



**Minute of Variation of Property Factor Enforcement Order made under Section 21 of the Property Factors (Scotland) Act 2011 (“the Act”) following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act**

**hohp Ref: HOHP PF/14/0094**

**The Property: 0/1, 35 Montague Street, Glasgow G4 9HU**

**The Parties: –**

**MGM Consultancy Ltd, registered under the Companies Acts and having its Registered Office, formerly at 16, Comely Park, Dunfermline KY12 7HU, and now at 16, Dollarbeg Park, Dollar, Clackmannanshire, FK14 7LT (“the homeowners”)**

**and**

**Walker Sandford Property Management Ltd, registered under the Companies Acts, having its Registered Office at c/o Clements, Chartered Accountants, 39 St Vincent Street, Glasgow G1 2ER and having a place of business at St George’s Buildings, 5 St Vincent Place, Glasgow G1 2DH (“the factors”) per Ms Antonia Grieve, HBJ-Gateley Solicitors, Exchange Tower, 19 Canning Strret, Edinburgh EH3 8EH.**

**Committee Members:** David Preston (Chairman); and Mike Links (Surveyor Member).

WHEREAS in its decision dated 13 November 2015 the Committee determined that the Factor had failed to comply with the Code of Conduct for Property Factors (“the Code”); and to carry out the property factor’s duties and it determined to subsequently issue a Property Factor Enforcement Order dated 13 December 2015 (the PFEO).

Following expiry of the time limit specified in the PFEO the Committee received representations from the homeowners and a copy of the factors’ letter to the other proprietors

**Having considered the representations and the letter the Committee HEREBY VARIES the PFEO by: (One) requiring the factors to issue a further letter to the other proprietors to take account of the issues detailed below in order to provide the full explanation called for in the PFEO; and (Two) extending the time limit specified therein to a date being two weeks after the issue of this Notice.**

## Reasons:

1. The PFEO required the factors, within one month of the date of service of the PFEO which was effected on 14 December 2015, to:
  1. Issue to all proprietors in the block at 35 Montague Street, a full letter of explanation of the whole circumstances surrounding the common repair to the half landing, to assist the homeowners, if so advised, to seek to recover the respective shares of the cost of the common repair work and associated costs. The letter should explain: how the situation was discovered; that the homeowner was facilitating access to the common area through their property to minimise costs; that the homeowners were anxious to regain the use of their property as quickly as possible; that the failure to provide alternative quotes at the time the quote from Aegis was sent to them was that of the factors and not any attempt by the homeowner to place the contract with a preferred contractor; details of the quotation received from Archd McCorquodale & Son Ltd dated 12 May 2014; and an explanation that the actual cost of the work was lower than the only other quote which the factors could obtain.
  2. Issue to the homeowners an apology for the lack of professionalism in dealing with their correspondence throughout and the lack of adequate response to their concerns.
  3. Pay to the homeowners from their own funds the sum of £1,000 by way of compensation for the loss and inconvenience caused to them through the need for Ms Markey and others to spend considerable time in corresponding with the factors and pursuing the application throughout the period, thereby diverting Ms Markey from her normal duties for the business and including any additional, albeit unidentified costs of agents employed by them.
4. On 11 January 2016 the homeowner submitted representations to the Committee to the effect that while she acknowledged that the factors had implemented points 2 and 3 of the PFEO, she did not believe that they had implemented point 1. She accepted that a letter had been sent but that its terms were not sufficient as to satisfy the provision as outlined by the PFEO.
5. On 13 January 2016 the factors' representative submitted copies of the letters sent to the other proprietors which were dated 7 January 2016.
6. The Committee considered the terms of the letter dated 7 January 2016 along with the representations from the homeowner. She complained that in her view the letter was inaccurate or lacking in information in a number of respects:
  - a. *"In late 2013 we were contacted by Cairn Letting on behalf of MGM Consultancy Ltd..."* This is incorrect; I contacted Walker Sandford directly in the first instance (on 4<sup>th</sup> December 2013).

The Committee agrees that the initial contact with them was from Ms Markey on behalf of the homeowner. However it does not consider it significant who made the

contact. The letter makes clear that the factors were contacted in respect of these matters in late 2013.

- b. *"... who had some work carried out in the bathroom of their property..."* There is no mention of the fact that the work referred to was dampness caused by a leak from cold water and waste pipes in the solum, another common area, or that this was processed through the building's insurance.

The Committee agrees that the letter does not explain that the work being carried out to the property, as explained in evidence by Ms Markey, was in respect of a common repair to the property arising from pipes leaking in the solum and that it was being carried out under the common buildings insurance policy. The Committee considers that the impression given by the factors' letter is that the homeowners were having private work carried out as a result of which the flat had been vacated. The Committee accepted that this was not the case and that the work in the solum necessitated the stripping out of the bathroom to provide access to effect the common repair to the pipes.

- c. *"... which had uncovered a common defect which could either be accessed from their bathroom carried out in conjunction with their private repairs or carried out from the close directly but this would require scaffolding."* There is no reference to the structural cracks or the details around the common fault. This sentence implies that we were given the choice and made the decision how to proceed with the repair and does not inform the co-proprietors clearly that as our bathroom was stripped back anyway, access could be gained from underneath via our property rather than the alternative which was a temporary scaffold platform. Installing a scaffold platform would have been disruptive and inconvenient for the other owners as well as being a more costly repair but this has not been highlighted.

The Committee has sympathy with the homeowners' position. The letter does not specifically refer to the structural cracks or the details of the common fault, although they were detailed in the report from Will Rudd Davidson which had been sent to the proprietors on 30 January 2014. However the Committee considers that the factors should, in addition to providing a copy of such reports to homeowners, provide an explanation of the detail and implications. Neither the letter of 30 January 2014 nor the letter of 7 January 2016 provide any such explanation. Homeowners are not generally expert or experienced in structural matters and technical reports of the nature of that by Will Rudd Davidson are not likely to be readily understood. The Committee agrees that the letter refers to the alternative means of access ie through the stripped out bathroom or by use of scaffold but it does not explain the benefits to the other proprietors as outlined by the homeowner.

- d. *"We sent out a copy of the surveyors report... February invoice for this survey."* There is no mention of Walker Sandford sending out the copy of the Surveyor's Report 6 weeks after they received it or that Douglas Brown

agreed to the Structural Surveyor's visit that we arranged as his own Surveyor could not attend until after the New Year.

The Committee agrees that the factors' letter should have explained that nothing had been done by them between their receipt of the report and them sending it out.

- e. *"In response to this we received several objections from owners... not charged to any owner."* This section is confusing as Walker Sandford are mixing up the Structural Report and the works carried out by Aegis when there is no evidence that Walker Sandford issued a copy of Aegis's quote to the other owners. Although they confirm that we have no relationship with Will Rudd Davidson, it is not mentioned that they were recommended by Glenavon Insurance, the insurer for the building. I am unclear whether the reference to MGM Consultancy only obtaining one quote refers to the Structural Survey or the Structural Works however either way it was Walker Sandford's responsibility to obtain quotes not ours. We only requested a quote from Aegis as they were already on site carrying out the insurance works in the solum area. Walker Sandford have not clarified any of these points.

The Committee agrees that the factors' letter does not make the position clear. The fact that the work may not have been properly mandated does not absolve the other proprietors of their obligations to pay for their shares of necessary common repairs to the building. It may be that the factors' ability to recover such shares under their processes (by, for example, applying them to a factoring account) as outlined in the titles and in their Written Statement of Services may be compromised unless the mandating procedures are followed. However that does not preclude the homeowners from recovering the shares. The Committee also agrees that in view of the clear misunderstanding by the other proprietors, evident from their responses in February 2014, the factors' letter should have clarified the reasons for which the homeowners instructed both Will Rudd Davidson and Aegis.

- f. *"The owners of flat 0/1 MGM Consultancy and their agents Cairn Letting opted to instruct both the common and private works at the same time before we were able to provide a second quote from an alternate contractor for comparison purposes. This was due... to the property"* There is no real explanation as to why we proceeded this way. They do not express the urgency of the situation as our property was uninhabitable or that the "private works" which were actually common works to the solum could not proceed until the common structural works to the half landing were carried out. They do not mention that the "private works" had actually already started but were stopped due to the discovery of the structural cracks. By stating that we instructed works before they were able to provide a second quote implies that we did not give them sufficient time to do so however it is agreed that it took 6 weeks from the initial request for Walker Sandford to take any action.

The Committee agrees that the factors' letter does not fully explain the circumstances as outlined by the homeowners. At various points the letter refers to "private works". It was explained in evidence and outlined at paragraph 7 of the homeowners' application that the works being carried out in the homeowners' property were as a result of a damp issue affecting the bathroom of the property which had been caused by leaks from the cold water mains pipes and two waste pipes which were accepted by Glenavon Insurance, the insurers of the building, as an insured common repair. The further problem identified as water ingress to the flat from the half landing, while a common repair, was not accepted as an insured risk due to the gradual deterioration of the half landing.

g. *"By the point where the works were instructed... the quote we obtained was more expensive than the quote MGM Consultancy/Cairn Letting had obtained."* Details of the quotation received from McCorquodale Ltd dated 12<sup>th</sup> May 2014 have not been provided.

The Committee agrees that the specific details of the McCorquodale quote should have been provided to the other proprietors.

7. The Committee does not consider that the factors have implemented the terms of the PFEO which required them to issue a "...full letter of explanation of the whole circumstances surrounding the common repair to the half landing, to assist the homeowners, if so advised, to seek to recover the respective shares of the cost of the common repair work and associated costs." Whilst the letter provides an explanation of the circumstances, it fails to provide a full explanation and, in particular would not be of any real assistance to the homeowners in any attempt by them to recover the shares of the costs from the other proprietors.
8. The Committee considered the options open to it in the circumstances. It considered whether to issue a Notice of Failure in view of the shortcomings of the terms of the letter as described above. However it was of the view that to do so would not achieve any meaningful outcome. Accordingly it decided that the factors should, within two weeks from the date of issue hereof, issue to the other proprietors a further letter taking account of the points made herein so as to provide the full explanation and assistance as required in the PFEO.
9. Accordingly the Committee hereby varies the PFEO by extending the time limit stated therein to a date being two weeks after service of this Notice.

**Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence**

#### **APPEALS:**

The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the Homeowner Housing Panel or 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...”

23/02/2016

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON