



CASE REVIEW

MR PAUL BROWN-CONSTABLE

AGAINST

STRANGFORD MANAGEMENT LIMITED

**COMPLAINT BY MR PAUL BROWN-CONSTABLE
AGAINST STRANGFORD MANAGEMENT LIMITED**

BACKGROUND

This case concerns the complaint by Mr Brown-Constable (the Leaseholder and Complainant) against Strangford Management Ltd (Strangford) raised in connection with the performance of their branch in London in connection with Flat 7, Mitre House, 124 Kings Road, London, SW3 4TP (the Property).

I have considered the specific complaints within the TPO Complaints Form and, where relevant, the information in the Further Details section (although I may not necessarily comment on it in my Review).

THE ISSUES

The issues I have been asked to examine can be summarised under the following headings:

A. SERVICE

- i. BULK WASTE REMOVAL**
- ii. ELECTRICITY**
- iii. PLUMBING**
- iv. ENTRY PHONE**

The Complainant has requested that Strangford provided the outstanding documents he has requested in order to resolve the dispute. The Complainant considers that Strangford have failed in their service in connection with proving accurate service agreement accounts and providing requested information.

Strangford have said that the Complainant's emails are incomprehensible however as a gesture of goodwill they tried to provide answers to the queries. They do not believe that their service fell short in this instance and have not offered the Complainant a gesture of goodwill.

THE REVIEW

My role, as defined by the TPO Terms of Reference, is to review complaints with a view to promoting a settlement of the dispute. It is not to make a legal determination on points of law. That is the role of the courts. It follows that my decision represents what I consider to be a fair and reasonable outcome to this dispute and the Complainant is free to accept or reject this.

In reaching my decision here I have nonetheless taken legal principles and precedent into account. Having considered the circumstances made apparent through the evidence presented, I have applied common sense and I shall consider the relevant sections of the TPO General Membership Obligations and the Royal Institution of

Chartered Surveyors (the RICS Code). FR have also agreed to abide by the ARMA Consumer Charter and Standards (the ARMA standards) which I have also referred to.

I have carefully read the evidence provided by both parties to the dispute; each party is aware of the position of the other and so I do not intend to dissect these or to reproduce the arguments or correspondence entered into at length here.

The purpose of this Review is to present and explain my findings and to propose what I deem to be a fair and reasonable outcome to the dispute given that the parties have been unable to reach such a point themselves. TPO provides a less formal alternative route to the courts for dispute resolution and we do not replicate court process when doing so. TPO process is not adversarial and so a judgement does not hinge on who presents the best argument, or counterargument, but on my consideration of the facts as I have found them.

TPO do not have the power to take sworn testimony or to cross examine witnesses under oath – as such I would ask the parties to the dispute to bear in mind that where issues might involve matters that were subject to verbal exchanges, I will not be able to determine precisely what was said. Where accounts differ, I will endeavour to reach a decision on the balance of probabilities based on all the evidence that has been submitted.

When TPO proposes an award, it is compensatory, so it will be for quantifiable loss or for aggravation, distress, and inconvenience attributable to the agent and that is over and above that which can be deemed inherent to the transaction in question.

We do not have the power to punish agents for shortcomings. As such any award made is set at a level deemed suitable to compensate for the impact of any shortcomings in service when measured against the Code of Practice or best practice expectations. We will not make awards simply for an agent failing to meet Code requirements where this has not caused any notable detriment.

CODE OF PRACTICE REQUIREMENTS

The expectations and requirements of Strangford's service under the following aspects of the TPO General Membership Obligations, the Royal Institution of Chartered Surveyors (the RICS Code) and the ARMA Consumer Charter and Standards (the ARMA standards) are:

TPO General Membership:

- To provide a service consistent with fairness integrity and best practice.

The RICS Code:

2.2- Agents should conduct business in an honest, fair, transparent, and professional manner and that in all dealings with clients, agents should ensure that all communications (both financial and non-financial) are fair, clear, timely and transparent.

4.2- Agents should respond promptly to reasonable requests from Leaseholders for information.

the ARMA standards:

- Be honest, fair, open, and transparent and provide a timely and professional service with access to the information needed.

OMBUDSMAN'S FINDINGS

A. SERVICE

Having thoroughly examined evidence presented in the light of the issues in dispute, I have supported this complaint. I will propose an award of £100 to compensate the Complainant for the impact on them of Strangford's shortcomings in service. I will explain why I have found this, below.

Before I proceed, I note Strangford's are no longer the managing agent for the Property, however I am satisfied that the events complained about occurred when they were the managing agent.

I must explain, however, that aspects of the Complaint do not fall within my Terms of Reference. Specifically, I cannot judge if the service charge accounts are correct. I can only consider the service the Complainant has received from Strangford in terms of what is best practice in the circumstances. The Complainant may wish to take these matters further with the new managing agent or the Directors or the resident's company. For example, he can make a formal request, under Sections 21 and 22 of the Landlord and Tenant Act 1985, to receive a summary of costs from the last accounting period, and thereafter for an appointment to inspect to relevant invoices and receipts.

As a leaseholder, the Complainant also has the right to apply to the First Tier Tribunal (FTT) for a determination on whether the service charges are payable and/or reasonable in view of the services provided.

I also wish to note here that, on 9 July 2021, Strangford emailed the Complainant stating they were having trouble understanding the Complainant's queries. Having viewed the multiple emails sent from the Complainant to Strangford I conclude that the emails are challenging to understand and therefore it is difficult to conclude exactly what the Complainant required from Strangford's. The Complainant has only brought four very specific complaints to TPO and therefore I will only comment on these below.

BULK WASTE REMOVAL

In this case, the dispute stems from the Complainant stating that the bulk waste removal invoiced on the 2019 service charge accounts are incorrect and that the invoices should have been charged to another Property in the building as the waste was their responsibility. The Complainant has stated that he has requested to view to four bulk waste removal invoices however Strangford's have failed to provide these.

TPO cannot determine if the invoices charged for bulk waste removal were correctly charged on the 2019 accounts or decide if these should have been allocated to Flat 1 in the Property, if the Complainant wishes to pursue this part of the complaint further, they can do so through the FTT.

On 7 June 2021 the Complainant made what I would consider to be a reasonable request for information; he questioned if the fees charged for the bulk removal should have been allocated to Flat 1, who the Complainant states is responsible for the rubbish, and not to the service charge. On 8 July 2021 Strangford's stated, '*Upon review of these invoices, we believe these to be in connection with quarterly bulk item removal costs.*'

The Complainant has expressed his concern about the wording Stanford has used in their reply to him stating '*we believe*'. The Complainant has stated that Strangford should know what the invoices were in relation to and should not base who gets charged the invoices on something they believe, it should be based on something they know. I agree that Strangford should have been able to give the Complainant a definitive reply.

Section 4.2 of the RICS Code states '*Agents should respond promptly to reasonable requests from Leaseholders for information.*' I am not satisfied that Strangford did this and I conclude this would have caused the Complainant undue aggravation distress and inconvenience.

ELECTRICITY

In this case, the dispute stems from the Complainant bringing to Strangford's attention that the electricity charge on the accounts was six times the average yearly amount. Although Strangford's agreed to refund half of the charge, the Complainant remains dissatisfied that the electricity bill is still two times the average yearly amount based on his calculations from the last six years. The Complainant was advised that he would receive the 2019 and 2020 electricity bills to view but he has stated he has not received these as promised.

On 26 April 2021, 23 May 2021, and 26 May 2021 the Complainant questioned the large increase in electricity cost and Strangford confirmed they would provide clarity on this. On 7 June 2021 Strangford agreed to supply the Complainant with the electricity bills for 2019 and 2020. On 8 July 2021 Strangford advised the Complainant '*In regards to the electricity spend, further to a number of discussions with the electricity supplier they have informed us that there has been duplicate payments made and therefore we have secured a credit back to the service charge account of £1,459.35, this should be in the account in 3-5 days.*' Then on 12 July 2021 the Complainant requested the electricity statements again. On 14 July 2021 Strangford confirmed they had spoken to the electricity supplier, and they were sending these to them on the post.

Section 4.2 of the RICS Code states '*Agents should respond promptly to reasonable requests from Leaseholders for information.*' I have seen no evidence that the final set of statements have been supplied to the Complainant to date and I am critical of Strangford for this. I conclude this would have caused the Complainant undue aggravation, distress, and inconvenience.

PLUMBING

In this case, the dispute stems from the Complainant questioning why a bill for Plumbing of £957 was charged to the Leaseholder via the service charge and not directly to Flat 1 to whom the work was for. This was questioned by the Complainant in their email to Strangford's on 26 April 2021. I have been unable to conclude from the emails provided that this query has been responded to.

Section 2.2 of the RICS Code states '*Agents should conduct business in an honest, fair, transparent and professional manner and that in all dealings with clients, agents should ensure that all communications (both financial and non-financial) are fair, clear, timely and transparent.*' I am not satisfied that Strangford's replies were timely and conclude this would have caused the Complainant undue aggravation, distress, and inconvenience.

ENTRYPHONE

In this case, the dispute stems from the Complainant questioning why a charge to repair the entry phone was included on the service charge accounts when Bourne, the company who carry out repairs for the entry phone, do this for free as part of their contract.

The Complainant has provided an email dated 4 October 2021 from Bourne, that states they do not charge for routine maintenance, parts or labour on the call outs and the call outs for the Property were not chargeable.

Strangford's have provided an invoice from Bourne for £495 dated 25 March 2020 which states, '*Emergency call out 19.02.20 to reports of door entry system not working*'. I am unable to determine if an '*emergency call out*' is covered under the agreement with Bourne but this would appear to confirm that this particular visit incurred a charge.

The Complainant has claimed in their email of 14 July 2021 titled Miscellaneous, that this is not a valid invoice and should be recredited to Flat 5 (who I understand is one of the directors) where the entry phone issue was identified. I am unable to make a determination on this claim or decide if this bill should be removed from the service charge accounts. If the Complainant wishes to pursue this further, they can do so through the FTT.

In summary, I have found that an award of £100 is suitable as compensatory redress for the impact of the shortcomings I have identified in their service. TPO does not have the power to punish agents through the awards we make; in my view an award at a higher level than that proposed here would represent punishment of Strangford's rather than fair redress for the Complainant.

I understand the Complainant was not looking for financial compensation for his complaints, however I consider this to be a reasonable outcome within the scope of decisions I am able to provide in this instance. As previously confirmed, Strangford's are no longer the managing agent for the premises. I have advised that the Complainant should take up his concerns with the Directors responsible for the premises or their new agent.

CONCLUSION

I have supported aspects of the complaints raised to the extent and for the reasons explained above. Given the extent of my support, I have concluded that an award of £100 represents a suitable and reasonable level of compensation to bring about a resolution of the dispute so that the parties can draw a line under the matter and move on.

Both parties will be informed by my Office of the opportunity to represent against my decision and it may be helpful if I explain that TPO will only reconsider the case if it can be shown that either my decision was based on a significant error in fact that fundamentally alters a material part of the decision, or significant new evidence has been produced that was not previously available that would have a material effect on my decision. If it were simply the case that either party considers the amount of the award made by me to be unsuitable, this does not alone constitute grounds for Representation.

I will also make clear that any Representation must be in writing, sent by letter or email, to allow a proper consideration of the matter. This Office cannot accept representations by telephone.

PROPOSED DECISION

For the reasons and to the extent explained stated in my Review, I have supported some of the complaints that have been made.

Accordingly, I make an award of £100 in compensation. This is in full and final settlement of the dispute.

Property Ombudsman