



**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 2011HOHP reference: HOHP/PF/14/0101**

**Re: 2/1, 9 Dunearn Street, Glasgow G4 9ED ('the property')**

**The Parties:**

**Mr Neil Patel, Flat 3, 8 Great Western Terrace, Glasgow, G12 0UP ('the homeowner')**

**Walker Sandford, St George's Buildings, 5 St Vincent Place, Glasgow G1 2DH ('the property factor')**

**The Homeowner Housing Committee: Martin McAllister, legal member and Colin Campbell, 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 2011 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 factors duties as defined in Section 17 (5) 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 in respect of Sections 2.5, 6.1 and 7.1 and has not carried out the property factor's duties in relation to the failure to progress the obtaining of quotations. The Committee proposes to make a property factor enforcement order**

**Background**

1. By application dated 15th July 2014 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 (the Code) and had failed to carry out the property factor's duties. The specific matters complained about in relation to breach of the Code were breach of Sections relating to Communications and Consultation, Carrying out Repairs and Maintenance and Complaints Resolution. After

the application had been lodged the parties attempted to resolve matters without success and the President of the homeowner housing panel decided to refer the matter to a homeowner housing committee (the Committee) on 3<sup>rd</sup> October 2014.

2. Following service of the Notice of Referral, the homeowner and the property factor made other attempts to resolve matters and the application was sisted for a period.

3. The property factor made written representations on 1<sup>st</sup> June, 12<sup>th</sup> August and 31<sup>st</sup> August all 2015. The homeowner provided copies of various emails and made representations on 8<sup>th</sup> July 2015.

4. In response to a Direction the property factor provided a copy of the written statement of services provided to the homeowner, a copy of the property factor's in house complaints procedure and information taken on steps taken to progress the relevant repairs.

5. Hearings were fixed and adjourned for various reasons and productions were lodged by the parties.

#### Hearing

6. A Hearing took place in respect of the application on 11th November 2015. The homeowner was present and the property factor was represented by Mr Douglas Brown, Customer Services Manager of the property factor.

#### Preliminary Matters

7. The homeowner confirmed that, notwithstanding the terms of the copy of the Land Certificate before the Committee which stated the owner of the Property to be Esther Jane Aspinall, he and Ms Aspinall now own the property jointly.

8. The parties had no dispute with regard to the need for repairs to be carried out at the tenement at 9 Dunearn Street and from the evidence of both Mr Patel and Mr Brown the Committee could discern no disagreement between the parties with regard to the need for the work. It is useful to set out the following agreed position with regard to repairs.

9. There was a leaking gutter which was repaired in March/April 2014. When this work was being carried out it became apparent that stonework repairs required to be carried out to the front elevation of the tenement. The homeowner's property is a second floor flat in a tenement of eight flats. Subsequent to the recognition that work required to be done to stonework at the front, it was ascertained that repairs to stonework at the rear elevation required to be done. A quotation for the works was obtained in December 2014 and a competitive quotation in January 2015 and these were sent to proprietors of the properties in the tenement. On 16<sup>th</sup> February 2015 the property factor had instructions from a majority of owners to proceed with the repairs. The property factor

wrote to owners and advised that a majority was in favour of proceeding with the works. On 15<sup>th</sup> March 2015 the property factor included in its invoices to proprietors the advance charging for the works. Five of eight owners voted for the works to proceed. These comprised the homeowner, the proprietors of flats 1/1 and 2/2 and Charing Cross Housing Association the proprietor of two flats in the tenement. The homeowner has made some payments towards the works and is prepared to pay in full at any time. The Housing Association has indicated that it will pay when the other shares have been paid. The other two proprietors are making instalment payments. Of the other proprietors, one has stated that he will not pay, one is unhappy about paying but has not advised that he will not pay and one has not responded to the property factor. As of 11<sup>th</sup> June 2015 only 4.3% of the funding had been paid and 13.2% as of 11<sup>th</sup> November 2015, the date of the Hearing. Glasgow City Council has a Missing Shares Scheme which effectively means that it will fund the shares of proprietors who have not paid and will then recover the payments from these proprietors. An application to the scheme cannot be made until the majority of funding is in place. It is not enough to have a commitment. The property factor has to be holding the funds.

10. The Committee heard evidence from both parties with regard to the alleged breaches of the Code and the alleged failure to carry out the property factor's duties.

**11. 2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.**

**7.1 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 will follow. This procedure must include how you will handle complaints against contractors.**

Mr Patel stated that he had first contacted the property factor in April and then in May, June and July 2014 with regard to the obtaining of quotations. He said that on each occasion he was told that quotations were being organised. On 7<sup>th</sup> June 2014 he completed the contact form on the property factor's website and stated in it that he wanted the property factor to organise quotations and the repairs. He said that he received no response to this. Mr Patel said that he telephoned the property factor on 7<sup>th</sup> July 2014 and was told that quotations had been requested but had not yet been received. On the same day the property owner emailed a complaint to the property factor. He said that he did this in accordance with the complaints procedure by emailing to two email addresses of the property factor. He said that with one of the email addresses he got a delivery failure response. The homeowner said that he received no response to the complaint and telephoned the property factor on the matter on 15<sup>th</sup> July 2014. He said that the property factor had been unable to give the

homeowner a timescale for getting the quotations and having repairs organised. The homeowner made an application to the homeowner housing panel on the same day. He did not receive a specific response to his complaint.

The written statement of services provided to the homeowner was before the Committee. On page 8, Section A.4 which relates to emailed correspondence it states that "a response will be sent within ten working days of receipt." The Complaints Procedure is set out on pages 24 and 25. It states that complaints will be dealt with promptly and that a complaint will be fully investigated and a response issued within ten working days. The Committee noted that there is an error in the contents page of the written statement of services. It refers to the Complaints Procedure being Section E whereas it is, in fact Section F.

Mr Brown said that his first involvement with the matter was in October 2014. He said that the matter had hitherto been handled by the maintenance department. He said that there had been a "blank spot with processes" and there had not been an effective way of chasing up matters when quotations had been requested but not received. He said that the processes had now been improved and there is now an automated system.

Mr Patel said that matters of communication had improved considerably since Mr Brown had become involved. He did however consider that matters had come to a standstill and Mr Brown conceded that at the current pace of payment it will be some time before the matter will be resolved.

**12. 6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.**

Mr Patel said that the property factor did not inform him about the progress of the obtaining of quotations and the progress of works. He said that he was provided with no timescales. Mr Patel said that he was not kept sufficiently advised of progress on obtaining quotations from April 2014 until he had made his complaint in July 2014 and then was not provided with any substantive information until Mr Brown's involvement in October 2015. The homeowner stated that he would be prepared to pay for the work in advance rather than by instalments. In a letter to the Committee dated 31<sup>st</sup> August 2015 Mr Brown stated that Mr Patel will fund the work only after all the other owners have paid. Mr Brown accepted that this is not accurate and he recognised that Mr Patel is prepared to fund the works in advance. Mr Brown stated that there were some accounting issues in a situation where one proprietor paid in advance and others did not.

Mr Brown accepted that, prior to October 2014, the property factor's processes in chasing quotations and advising homeowners of progress were lacking. He said that

the lack of sufficient funding meant that the works could not progress even with using the Council's Missing Shares Scheme. He said that Charing Cross Housing Association cannot provide funds until other funds are in place. He said that the two other flats where proprietors were making instalment payments were in the same ownership or at least the same family and "part of an estate" of someone who had died. He accepted that an approach had not been made to these proprietors to get full advance funding. He accepted that if full advance funding was in place for three of the flats it might be possible for an approach to Charing Cross Housing Association to have them provide their share of the funds and an application then made to the Council.

### 13. Breach of property factor's duties.

Mr Patel's application stated that he considered that the property factor had not been carrying out its duties in its response to ensuring that the repairs were effected. In evidence he reiterated this. Mr Brown's evidence was that the property factor was prevented in carrying out the repairs because of lack of funding.

### Submissions

14. Mr Patel said that he wanted the work done. He said that he is concerned about possible deterioration of the building and that there are also possible safety issues. He said that he has been working well with Mr Brown in trying to make progress.

Mr Brown said that he was doing everything possible to make progress but the issue is lack of funding from proprietors.

### Discussion

15. The members of the Committee considered the evidence comprising the documents before it including the representations of the homeowner and the property factor. It also had the oral evidence of Mr Patel and Mr Brown. The members of the Committee accepted the evidence of Mr Brown and Mr Patel as being credible and reliable. The members of the Committee were struck by the evident good relationship that exists between Mr Patel and Mr Brown and by the fact that it is clear that they have a common purpose in getting the works done.

The Committee had regard to the fact that the application before it is dated 15<sup>th</sup> July 2014 and the President's Referral dated 3<sup>rd</sup> October 2014. It noted that the evidence presented was for a period both before and after the date of the application.

### 16. Matters relating to possible breaches of items 2.5 and 7.1 of the Code:

The property factor had a clear complaints process set out in its written statement of services. The Committee accepted that the homeowner had made a complaint on 7<sup>th</sup> July 2014 and did not receive an adequate response within the timeframe detailed in the statement of services.

The Committee accepted that prior to October 2014 the property factor did not respond within prompt timescales. It accepted that the homeowner had contacted the property factor between April and July 2014 in connection with the proposed repairs and had not had his requests dealt with as quickly and as fully as possible.

The property factor produced no evidence to support that it had dealt properly with the homeowner's complaint or had communicated effectively in connection with the proposed repairs

#### 17. Matters relating to possible breaches of Section 6.1 of the Code

The Committee found that the written statement of services set out procedures to allow homeowners to notify the property factor of matters requiring repair, maintenance or attention. The homeowner's evidence, which was persuasive and not contested by the property factor, was that between April and July 2014 the property factor did not give him information with regard to the proposed repairs and that, in fact, no substantive information was given until October 2014 when Mr Brown became involved. The Committee did not consider that it required to consider the property factor's actions after the application had been made but, if it had, it would have considered that the property factor did make progress in getting the quotations after the involvement of Mr Brown.

#### 18. Breach of Property Factor's Duties.

The Committee considered that, in relation to progressing the obtaining of quotations, the property factor had failed to comply with the property factor's duties.

19. The Committee considered whether or not the breaches of the Code which it had identified and the failure to carry out the property factor's duties merited it making a property factor's enforcement order. The Committee found that both parties were keen to have the work progressed and had some sympathy with the property factor. Whilst not a matter for the Committee in relation to the application, it did consider that a more proactive approach could be adopted. It seemed to the Committee that the two other proprietors currently paying by instalments are critical to progress matters and that steps could be taken to ascertain whether or not they would be prepared to provide funds in advance. If funds from Mr Patel and these other two proprietors were held by the property factor it is entirely possible that Charing Cross Housing Association may pay what is due by them which would allow an approach to the City Council under the Missing Shares Scheme.

The Committee had regard to Section 19 of the Act. It had little difficulty in coming to the view that, in the period prior to July 2014 and indeed up until October 2014 the property factor had not complied with the Code or the property factor's duties. It accepted Mr Brown's evidence that the processes had changed and that the system of obtaining quotations and ensuring that responses from contractors had improved. The Committee considered that it was not satisfied that the process of dealing with

complaints and communication had been improved and considered it appropriate that the property factor address this issue.

The Committee considered whether any other matter should be dealt with by a property factor enforcement order. It saw no value in making a monetary award. It was satisfied that the property factor and homeowner were working towards a common aim with regard to the proposed repair.

**The Committee proposes that a property factor enforcement order be made in the following terms:**

**That within twenty eight days of service of the property factor enforcement order, the property factor confirms in writing to the Committee that relevant staff have been trained in the complaints process as set out in the property factor's written statement of services and that appropriate robust internal processes are in place to ensure that complaints and other communications from homeowners are dealt with in accordance with the timescales set out in the written statement of services.**

#### **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 day on which the decision appealed against is made...."**

Regulation 26 (3) indicates that the decision is made "by giving notice of the decision" to the parties.

Martin McAllister

Chairman of Committee

Date 21<sup>st</sup> December 2015

Martin J. McAllister