



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

HOHP/PF/14/0039

Re: Property at 1/3 South Mellis Park, Edinburgh, EH8 7TP (“the Property”)

The Parties

Cameron Dearden, residing at 1/3 South Mellis Park, Edinburgh, EH8 7TP (“the applicant”)

and

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the respondent”)

**Decision by a Committee of the Homeowner Housing Panel
In an Application under Section 17 of the Property Factors (Scotland) Act
2011**

DECISION OF THE COMMITTEE

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

(a) Complied with the property factor’s duties created by Section 17 of the Property Factors (Scotland) Act 2011 (“The 2011 Act”) &

(b) Complied with the Code of Conduct, as required by Section 14 of the 2011 Act

Determined that the Respondent has not breached the Code of Conduct for Property Factors, nor has the respondent failed to carry out the property factor’s duties.

Committee Members

Paul Doyle (Chairperson)
Tom Keenan (Housing Member)

Background

- 1 By an application dated 5 March 2014, the applicant applied to the Home Owners' Housing Panel for a determination as to whether the respondent had failed to comply with the Code of Conduct imposed by Section 14 of the 2011 Act.
- 2 The application stated that the applicant considered that the respondent had failed to comply with Section 2.5; 5.2 and 7 of the Code of Conduct. The applicant stated that the complaint does not relate to a failure to carry out the property factor's duties.
- 3 By letter dated 9 June 2014, the president of the Home Owners' Housing Panel intimated a decision to refer the application to a Home Owners' Housing Committee. The Home Owners' Housing Panel served notice of referral on the parties, directing both parties to make any further written representations.
- 4 The applicant had expanded on his application in letters dated 24 March 2014, 1 April 2014, 2 May 2014 and 18 May 2014. He submitted further written submissions dated 26 June 2014. The respondent submitted further written representations with supporting documents on 9 June 2014.
- 5 Neither party has requested an oral hearing. The committee were satisfied that this case can be justly determined on the available documentary evidence.

Findings in Fact

- 6 (a) The applicant purchased the property at 1/3 South Mellis Park, Edinburgh on 1 November 2013. Title was taken in the applicant's name. The respondent is the property factor for the larger building of which the applicant's house forms part. Soon after taking entry of his home, the applicant contacted the respondent enquiring about the level of buildings insurance cover.
- (b) The respondent provided a written statement of services for the development of which the applicant's property forms part in June 2013 and has provided the applicant with a copy of that written statement of services.
- (c) Block insurance with Zurich Insurance plc was arranged through the respondent's broker, Deacon Insurance Services. The respondent provided the

applicant with a copy of the residential property owner's schedule, clearly showing the name of the applicant, the applicant's address and confirming that buildings insurance in the sum of £152,467.49 and insurance (with a limit of £25,000) for contents of the common parts of the larger building was arranged from 1 November 2013 until 31 October 2014.

(d) Under cover of their letter of 30 June 2014, the respondent provided the applicant with a copy of the full block buildings insurance policy wording, which extends to 49 pages of printed A4.

(e) At the start of January 2014, the applicant found that the timer on the communal stair lighting left the stair in darkness at some times of the day. The applicant contacted the respondent who remedied the problem by adjusting the time clock for the stair lighting on or about 24 January 2014.

(f) Entry to the applicant's flatted dwelling-house is obtained through a common passage and stair. The main door to the common passage and stair is controlled by an entry phone. When the applicant moved into his property on 1 November 2013, he discovered that the entry phone handset within his own property was faulty. He reported the fault to the respondent, who sent an engineer. The engineer changed the phone in the hallway of the applicant's own property. The applicant was charged £65. The applicant did not understand, at the time the work was carried out, that he was responsible for all items within his own dwelling-house and that the cost of the replacement handset situated in his own dwelling-house would not be borne by the respondent. When the applicant raised this matter with the respondent, the respondent, as a goodwill gesture, offered a £20 credit on the applicant's quarterly invoice.

(g) Between November 2013 and March 2014, the applicant made many telephone calls to the respondent, some of which did not receive a reply. The property manager who was responsible for communication with the applicant is no longer employed by the respondent. The applicant has been provided with the contact details for a new property manager, who is the designated first line of contact for the applicant when he needs to speak to the respondent. The applicant has been assigned a second, alternative, contact within the respondent's organisation.

Reasons for Decision

7 (a) The applicant does not complain that the respondent has not fulfilled the property factor's duties, but focuses on the Code of Conduct. He complains that there has been inadequate communication and consultation and that the respondent has failed to respond to enquiries and complaints within prompt timescales - and so breaches Section 2.5 of the Code of Conduct.

(b) The applicant complains that he moved into the property in November 2013 and asked for buildings insurance details. The applicant complains that in January 2014, he reported a fault in the stair lighting which was not remedied until on or about 24 January 2014.

(c) The respondent's own written statement of services explains that the respondent maintains a computer portal which enables the applicant and his neighbours to contact the respondent, and sets out short timescales for a response to telephone messages, electronic and paper correspondence and personal visits to the respondent's offices. It is clear from the history of the stair lighting complaint that the applicant's communication was responded to. The applicant states that he had to report the fault five times, but in his letter of 27 January 2014, the applicant makes it clear that his communication in relation to the stair lighting all occurred within the weeks of January and that his complaint (even though it was repeated) was acted upon by the respondent.

(d) It was not until 30 June 2014 that the respondent provided a full copy of the buildings insurance policy, however by the time the applicant made a written complaint to the respondent on 27 January 2014, he already possessed a copy of the buildings property schedule, which clearly identifies the applicant, his flat dwelling-house and the level of insurance. The applicant does not specify the dates that he contacted the respondent, nor the manner in which he contacted the respondent.

(e) It is clear from the email exchange throughout March 2014 produced by the applicant that the respondent corresponded with the applicant by email, discussing his complaints and finding a solution (which the applicant has accepted) to the applicant's complaint in relation to the entry phone system. The weight of evidence indicates that the respondent has maintained adequate communication with the applicant and has responded to his enquires within prompt timescales.

(f) The respondent has clearly considered the applicant's complaints in relation to communications seriously and in their letter of 3 June 2014, express their own dissatisfaction with the level of service offered for telephone communications. The respondent explains that the person responsible is no longer employed by the respondent and set out the new contact arrangements for the applicant. Committee members note the responsible attitude taken by the respondent and the actions taken by the respondent to ensure that adequate levels of communication are preserved and maintained.

(g) In his original application, the applicant focused on Section 5.3 of the Code of Conduct. In further representations, he clarified that he had intended to rely on Section 5.2. No complaint is made in relation to Section 5.3.

(h) The applicant's focus on Section 5.2 relates to the details of buildings insurance policy. Section 5.2 provides *inter alia* "...the terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection upon request at no charge..."

(i) It is not argued that full details were not available (at no charge), what is argued is that the respondent had not delivered the full contract of buildings insurance to the applicant. In his letter of 27 January 2014, the applicant complains "...I've been asking for the buildings insurance documentation I paid for. I need to know what is covered for my own piece of mind...to date I have had nothing"

(j) The applicant had a schedule of insurance which sets out the nature of the insurance cover, the extent of the insurance cover and the applicant's details. It would have been helpful if the respondent told the applicant where and how he could inspect the policy but when Section 5.2 of the Code of Conduct is read in full, it can be seen that the details called for in the first sentence of Section 5.2 are set out in the policy schedule, which the applicant had. At the date of hearing, the applicant had the full block buildings insurance policy. At the date of hearing, the respondent did not breach Section 5.2 of the Code of Conduct.

(k) The applicant complains that the respondent breaches Section 7.1 of the Code of Conduct. Section 7.1 provides:

"you must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you follow. This procedure must include how you will handle complaints against contractors"

(l) Section 4 of the respondent's written statement of services (pages 10 and 11 of the document) sets out a written complaints resolution procedure. The respondent fulfils the requirements of Section 7.1 of the Code of Conduct.

(m) There were originally four strands to the applicant's complaint. In his application form dated 2 March 2014, the applicant concedes that he has received a buildings insurance policy schedule. The second strand of his complaint related to stair lighting which is repaired and he no longer pursues (he declares "... Stair lighting now repaired after much chasing" in section 7 of the application form.)

(n) The third and fourth strands of his complaint relate to the difficulty with his entry phone and the inadequacy of telephone communication. In his email dated 18 May 2014, the applicant states "...yes please remove complaint re the door

entry system” We are therefore left to consider the adequacy of buildings insurance information provided and the adequacy of telephone communication.

(n) The good news for the applicant is that he now has not just a buildings insurance policy schedule, but the entire 50 page policy document. He also has the contact details for two individuals within the respondent’s organisation, dedicated to handling his complaints.

(o) We consider carefully both the terms of the 2011 Act and the Code of Conduct. When we take an holistic view of each strand of evidence, we can only come to the conclusion that the respondent has not breached the terms of the Code of Conduct.

Decision

8 The committee therefore finds that the respondent has not breached the Code of Conduct for property factors. The committee refuses the application. No property factor enforcement order will be made in response to this application.

Appeals

9 The parties’ attention is drawn to the terms of section 22 of the Property Factors (Scotland) 2011 Act regarding their right to appeal and the time limit 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...”

Paul Doyle

Signed
Chairperson

Date

20/08/2014