First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Rules").

Chamber Ref: FTS/HPC/PF/19/1168

12 Clairmont Gardens, Glasgow, G3 7LW ("The Property")

The Parties:-

Mr. John Kennedy residing at 12 Clairmont Gardens, Glasgow, G3 7LW ("the Homeowner") and

James Gibb Residential Factors, having a place of business at 65, Greendyke Street, Glasgow G1 5PX ("The Factor")

Tribunal Members

Karen Moore (Legal Member)

Carol Jones (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that (i) the Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct ("the Code") and had breached Sections 2.1, 2.5 and 5.2 of the Code but had not breached Section 3.3, 5.5 and 6.1 of the Code.

Background

1. By application paperwork comprising documents received by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 17 April 2019 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the factor had failed to comply with Section 2 at 2.1 and 2.5, Section 3 at 3.3, Section 5 at 5.2 and 5.5 and Section 6 at 6.1 of the Code.

2. The Application comprised Application form dated 17 April 2019, copy correspondence (email and letter) between the Homeowner and the Factor and Factor's Written Statement of Services.

3. The Tribunal issued the following Direction on 19 June 2019:-

"The Applicant (Homeowner) is required to provide:

1. *A copy of the title deeds or a land register print of the Land Certificate for the Property relevant to the common ownership, factoring title conditions and common insurance title conditions.*

The Respondent (Factor) is required to provide:

1. *A copy of the Respondent's appointment as property factor to the development of which the Property forms part;*
2. *Details of the claims, if any, made on the common insurance policy for the development of which the Property forms part and*
3. *Two hard copies of its Written Statement of Services relevant to the Property.*

The said documentation should be lodged with the Chamber no later than close of business on 30 June 2019."

The Homeowner complied with the Direction.

Hearing

4. A hearing took place at 10.00 a.m. on Thursday 4 July at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT. The Homeowner was present and accompanied by Mr. Kieran Shah as a supporter in terms of Rule 11 of the Rules. The Factor was represented by Ms Deborah Rummens, one of its Directors, and by Mr David Smith, one of its employees.

5. The Tribunal first explained the role of supporter to the Homeowner and Mr. Shah. Ms. Rummens then addressed the Tribunal on the late compliance by the Factor with the Direction and explained that the documents requested had been emailed to the Tribunal on the evening of 3 July, the Direction having been overlooked due to a combination of staff leaving the Factor's organisation and administrative errors. The Tribunal obtained copies of the said documents and adjourned the Hearing for a short time to allow the Homeowner and the Tribunal itself to consider the said documents. The Homeowner objected to the late lodging of the said documents but preferred not to adjourn the Hearing to a later date. The Tribunal having considered the content of the said documents and, taking the view that the said documents would assist the proceedings, allowed them to be lodged and the Hearing continued.

6. The Tribunal then heard evidence from the parties in respect of the matters raised in the Application.

7. With regard to Section 2.1 of the Code which states:-*"You must not provide information which is misleading or false."*,the Homeowner advised the Tribunal that this related to the way in which the Factor presented information regarding the buildings insurance for the Property and the development of which it forms part on the Factor's website and in correspondence. With reference to a letter from the Factor dated 22 November 2018, the Homeowner stated that the Factor had advised him that the insurance premium was available on the website on 23 August 2018 when in fact it was not available until 13 November 2018. The Homeowner further stated that it was not until he received the Factor's documents at the Hearing that he became aware the nature of the buildings insurance policy.

8. Ms. Rummens on behalf of the Factor accepted that it was the updated reinstatement cost of the Property which had been posted on the website in August 2018 and not the insurance schedule and premium and agreed that the wording in the letter of 22 November 2018 was not accurate or clear. Ms. Rummens explained the process carried out by the Factor in revaluing all of the properties in its portfolio and the way in which homeowners were notified via a series of newsletter signposting homeowners to parts of the Factor's website, but accepted that this process was not made clear and that reference to claims history in correspondence with the Homeowner, whilst actually referring to claims across the Factor's portfolio, could be taken as referring to claims made in respect of the Property. She further explained the custom and practice of factors in arranging block portfolio buildings insurance and not individual policies for each development and that reference to claims were reference to the portfolio and not individual properties or developments. The Homeowner advised that he had been unaware of this and Ms. Rummens accepted that this could have been made clearer to him.

9. With regard to Section 2.5 of the Code which states:-*" You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers)*",the Homeowner advised the Tribunal that this related to the time taken by the Factor to respond to his email and telephone complaints to Ms. Brownlow of the Factor's organisation in respect his enquires about the increase insurance charge. The Homeowner explained that he first made an enquiry on receiving the account for the increased charges at the end of August/beginning of September 2018 but did not receive a substantive response until he received a letter from Mr. Smith dated 31 October 2018.

10. Ms. Rummens on behalf of the Factor explained that Ms. Brownlow was no longer employed by the Factor and that complaints were treated as such only if made formally. She explained that the Homeowners enquiries were not treated as a formal complaint

until his email of 12 October 2018 which complaint was investigated and responded to by Mr. Smith on 31 October 2018 and drew the Tribunal's attention to the apology made by Mr. Smith.

11. With regard to Section 3.3 of the Code which states:-" *You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.*", the Homeowner advised the Tribunal that this related to his request for information on the multiple claims which he understood to have been made in respect of the Property and the development of which it forms part. He stated that it was not until he heard Ms. Rummens' evidence that he became aware that there had been no claims for the Property and the development of which it forms part.

12. With regard to Section 5.2 of the Code which states:-" *You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.*",the Homeowner advised the Tribunal that this again related to the way in which the Factor presented information regarding the buildings insurance for the Property and the development of which it forms part on the Factor's website and in correspondence and stated again that it was not until he received the Factor's documents and heard Ms. Rummens evidence at the Hearing that he became aware of the nature of the buildings insurance policy.

13. Ms. Rummens and Mr. Smith on behalf of the Factor accepted that the presentation of the insurance information on the Factor's website was confusing and that homeowners required to access different parts to determine how costs were calculated. In response to questions from the Tribunal with input from the Homeowner, Ms. Rummens and Mr. Smith explained that there was one block policy which covered the Factor's portfolio. There was no single premium and that the cost of cover was, in effect, purchased on the basis of reinstatement cost, with properties which had a "no claim history" attracting a lower rate per £1,000.00 of reinstatement cost than properties with a "claim history". They explained that the Property was in the "no claim history" band and so the Homeowner was paying a low rate. They further explained that the increase in the premium was solely related to the increase in the reinstatement cost and changes to Insurance Premium Tax ("IPT") and was not as a result of any claim. Ms. Rummens explained that properties in the "claim history" band not only attracted a higher rate but also attracted a higher claims excess.

14. With regard to Section 5.5 of the Code which states:-" *You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves"* and Section 6.1 of the Code which states:-" *You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required."* The Homeowner confirmed to the Tribunal that these complaints related to the claims which he had thought had been made in respect of the Property and accepted that there were no claims and so there was no information to be provided on this.

15. In summing up, the Homeowner advised the Tribunal that it should have been clear to the Factor from his correspondence the information which he required. If granting a Property Factor Enforcement Order ("PFEO"), he asked the Tribunal to order the Factor to clarify its insurance arrangements and to award him compensation for the stress and inconvenience caused to him.

16. In summing up, Ms. Rummens accepted that the Factor could have been clearer and could have provided a fuller explanation in dealing with the Homeowners' complaints.

Findings of the tribunal

17. The Tribunal took into account the Application, the productions lodged by the Parties and the submissions made at the Hearing. The Tribunal found that the Homeowner gave evidence in a straightforward and truthful manner and had no difficulty in understanding his position in respect of the information given to him by the Factor. The Tribunal found that Ms. Rummens and Mr. Smith equally gave evidence in a truthful manner and that the issue between the Parties lay in a genuine difference of understanding of the facts surrounding the buildings insurance. The Tribunal agreed with the Homeowner and found that the Factor should have clearly understood from his correspondence the information which he required. It appeared to the Tribunal that the Factor focussed on the increase in the reinstatement cost when explaining the increase in the Homeowner's insurance cost whereas it should have explained how the Homeowner's insurance specific cost was calculated in relation to the way in which the Factor procured the block policy. It should also have been clear to the Factor that the Homeowner was requesting information on any claims specific to the Property.

18. With regard to the specific complaints, the tribunal considered Section 2.1 of the Code which states:-*"You must not provide information which is misleading or false."* the Tribunal agreed with the Homeowner that the Factor's information, although not intentionally so, had been misleading or false, resulting in the Homeowner being

misinformed and so the Tribunal found that there had been a breach of Section 2.1 of the Code.

19. With regard to Section 2.5 of the Code which states:-" *You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers*)" ,the Tribunal agreed with the Homeowner that it should have been clear to the Factor that his enquires to Ms Brownlow were complaints and "not business as usual" enquiries and so the Factor should have implemented its formal complaints process earlier than it did. It was also clear to the Tribunal that the Factor did not follow up on several phone calls from the Homeowner or respond to an initial email and did not always comply with the time limits in the Written Statement of Services so the Tribunal found that there had been a breach of Section 2.5 of the Code.

20. With regard to Section 3.3 of the Code which states:-" *You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance."* , as it was accepted that there were no multiple claims, the Tribunal found that there had been no breach of Section 3.3 of the Code.

21. With regard to Section 5.2 of the Code which states:-" *You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this."* ,the Tribunal agreed with the Homeowner that the way in which the Factor presented information regarding the buildings insurance for the Property and the development of which it forms part on the Factor's website and in correspondence was not all clear and only became clear during the course of the Hearing. The Tribunal, having regard to the fact that the purpose of this part of the Code is to ensure transparency and openness in how factors arrange buildings insurance, had no hesitation in finding that there had been a breach of Section 5.2 of the Code.

22. With regard to Section 5.5 of the Code which states:-" *You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves"* and Section 6.1 of the Code which states:-" *You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the*

group of homeowners a cost threshold below which job-specific progress reports are not required." , as the Homeowner accepted that there were no claims and so there was no information to be provided on these matters, the Tribunal found that there had been no breach of Sections 5.5 and 6.1 of the Code.

Decision of the tribunal

23. Accordingly, for the reasons and findings set out in full in the foregoing paragraphs, the Tribunal determined that the factor has failed in its Section 14 duty in respect of compliance with the Code

24. The Tribunal having so determined, then considered whether to make a PFEO in terms of Section 19 of the Act. The Tribunal had regard to the Homeowner's submission that he had been caused unnecessary inconvenience and stress by the Factor's failure to comply with the Code and considered that, in all the circumstances, there had been a detrimental effect on the Homeowner. The Tribunal agreed with the Homeowner that the Factor should be required to provide greater clarity in respect of insurance matters. Accordingly, the Tribunal proposed to make a PFEO which will follow separately to conform with Section 19 (2) of the Act which states:- *"In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a)give notice of the proposal to the property factor, and (b)allow the parties an opportunity to make representations to it."*

25. The decision is unanimous.

Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them

Karen Moore

Chairperson

9 July 2019