



**Decision of the Homeowner Housing Committee issued under the
Homeowner Housing Panel (Applications and Decisions) (Scotland)
Regulations 2012**

Reference: HOHP/PF/15/0020

Re: 22 Derby Wynd, Carfin, Motherwell ML1 4GE (the Property)

The Parties:

**Miss Ann-Marie McPolin, 22 Derby Wynd, Carfin, Motherwell ML1 4GE
(the homeowner).**

**FirstPort property Services Scotland limited, 183 St Vincent Street,
Glasgow, G2 5QD ("the property factor").**

Committee Members

Martin McAllister (Chairperson) and Ann MacDonald (Housing Member).

**Decision by a Committee of the Homeowner Housing Panel in respect of
an application under section 17 of the Property Factors (Scotland) Act
2011(the Act).**

Decision of the Committee

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

Complied with the Code of Conduct for property factors, as required by Section 14 of the 2011 Act and carried out the Property Factor's duties as required by Section 17 of the 2011 Act.

Determines that, in relation to the Homeowner's Application, the factor has not complied with the Code of Conduct for property factors as required by the Act.

Background

1. The factor's date of registration as a property factor is 1st November 2012.
2. By application dated 18th February 2015 the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the property factor had failed to comply with the Code of Conduct for Property Factors and had failed to carry out the property factor's duties. The specific matters complained about in relation to breach of the Code of Conduct for Property Factors were breach of Sections relating to Communications and Consultation, Carrying out Repairs and Maintenance and Complaints Resolution. The issues surround the installation of a communal Sky Television system, the replacement of a carpet in a common area and the methodology of the property factor in determining that these works could be carried out.
3. After the application had been lodged the matter was referred to a Homeowner Housing Committee (the Committee) on 24th March 2015.
4. Following service of the Notice of Referral, the homeowner made written representations on 11th April 2015 and enclosed copies of correspondence passing between the property factor and the homeowner after the application had been lodged. The property factor made written representations on 7th April 2015

Hearing

5. A hearing took place in respect of the application on 11th June 2015.

The homeowner was present and was accompanied by William McNiff. The property factor was represented by Brian Douglas, Business Development Manager and Keith Murray, Regional Director.

Preliminary Matter

6. Mr Murray advised that the property factor had previously traded as Peverel but now traded as FirstPort. This is not a change of company

but a change in trading style.

Findings in Fact

7. The Committee finds the following facts to be established:-

7.1 The applicant (homeowner) is the heritable proprietor of the property known as 22 Derby Wynd, Motherwell. The property is registered in the Land Register of Scotland under Title Number LAN157684. The applicant has owned the property since May 2008.

7.2 The property is a second floor flat in a block of nine flats.

7.3 The management of the common parts of the development where the block of flats is situated and the block of flats itself is governed by two Deeds of Conditions, one registered in the Land Register on 8th March 2001 and the other on 8th October 2001.

7.4 The property factor is FirstPort Property Services Scotland Limited.

7.5 The property factor issued a ballot paper to the proprietors of the nine flats in the block seeking authority to replace an existing carpet and install a new communal Sky system. A letter dated 17th July 2015 accompanying the ballot paper indicated that a proprietor not returning the ballot paper would be deemed to approve the proposed works. The letter and ballot paper were sent by ordinary mail.

7.6 Three proprietors returned the ballot paper. One proprietor voted in favour of the Sky installation and two voted against. Two proprietors voted in favour of the carpet renewal and one voted against.

7.7 The carpet was replaced and the Sky system was installed. The homeowner did not connect to the new communal system.

7.8 The cost of the works was met from the reserves held by the property factor on behalf of all the proprietors of the block of flats.

7.9 The sum of £152.64 was the homeowner's share of the cost of the communal Sky system installation and this sum was credited back to the Homeowner on 17th October 2014. The homeowner has borne no share of the

cost of the communal Sky installation.

7.10 The Deeds of Conditions permitted the property factor to replace the existing carpet in the communal area without reference to the residents.

7.11 The Deeds of Condition contain provisions for meetings of residents to determine such matters as common works.

7.12 The method employed by the property factor in seeking approval for the common works by issuing the ballot paper in the form it did and also indicating that a proprietor not returning it would be deemed to approve of the works was flawed.

7.13 The property factor did not deal properly with the complaint made by the Homeowner.

7.14 After the application had been made to the Homeowner Housing Panel, the property factor offered to meet the Homeowner to resolve matters but this was rejected by the homeowner.

Evidence

8.1 The Committee had before it the application and the written representations of the parties. It also had a copy of the Land Certificate for the title LAN157684 and the property factor's Statement of Services and Complaints Procedure issued by the property factor. The Committee also had copies of correspondence between the homeowner and the property factor both before and after the Homeowner had made the application to the Homeowner Housing Panel.

8.2 There was no dispute between the parties with regard to ownership of the property, the right of the property factor to act as such and the fact that the communal carpet was replaced and a communal Sky system installed .

8.3 The homeowner said that one of the matters she had concerns about was the poor workmanship regarding the common carpet which had been replaced. She said that she had just returned from holiday and that part of the carpet had been replaced in her absence. The homeowner said that she did not think the carpet in the communal area required to be replaced and she believed that the carpet that had been laid was of inferior quality but she led no further evidence on the matter. Mr Murray said that he considered that the carpet needed to be replaced and that it had been down for thirteen years. He said that it had become more difficult to clean properly. Mr Murray agreed that the new carpet had not been fitted well and said that there had been issues

with the original contractor. He said that another contractor had been employed to carry out the work to rectify faults. Mr Douglas said that stair treads still require to be fitted and that these would be done soon. Mr Murray said that he thought that the property factor had authority under the title deeds to renew the carpet but that he considered it advisable to seek authority. It was conceded by Mr Murray that the rectification of faults in the new carpet had taken too long.

8.4 The property factor said that the title of the development stated that proprietors of the flats had to seek permission from the developer if they wanted to install satellite dishes and he said that the block had a number of such dishes without permission. The homeowner said that she had a satellite dish and had never been approached about this by either the factor or the original developer. Mr Murray conceded that this was the case and that no approaches in this regard had been made by the property factor to any proprietors in the development. Mr Murray also conceded that approval for a communal system would require to be obtained from the proprietors of the flats in the block. He said that Gill McGeachie, a former employee had considered that it would be better to have a communal system and he said that approaches had been made to Mr McGeachie by property owners in the block. Mr Murray also said that he thought that there were technical reasons why a communal system would be preferable to an individual installation but he was unable to give any detailed evidence on that matter.

8.5 Parties agreed that ballot forms had been issued on two occasions. One had been issued in June 2015 and had insufficient response for the Property Factor to proceed with the works and subsequent ballot forms had been issued on 17th July 2015. Those forms had been sent with a letter from the property factor to homeowners in the block of flats. This letter stated *inter alia* in relation to both works "should we not receive a ballot form it will be assumed that you are in favour of the proposal proceeding." Miss McPolin said that she considered this to be undemocratic. The property factor said that three ballot forms had been returned and that two of the three proprietors had been in favour of the carpet replacement with one against and that one of the three proprietors had been in favour of the Sky installation with two against. Correspondence before the Committee from the property factor stated that, in light of the condition set out in the letter accompanying the ballot forms, it had been considered that authority had been given for both works. The carpet renewal and the Sky installation proceeded with eight out of nine proprietors in the block opting to connect to the new system. Mr Murray and Mr Douglas readily stated that such a methodology used for the ballot was unusual and would not be adopted in future.

8.6 Miss McPolin accepted that she had received a credit of £152.64 which was in respect of her share of the costs of the Sky installation because she had not connected to it. She said that she was concerned about any ongoing maintenance of the system. Mr Douglas stated that any future maintenance would be shared by the proprietors using the system and that Miss McPolin

would not be charged for this. A copy of the credit Note for £152.64 was before the Committee.

8.7 The papers before the Committee included a letter from Mr Douglas of the property factor dated 5th March 2015 where he apologises for the length of time it has taken to sort out the homeowner's complaints and offering to meet the homeowner. By letter dated 9th March 2015, the homeowner rejected the offer to meet because previous attempts to resolve matters had failed and because the matter was being considered by the Homeowner Housing Panel.

8.8 The papers before the Committee included correspondence from the property factor conceding that the homeowner's complaints had not been properly dealt with.

8.9 The Complaints Procedure brochure provided by the property factor bears the legend "Peverel Scotland" at the front and makes specific reference to the Property Factors (Scotland) Act 2011 but it also directs homeowners to an English advice service.

8.10 At the conclusion of evidence Mr Murray apologised unreservedly for the way that the homeowner had been treated by FirstPort.

Discussion

The members of the Committee considered the evidence. It considered that the matters before it could helpfully be divided into four:

- (i) Breach of the Code in relation to communication and consultation (Section 2)
- (ii) Breach of the Code in relation to carrying out repairs and maintenance (Section 6)
- (iii) Breach of the Code in relation to complaints resolution (Section 7)
- (iv) Overarching failure to carry out property factor's duties.

The Committee considered first the carpet replacement. It accepted the evidence of the property factor that the carpet needed replaced. Given the age of the carpet it seemed reasonable that it had reached the end of its

useful life. Although Miss McPolin said that she thought the replacement was unnecessary she had no evidence to support this. The Committee also formed the view that the property factor would have been entitled to replace the carpet without reference to homeowners since this was a renewal but did accept the property factor's position that it considered it good practice to consult. The property factor accepted that the rectification of the faults in the new carpet had taken too long.

The Committee considered the evidence in relation to the authority that had been sought for the installation of the communal Sky television system. It formed the view that such an installation was not a renewal and the property factor did not argue that it was. Whilst it accepted that the title did contain provisions preventing the installation of satellite dishes without authority of the developer and arguably, by extension, without authority of the property factor, this was not a matter that was pursued by the property factor and the Committee considered that this was irrelevant to the matter before it. It was clear that a ballot of the proprietors had not produced an adequate response and the property factor had then decided to issue another ballot within a month with the condition that a ballot form not returned would mean that the person not returning it was agreeing to the works going ahead. The forms were sent by ordinary mail and the property factor would therefore have been unaware if they had been received or not. The Committee considered the terms of the title and, in particular, the provisions of the Deed of Conditions registered in the Land Register on 8th October 2001. This contained provisions for calling meetings of proprietors. It seemed to the Committee that the property factor could have used this process which would have involved a proprietor calling a meeting. Presumably since the property factor had initially been approached by a proprietor or proprietors seeking such an installation, there would have been no difficulty in adopting this process. It seemed to the Committee completely unsatisfactory that the property factor had adopted such a procedure without authority from the proprietors. The Committee considered that it would have been possible for the property factor to obtain authority from a meeting of proprietors in advance if it had wanted to adopt such a "negative vote" procedure. The Committee also noted the property factor's view that it would not adopt such a procedure in future.

The Committee noted that the property factor had accepted in correspondence that it had not dealt properly with Miss McPolin's complaint. It also noted that the property factor had offered to meet with Miss McPolin after she had lodged the application with the Homeowner Housing Panel in an attempt to resolve matters. It accepted that Miss McPolin was perfectly entitled not to accept the offer of a meeting but the correspondence did display a willingness on the part of the property factor to attempt to resolve matters whilst at the same time acknowledging that it had failed in relation to its complaints procedures. In view of the property factor's acceptance that it had not properly followed the complaints resolution process, the Committee considered that it did not require to consider in detail what the failures were. The Committee considered that the property factor should not have a brochure referring to an English advice service and, although this was not an

issue in this particular case, it seems appropriate that the property factor should take steps to amend its publication.

Decision

The Committee took the view that there had been breaches of the Code of Conduct but did not consider that there was a breach of the property factor's duties. It considered that, in particular, there had been breaches of Sections 2, 6 and 7 of the Code. The Committee appreciated the candid position of the property factor in acknowledging that its handling of the complaint had not been appropriate and its statement that it would never again adopt the position it did with the ballot forms as it had done in this matter. The Committee also took note of the apology made by the property factor. The Committee noted that the homeowner had not suffered financial loss because she had not been charged for the Sky installation but took the view that she had been inconvenienced by the breaches of the Code of Conduct and that it would be appropriate for an award of compensation to be made. The Committee determined that a property factor enforcement order be made in the following terms:

That the property factor makes a payment to the homeowner of £250 in respect of compensation and in recognition of the inconvenience experienced by the homeowner and that such compensation be paid within twenty one days of service of the property factor enforcement order upon the property factor.

Appeals

The parties' attention is drawn to the terms of section 21 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 day on which the decision appealed against is made...."

Chairman of Committee..

Date 17th June 2015