PROPERTY AT FLAT 1/2, 780 CROW ROAD, ANNIESLAND, GLASGOW G13 1LX

The Parties:-

The homeowner – Joan Findlay, Flat 1/2, 780 Crow Road, Anniesland, Glasgow G13 1LX ("homeowner")

The property factor – Speirs Gumley, Property Management, 194 Bath Street, Glasgow G2 4LE ("the property factor")

DECISION BY A COMMITTEE OF THE HOMEOWNER HOUSING PANEL IN APPLICATIONS UNDER SECTION 17 OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011 ("THE 2011 ACT")

Case reference: HOHP/PF/14/0091

Committee Members

Richard Mill (Legal Chairperson)
Robert Buchan (Surveyor Member)

Decision of the Committee

The committee unanimously determines that the Property Factor has complied with the Code of Conduct for Property Factors, as required by Section 14 of the 2011 Act, and complied with their duties.

Background - Procedural and Factual

The homeowner made application to the Homeowner Housing Panel in terms of an application dated 9 June 2014 and received on 18 June 2014. The application was allocated reference HOHP/PF/14/0091.

Following requests for further information and in order to allow the homeowner to fulfil their obligation to formally intimate their concerns to the property factor in terms of Section 17(3) of the Act, the application was continued for a period of time. A decision was made by the President on 24 March 2015 to refer the application to a Homeowner Housing Committee. Notices of referral were issued to the parties on 24 March 2015.

The application sets out the homeowner's concerns regarding the respondent's handling of roof repairs carried out at 780 Crow Road, Anniesland, Glasgow G13 1LX, within which her own flatted dwelling house is situated, and the adjoining tenement block 24 Willoughby Drive.

The application was actively case managed by the committee prior to the final Hearing. Directions were issued in order to advance the case.

An initial hearing was set down to take place on 27 May 2015. The hearing was adjourned on the application of the applicant who was ill.

Hearing

The hearing took place at Europa Building, 450 Argyle Street, Glasgow G2 8LH on 30 June 2015. The applicant appeared personally and was assisted in her representation by two representatives of the University of Strathclyde Law Clinic, namely John Stringer and Rosin Donnelly. The property factor was represented by Iain Friel, Managing Director, Speirs Gumley, Ross Moffatt, Inspection Team Leader and Diane Robb, Property Manager.

Findings in Fact

1. The applicant is the homeowner of Flat 1/2, 780 Crow Road, Anniesland, Glasgow G13 1LX.

2. The tenement block 780 Crow Road is adjacent to the tenement 24 Willoughby Drive.

3. The common parts of both 780 Crow Road and 24 Willoughby Drive are factored by the respondent. They are responsible for managing and maintaining the common areas of the tenements, including the common roof.

4. The respondent's authority to act arises through custom and practice. They were appointed by the relevant co-proprietors of 780 Crow Road and 24 Willoughby Drive prior to 1982 and have continued to manage the common parts since then.

5. The respondent manages 780 Crow Road and 24 Willoughby Drive in accordance with the Deed of Conditions by Hackmax Property Co Limited dated 10 February and registered in the General Register of Sasines on 15 February 1971. This Deed sets out the management arrangements for the common parts of the properties numbered 778-780 Crow Road and 24 Willoughby Drive.

6. The Deed of Conditions sets out the proportion of liability for common repairs for each of the proprietors. All properties within 780 Crow Road and all properties within 24 Willoughby Drive have a 6% share of liability for common repairs.

7. The respondent became a registered property factor on 1 November 2012. Their Property Factor Registration number is PF000160. The respondent's duty under Section 14(5) of the Act to comply with the code arises from that date.

8. The respondent has issued a generic Written Statement of Services to the applicant and other homeowners in respect of their role as property factor. The quarterly management charge payable by the applicant is £40.22 inclusive of VAT.

9. The respondent received reports of serious water penetration affecting one of the top floor flats at 24 Willoughby Drive over the Christmas and New Year period 2013/14. Glasgow Roofing & Building Company (GRBC) was instructed to attend as a matter of urgency. Water penetration was found to be entering the building from two sources, namely:-

    (i) Sections of the flat roof
    (ii) An outlet to the internal downpipe

10. GRBC carried out emergency repairs at a cost of £920 + VAT. GRBC advised that this could only be considered as a temporary measure because a section of the flat roof did not have a satisfactory gradient towards the outlet, as a result of which water would continue to "pond", eventually causing further water ingress to the property. They advised that by introducing a gradient to that section of flat roof, this problem would be eliminated. The contractor provided an estimate to carry out these further works for the sum of £865 + VAT.

11. The further recommended works to add a gradient to the flat roof section as recommended were subsequently carried out in January 2014 at a cost of £865 + VAT.

12. The recommended works to add a gradient to the flat roof was not an emergency repair. The proposed work was not intimated to the applicant nor other relevant proprietors. No tendering exercise was undertaken and no competing quotations were obtained.

13. The respondents advised that GRBC are listed on their panel of approved contractors and consistently provide competitive costs for roof repairs. The respondent's usual practice is to obtain competing quotations and request advance funds from all homeowners. In the present circumstances however, the respondent decided to bear the costs on behalf of the owners initially themselves in order to expedite the work being undertaken. The respondent took the view that it was in all of the owner's best interests to have the additional works, recommended by GRBC who had already surveyed the roof, undertaken as quickly as possible.

14. The respondent formally communicated their actions in respect of the roof works carried out between December and January 2014 sometime later in a letter to homeowners dated 10 April 2014. A full explanation was given as to why they had taken the steps which they had. No other homeowners complained other than the applicant. Due to the applicant's concerns the respondent met with the applicant on 26 June 2014 at the property with a representative from GRBC. The applicant was shown all areas in which work was carried out and a full explanation was given.

15. In February 2014 a repair was carried out to an internal downpipe at 24 Willoughby Drive. This was an evening emergency callout on 10 February 2014 by one of the proprietors of 24 Willoughby Drive. The resulting repair involved five lengths of downpipes, spanning three flats, being renewed. The cost of the work was £702 + VAT. These woks were separate and distinct from the earlier works carried out.

16. Later in 2014 further roofing repairs were identified as necessary due to ongoing water ingress to a top floor flat at 24 Willoughby Drive. The respondent obtained four quotations and wrote to homeowners with their recommendation. Full consultation with homeowners including the applicant was undertaken in relation to these further works. In particular detailed letters were issued by the respondent on 4 and 10 December 2014. These subsequent works were undertaken at a total cost of £450 + VAT. These works were separate and distinct from the earlier works carried out.

17. The applicant has accepted liability for her share of the original emergency roof repairs instructed in December 2013. She disputes liability for the other works referred to within the committee's findings.

Reasons for Decision

The committee were satisfied following the Hearing that they had sufficient evidence, both in the form of the written papers available and the oral evidence which they had heard, in order to reach a fair determination of the issues raised within the homeowner's application.

A number of sections of the Code of Conduct were alleged to have been breached by the respondent.

It was also submitted on behalf of the applicant that the respondent was in breach of two of the clauses of the Deed of Conditions.

The applicant had every opportunity at the Hearing to present her case. She was assisted in making relevant submissions by Mr Stringer. She also gave direct oral evidence in relation to certain components of her application.

In relation to the distinct sections of the Code of Practice put at issue, the committee deliberated as follows.

Section 2.2

The applicant asserted that she had been the victim of abuse and intimidation. It was accepted that there was no documentary evidence to support her claim. The appellant gave oral evidence in which she referred to a particular employee of the respondent, namely Mr Robert Scott. He had been the former property manager for the applicant's property and had been so for some 16 years.

The appellant in her evidence referred to feeling that Mr Scott had been abrupt and was abusive. The appellant referred to such feelings as being "my perception". The appellant did not provide any specification in terms of dates or particular language or words which had been used by Mr Scott.

It was submitted on behalf of the property factor that Mr Scott had been a very loyal employee of the respondent, serving some 38 years without any disciplinary action ever having been taken. He had now retired. He had been known personally to Ross Moffatt who was in attendance for the respondent who had known him for some 20 years as well as for lesser periods by Mr Friel and Ms Robb. The committee were advised that Mr Scott was never known for such behaviour as was described by the applicant.

On the basis of the evidence available the committee did not found it established or proved that any member of the respondents staff had abused, intimidated or threatened the applicant. A new property manager has now been allocated by the respondent to deal with the applicant's property.

Section 2.4

This section requires the respondent to have a procedure in place to consult with the group of relevant homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service.

The respondent acknowledged both before the hearing and at the hearing that they had not consulted with the applicant or other relevant homeowners about the instruction of further work carried out by GRBC at the cost of £865 + VAT as recommended by them following the emergency roofing repairs being carried out.

The respondents have both, orally and in writing, apologised to the applicant for not having carried out a formal consultation process. They ultimately wrote, by way of letter dated 10 April 2014, explaining, in full, the steps taken and the reasons why. The applicant also had the benefit of a site inspection with a representative of the respondent and GRBC.

The respondent indicated that it would normally be their procedure to obtain competing quotes but as GRBC appeared to have identified the issue and solution in the course of carrying out the previous emergency repairs it was considered advisable to take advantage of their particular knowledge of this area of the roof and to proceed with the works. An additional influencing factor was that it was within their knowledge that from their current Panel Approved Contractors, GRBC consistently provides competitive costs for such work.

These additional works undertaken were, in effect, to conclude the work initially identified on an emergency basis. The respondent initially bore the costs of the work and then sought recovery from the homeowners. No other homeowners complained about the respondents' practice.

The committee are reluctant to overly criticise the respondent for taking steps which appear objectively to have been taken to protect the interests of the applicant and other homeowners. They appear to have acted proactively in managing the applicant's property. The committee is satisfied that the respondent acted in good faith in instructing the additional works.

On the basis of the evidence available the respondent has a procedure in place for seeking approval of relevant additional works. The committee does not consider that the respondent has breached this Section of the Code. The committee observes that the respondent may wish to revise their generic Written Statement of Services so as to specifically make reference to their procedure for future purposes.

Section 3.3

The applicant's complaints were to the effect that the invoices provided to her were deficient in two respects. Firstly, it was suggested they were confusing in the way in which they had historically been generated so far as stipulating the VAT elements of the various charges comprised within the invoice. Secondly the applicant complained about the detail of the narrative, specifically in relation to third party invoices.

It was explained on behalf of the respondent that until some 6 months or so ago a cumulative VAT element was added on to each invoice total as opposed to each item within the invoice reflecting a separate VAT element. This practice has been amended.

The committee formed the view that the respondent's new practice to stipulate the individual VAT element of each charge is clearer but that the former method by which a cumulative VAT total was added on to each account was in no way misleading or unclear. It is quite simple for the individual VAT element to be worked out without difficulty. On the basis of the evidence available the respondent had always been quite happy to work out the individual VAT element when requested.

The committee did not find the complaint regarding the specifics of the narrative of entries within the invoicing to be established. The narrative within invoicing, specifically in relation to third party accounts, would only ever be intended to be a brief summary. The evidence available to the committee was to the effect that the respondent had always been ready and willing to provide further additional information regarding the individual charges on request and additionally provide copies of the third party invoices. This is the requirement of section 3.3 of the Code which the respondent has complied with.

Section 6.1

The applicant's concerns regarding the respondent's adherence to Section 6.1 of the Code was to a greater or lesser extent wrapped up with the same concerns which had been expressed in relation to their compliance with Section 2.4 of the Code. Reference is made to the committee's consideration of that issue. Additionally, it does not appear that there were ever any works carried out which were to take a particularly lengthy period of time and which were ongoing and which would require

the respondent to keep the applicant informed of progress about. Otherwise there is a clear procedure in place to allow the applicant and homeowners to notify the respondent of matters requiring repair, maintenance or attention.

Section 6.6

This Section of the Code requires documentation relating to any tendering process to be made available for inspection by homeowners on request, free of charge. There is evidently no breach of this Section of the Code. A full tendering exercise was undertaken in 2014 in respect of the most recent roof repairs which were conducted in 2015. Quotations and advice were provided to all homeowners. The committee makes reference to the letters issued by the respondent to the applicant dated 4 and 10 December 2014. Quotations were obtained and exhibited from not only GRBC but also by 2 other contactors, namely GDN and Torrance.

The applicant also asserted the respondent had failed to abide by the terms of the relevant Deed of Conditions. The committee has not found this established.

There is a prohibition contained within Clause SECOND to the effect that there should be "no alteration of the structure or outward appearance or general scheme of painting or decoration of the exterior or mutual parts of the said tenements :.." The highest attack which could be placed upon the respondent's actions were in respect of the gradient created to seek to alleviate further water ingress. The gradient in question is a few inches high and runs over a number of feet. It is minimal in nature. It is behind a parapet on the roof of the property and cannot be seen unless the roof is inspected. In any event additionally and importantly no other proprietors have complained. The committee finds the suggestion made by the applicant in this respect entirely frivolous.

The other suggested failure to comply with the Deed of Conditions refers to the need for all common proprietors to join together to ensure the maintenance of the whole subjects and if necessary for a vote to be taken in the event of a dispute. On the basis of the evidence available there is in fact no general dispute, with the remainder of the proprietors, other than the applicant, being happy with the works which the respondent has proposed and implemented. The obligations in the Deed of Conditions are in fact personal to the applicant not the respondent.

The committee was generally impressed with the level of service being offered to the applicant by the respondent. They appear to have a genuine commitment to the maintenance of the applicant's property and ensure that their obligations in this respect are discharged. The charges made by the respondent appear in the view of the committee good value. The committee is satisfied that all of the roof works undertaken have been necessary. The complaint about the respondent's failure to consult about the further works ultimately carried out by GRBC is more of a technicality rather than a material failing in the committee's view.

One of the suggestions made by the applicant was to the effect that all of the works undertaken over recent times which, effectively fall into four distinct areas of work, are all one and the same roof repairs which are persistently requiring to be

undertaken due to failures in the implementation of previous repairs. The committee disagrees with this interpretation. The evidence available clearly suggests otherwise and is well documented.

The applicant's property forms part of a traditional tenement. It does not benefit from a pitched or slated roof. It has a flat roof. There are further complications due to it being on a corner site and common downpipes being shared with 24 Willoughby Drive. It must be appreciated that many of the original pipes and other features are now many years old and coming to the end of their useful and effective life. It has to be expected that there will be a need for ongoing repairs. Indeed, many of the repairs which have been undertaken more recently can only be seen as a relatively short to midterm resolution. The applicant gave evidence to the effect that the whole flat roof area had been replaced some 25 years ago. If that is the case then one would ordinarily expect that roof covering to once again be at the end or near the end of its serviceable use.

The committee is satisfied the respondent has complied with all of their duties including those set out within the Code of Conduct. In these circumstances no Property Factor Enforcement Order is necessary nor made.

Appeals

In terms of Section 22 of the 2011 Act, any Appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any Appeal must be made within 21 days beginning with the day on which the Decision appealed against is made.

Signed:
Chairperson

Date: 8 July 2015