



**Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

**HOHP reference: HOHP/PF/14/0013**

**Re: Flat 3/2, 113 Main Street, Bridgeton, Glasgow G40 1 QD ('the property')**

**The Parties:**

**Ms Leanna Donaldson, c/o Callan & Co, Solicitors, 157, Cumbernauld Road, Muirhead, Glasgow G69 9AF ('the applicant')**

**Walker Sanderford Property Management Ltd, St George's Buildings, 5, St Vincent Place, Glasgow G1 2DH, incorporated under the Companies Acts and having their Registered Office at c/o Clements, Chartered Accountants, 39 St Vincent Place, Glasgow G1 2ER ('the property factor')**

**Committee members:**

**David M Preston, Chairperson and Carolyn Hirst, Housing Member**

**Decision:**

**Background:**

1. By letter dated 4 December 2013, Messrs Callan & Co, on behalf of the applicant applied to the Homeowners Housing Panel (HOHP). They complained that the property factor had failed to provide a breakdown of the sums due by the applicant to the property factor to discharge a Notice of Potential Liability lodged by the property factor, either before the sale of the property had been completed or between then and the date of the letter. By letter dated 16 December 2013 Messrs Callan & Co clarified that the application was made under section 17(1) of the Act in that the property factor had failed to carry out their duties. In a letter dated 10 June 2014, Callan & Co further clarified that they wished HOHP to determine whether the property factor had failed to provide clarity and transparency in all accounting procedures as the property factor failed to provide a breakdown of the sums claimed. Such an obligation is specifically referred to in

Section 3 of the Code of Conduct for Property Factors effective from 1 October 2012 (“the Code of Conduct”).

2. In response to the application the property factor submitted representations on 8 May 2014. In particular they argued:
  - a. no specific failure to comply with any specific section of the Code of Conduct had been outlined;
  - b. the homeowner had not engaged in the property factor’s complaints procedure as published on their website, contrary to the directions outlined in section 7 of the Code of Conduct;
  - c. at the date of the application the homeowner was not the owner of any property factored by the property factor and as such she was not a homeowner and was unable to lodge an application.
3. The application was referred to the Committee to be dealt with by written representations in terms of regulation 18 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 (“the Regulations”). The Committee met on 10 July 2014 in the offices of HOHP to consider the application and representations.
4. The Committee considered that it should deal with the property factor’s argument that at the date of the application the applicant was unable to lodge an application as she was not a homeowner as defined in section 10 of the Act as a preliminary matter.
5. In response to that argument, in their letter of 10 June 2014, Callan & Co stated “The time the Applicant is complaining about she was a homeowner and is entitled to refer her complaint to the Homeowner Housing Panel.” The Committee interpreted this as meaning that at the time of the circumstances complained of, the applicant was a homeowner and was therefore so entitled.
6. The Committee considered carefully the terms of the Act as well as the Code of Conduct and the Regulations. It noted the definition of “homeowner” in section 10(5) of the Act as being “an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor”. Section 17(1) of the Act provides that a *homeowner* may apply to the homeowner housing panel for a determination. Section 10(5) makes no reference to a former owner.
7. In the present case the applicant, at the date of the application, namely 4 December 2013 was no longer a homeowner as defined in the Act, the sale of the property having been completed on 8 November 2013.

8. The Committee noted that Section 3.1 of the Code of Conduct provides for an obligation on the property factor to provide all financial information relating to their account, if a homeowner decides to terminate their arrangement with the property factor or where a property changes ownership, within three months of termination of the arrangement unless there is a good reason not to.
9. The Committee determined that unless and until the property factor failed to provide all relevant financial information within the period of three months, no application could be made by a former homeowner until the expiry of that period, following a transfer of ownership of the property and that there were no other provisions in the Act which would enable a former homeowner to make an application to HOHP.
10. The Committee noted that the period of three months in terms of section 3.1 of the Code of Conduct had not expired by the date on which Messrs Callan & Co, on behalf of the applicant, applied to the HOHP and accordingly the Committee determined that the application to HOHP was premature.
11. The Committee considered that although this result may appear to be anomalous, it was bound by the terms of the principal and subordinate legislation, which is capable of logical interpretation, albeit that such interpretation has a very restricted result. It is not for the Committee to amend the legislation to broaden its effect.

### **Appeals**

*The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides*

*"(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee. (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made ... "*

David Preston

Chairperson Signature

Date.....*30-7-14*.....

