

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

Housing and Property Chamber First-tier Tribunal for Scotland



Decision issued under s19(2) of the Property Factors (Scotland) Act 2011

**Chamber Ref: FTS/HPC/PF/17/0263
FTS/HPC/PF/17/0264**

**Flats 1/2 41 Riverford Road and
0/2 43 Riverford Road,
Glasgow G43 1RX (“The Property”)**

The Parties:-

Mr Mordecai Bamberger, 86 Hillside Road, London N15 6NB (“the applicant”)

**Hacking and Paterson Management Services I Newton Terrace, Glasgow G3 7PL
 (“The property factor”)**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the property factor has:

- (a) complied with the property factor’s duties created by Section 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”); and
- (b) complied with the code of conduct as required by Section 14 of the 2011 Act,

determined that the property factor has not breached the code of conduct and that the property factor has complied with the Property Factors Duties

Tribunal Members

Paul Doyle	Legal Member
Andrew McFarlane	Ordinary Member

Background

1 By application dated 29 June 2018, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor’s duties.

2 The application stated that the applicant considered that the respondent failed to comply with the Property Factor's Duties and failed to comply with Sections 2.1, 3, 4.2. & 5.8. of the code of conduct for property factors. Although the application originally referred to section 5.3 of the code of conduct, the homeowner abandoned that part of his claim on 20 October 2017.

3 By interlocutor dated 16 January 2018, the application was referred to this tribunal. The First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

4 On 16 September 2017 the property factor sent a response to the application. The applicant sent further representation on 15 September, 20 October, 14 November, 3 & 24 December all 2017. On 23 February 2018 the Property Factor sent an inventory of productions.

5. A hearing was held at Glasgow Tribunal Centre on 16 April 2018. The applicant was neither present nor represented. The Property Factor was represented by David Doran, a director of the property factor company. After explaining the procedure to be followed, tribunal members asked Mr Doran questions drawn from the applicant's written representations.

Findings in Fact

6 The tribunal finds the following facts to be established:

(a) The homeowner is heritable proprietor of both properties in this application. He purchased both properties on 23/12/2003. The properties are not occupied by the homeowner, they are investment properties which he has let out. The properties were both purchased on the same day, but for different purchase prices. 1/2 41 Riverford Road Glasgow cost £12,000 more than 0/2 43 Riverford Road Glasgow.

(b) 1/2 41 Riverford Road Glasgow is a first floor flatted dwellinghouse in a mid-terrace block containing eight flats. 1/2 41 Riverford Road Glasgow is a ground floor flatted dwellinghouse in a corner block containing 16 flats.

(c) The Property Factor has acted as property factors to the homeowners of the larger properties of which the applicant's properties form part since the development was completed. The property factors have been the property factors for this applicant since the applicant purchased both properties. The property factor have sent quarterly detailed invoices to the applicant (and to his neighbouring homeowners) providing itemised accounts for the property factor's charges since the applicant purchased both properties.

(d) In 2016 the applicant chose not to pay some of the property factors accounts for 2015 & 2016. The property factor raised two separate actions for payment against the applicant at Glasgow Sheriff Court. The first action was for property factor charges in the periods to August 2015 and August 2016. The applicant

lodged a notice of intention to defend that court action and sent written submissions to Glasgow Sheriff Court setting out his position. The property factor was granted a decree on 10 February 2017. The applicant has paid all sums due under that decree.

(e) The property factor raised a separate Sheriff court action against the applicant for unpaid property factor invoices for the period to May 2015. That case was due to call in Glasgow Sheriff Court in November 2017. The applicant paid the sum sued for before the first calling of the case and the property factor arranged for the action to be dismissed.

(f) The property factor has not applied interest on late payment charges to any sums due by the applicant since June 2017. The applicant made this application to the First-tier Tribunal on 29 and June 2017.

(g) The property factor provided each homeowner in the development with a written statement of terms of service and delivery standards. The property factor sent the most recent version of the terms of service and delivery standards to the applicant on 20 February 2017. The terms of service and delivery standards sets out the core factoring services that the property factor will provide. Page 3 of the property factor's terms of service and delivery standards contains the following clauses

- If insurance is placed by HPMS as part of the core factoring service, it is the homeowner's responsibility to ensure that the sum insured is adequate.
- Property valuations for buildings insurance are not undertaken by HPMS. This service can be arranged with a third-party valuation surveyor, upon the instruction of the homeowners.

(h) The land certificate for each of the applicant's properties contains details of the burdens affecting each property. The deed of conditions by Taylor Woodrow Developments Ltd (who developed the larger property) registered in the Land Register for Scotland on 12 March 2003 sets out the burdens affecting both properties. Clause 8 of the deed of conditions deals with insurance and requires the larger property (of which the applicant's two flatted dwellinghouses forms part) to be constantly insured by an index linked insurance policy for the sum of at least £2 million. The sum insured is to be based on the market value of the larger property, and not on the reinstatement value of the property.

(i) The obligation to ensure the flatted dwellinghouses falls on each individual homeowner. That obligation is governed by the terms of the title deeds. The property factor's role is to facilitate the title deed obligations imposed on each individual homeowner.

(j) In 2012 the applicant contacted the property factor complaining that the charge for insurance for both of his properties was too high. He asked to see the insurance certificate. When he saw the insurance certificate he believed that the properties were over insured because he believed that the properties should be ensured for their reinstatement value. The applicant persuaded the

property factor to obtain a Reinstatement Cost Assessment from Shepherds, surveyors. In June 2014, Shepherds, surveyors, assessed the reinstatement cost of the larger property at £1,550,000. The property factor provided a copy of that valuation report to the applicant.

(k) The property factor arranges buildings insurance for the larger property of which the applicants flatted dwellinghouse forms part every year. The property factor has historically based the insured figure on the original insurance obtained by the developers, increased by index linking each year.

(l) The property factor has consistently given the applicant clear and candid information about the level of insurance, the reasons for buildings insurance and the level of charge. The obligation to insure the building for not less than £2 million (for any one incident) by an indexed linked buildings insurance policy rests with the homeowner.

(m) The property factor has not provided misleading information nor has the property factor requested improper payments, nor has the property factor provided obtuse and confusing information about financial obligations to the homeowner. The property factor has not applied interest on late payment charges to any sums due by the applicant which are the subject matter of this application since the application was submitted. The property factor's terms of service and delivery standards clearly state the frequency with which property revaluations will be undertaken for the purpose of buildings insurance.

(n) The property factor has not breached the code of conduct. The applicant does not specify a separate breach of the property factors duties. There is no reliable evidence before the tribunal of a breach of the property factors duties.

Reasons for decision

7 (a) The central issue in this case relates to the charges for buildings insurance. The applicant identifies four sections of the code of conduct which he says is breached because he believes that he has been overcharged for buildings insurance for many years. Between 2012 and 2014 there was correspondence between the applicant and the property factor about the level of insurance. That culminated in obtaining a Reinstatement Cost Assessment from Shepherds, surveyors, which identified a reinstatement cost for insurance purposes of £1,550,000.

(b) What the applicant fails to appreciate is that the obligation to insure rests with him and is governed by his Land Certificate. The Land Certificate incorporates the deed of conditions by Taylor Woodrow Developments Ltd, which requires that the property should be insured for not less than £2 million. The same clause in that same deed of conditions specifies that the property must be insured for the market value, not the reinstatement cost.

(c) The valuation obtained from Shepherds in 2014 is academic because of the insurance clause in the deed of conditions by Taylor Woodrow Developments Ltd. The applicant believes that he has been overcharged for buildings

insurance when, in fact, buildings insurance has been arranged in accordance with the conditions of the land certificate. The insurance may well be expensive. There may well be cheaper insurances available, but on the evidence before this tribunal the cheaper insurances do not comply with the conditions of the Land Certificate.

(d) The applicant complains that the property factor has breached section 2.1 of the code of conduct which says

2.1 You must not provide information which is misleading or false.

(e) The property factor has not provided misleading or false information. The information the property factor provided might not be the information that the applicant wants to read or hear, but it is neither misleading nor false. The property factor has, in fact, provided accurate information. It is the that information the applicant seeks to challenge, but because of the terms of the burdens contained within his own land certificate the applicant's challenge is simply misconceived.

(f) The applicant complains that the tenets of section 3 of the code of conduct are breached. The heading of Section 3. of the code of conduct says

SECTION 3: FINANCIAL OBLIGATIONS

While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

The overriding objectives of this section are:

Protection of homeowners' funds

Clarity and transparency in all accounting procedures

Ability to make a clear distinction between homeowners' funds and a property factor's funds

(g) What the applicant says is that the property factor does not protect homeowners' funds and makes improper applications for payment. Because the very foundation of this application is undermined by the terms of the applicant's own Land Certificate there is no merit in the complaint made by the applicant. There is no reliable evidence before this tribunal that improper payments have been requested. There is no reliable evidence before this tribunal that homeowners' funds have not been properly accounted for and protected. The weight of reliable evidence indicates that the applicant has received detailed quarterly invoices from the property factor detailing all expenses and demands for payment. The weight of reliable evidence indicates that it is because the homeowner has received detailed quarterly invoices that he has been able to discuss his concerns with the property factor and raise this application.

(h) Section 4.2. of the code of conduct says

If a case relating to a disputed debt is accepted for investigation by the homeowner housing panel and referred to a homeowner housing committee, you must not apply any interest or late payment charges in respect of the disputed items during the period that the committee is considering the case.

(i) The applicant simply says "*you are in breach of this law*". The weight of reliable evidence indicates that no interest or late payment charges have been applied by the property factor since June 2017. The appellant's application was made on 29 June 2017 and was referred to this tribunal by interlocutor dated 16 January 2018.

(j) Sections 5.8. of the code of conduct says

You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.

(k) The property factor's terms of service and delivery standards are produced by the applicant himself. The terms of service and delivery standards produced by the applicant clearly state

Property valuations for buildings insurance are not undertaken by HPMS

(l) The frequency of property revaluations for buildings insurance is clearly stated as zero. The property factor makes a clear declaration that that is not a service that is offered. There is no obligation on the property factor to insure the building. There is no obligation on the property factor to carry out property revaluations. The property factor makes a candid declaration that the frequency of property revaluations will be nil.

(m) On the facts as this tribunal finds them to be the property factor has adhered to the code of conduct. The applicant's complaint that there have been four breaches of the code of conduct is not made out.

(n) The applicant complains that the property factor's duties have been breached, but his complaint is entirely without specification. A fair reading of the application and supporting documents indicates that the applicant believes that if his allegations that the code of conduct is breached are successful, then by analogy the property factor will have breached the property factors duties.

(o) On the facts as this tribunal finds them to be, the property factor has not breached the code of conduct. By analogy, the tribunal finds that the property factors duties set out in section 17 of the Property Factors (Scotland) Act 2011 have not been breached.

Decision

8. Because there has been no breach of the code of conduct for property factors, and because the property factors duties have been adhered to, there is no need for a Property Factor Enforcement Order.

Appeals

9. **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.**

Paul Doyle

Signed
Legal Member

15 April 2018

