



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

HOHP Ref: HOHP/PF/15/0135

Title No ANG52370

The Parties

John Joss, residing at 35 Abbey Lane, Grange, Errol, Perthshire, PH2 7GA ("The applicant")
and

Robert Adams t/a Factor4you, River Court, 5 West Victoria Dock Road, Dundee, DD1 3JT ("The respondent")

Decision by the Home Owner Housing Panel of an application under Section 16 of the Property Factors (Scotland) Act 2011

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"); and
- (b) complied with the code of conduct as required by Section 14 of the 2011 Act,

determined that the respondent has breached Sections 1; 2.1; 2.2; 2.3; 2.4; 2.5; 3.3; 4.1; 4.4; 5.1; 5.2; 5.6; 5.7; 5.8; 6.1; 6.5; 7.1 and 7.4 of the code of conduct for property factors, and has failed to comply with the Property Factors Duties

Committee Members

Paul Doyle	Chairperson
John Blackwood	Housing Member

Background

- 1 By application dated 25 September 2015, the applicant applied to the Home Owner Housing Panel for a determination of his complaint that the respondent

has breached the code of conduct imposed by Section 14 of the 2011 Act & that the respondent has failed to comply with the property factor's duties.

2 The application stated that the applicant considered that the respondent failed to comply with the Property Factor's Duties and failed to comply with Sections

1.0
2.1, 2.2, 2.3, 2.4 & 2.5
3.3
4.1 & 4.4
5.1, 5.2, 5.6, 5.7 & 5.8
6.1 & 6.5
7.1 & 7.4

of the code of conduct for property factors.

3 By interlocutor dated 24 November 2015, the president of the Home Owner Housing Panel intimated a decision to refer the application to a Home Owner Housing Committee. The Home Owner Housing Panel served notice of referral on both parties, directing the parties to make any further written representations.

4 On 11 January 2016 the respondent was removed from the register of property factor under section 4(7) of the Property Factors Act 2011. On 1st March 2015, the applicant responded to the notice of referral. The respondent did not respond to the notice of referral.

5 A hearing was held at the Caledonian House, Greenmarket, Dundee on 03 May 2016. The applicant was present, but unrepresented. The respondent was neither present nor represented. The case file reveals that the respondent was given timely notification of the date, place and time of the hearing. No application is made for an adjournment. The committee are satisfied that this case can justly be determined in the absence of the respondent.

6 The applicant answered questions from committee members. No oral evidence was offered by the respondent. The committee then reserved their determination.

Findings in Fact

7 The committee finds the following facts to be established:

- (a) The applicant (together with his wife) purchased the property at 4 Panmure Court, West Victoria Dock Road, Dundee, on 17 September 2008. That property is a first floor flatted dwelling-house in a development of flats and houses developed by Lindores Limited. Parts of the larger building of which the applicant's property forms part are owned in common with neighbouring proprietors. On 1 July 2011, the respondent was appointed as property factors to manage *inter alia* the areas owned in common by the applicant and other proprietors in the

development of dwelling-houses there. On 11 February 2013, the respondent was registered as a property factor in the Property Factors Register.

- (b) The factors for the property had been Ross & Liddle. A meeting of proprietors was convened in June 2011. Only 8 proprietors attended that meeting. They selected the respondent as the new factor and dismissed Ross & Liddle from their position as factors for the larger property of which the applicant's property forms part. The respondent acted as factor from 1 July 2011 until the appointment of replacement factors on 15 April 2016. The respondent was removed from the property factors register on 16 January 2016.
- (c) On 20 June 2011 the Respondent wrote to each of the proprietors of the larger building explaining that the respondent would assume the role of factors on 1st July 2011. The factors have not sent the applicant a written statement of services. The respondent did not send the applicant annual financial statements for the years to June 2012, June 2013, June 2014 or June 2015. The only documents the respondent has sent the applicant is an annual demand for payment of the applicant's share of the annual block insurance fee.
- (d) Each year the factor arranges block insurance for the larger property. In August for each of the years 2011 to 2015 the respondent wrote to the applicant providing a copy of the block insurance and requesting reimbursement of the annual policy. Each year, there has been an error in the certificate of insurance which the applicant has drawn to the respondent's attention. In May 2015 the respondent incorrectly stated that insurance had been arranged with "*Ecclesiastical Insurance Office plc*", when the block insurance policy had been arranged with "*Amlin UK*". When the applicant drew that error to the respondent's attention, the respondent acknowledged his mistake, apologised and provided a copy of the certificate of insurance for the applicant's records.
- (e) Neither the applicant nor his neighbouring proprietors have been told of the frequency of property revaluation for insurance purposes. The applicant does not know if the property has been revalued for insurance purposes since 2011. The applicant has asked the respondent to specify the basis of division of cost of the block insurance policy, but has received no meaningful reply.
- (f) On 23 July 2012 the applicant wrote to the respondent voicing concern about the condition of the larger building. The applicant believed that the fabric of the building was deteriorating because of inadequate maintenance. He believed that the common areas were not regularly cleaned. The respondent did not reply to the applicant. At or about the same time, the applicant told the respondent that the rendering to the exterior walls of the building was damaged and required maintenance. The respondent ignored the applicant and took no action.

(g) In May 2015 the applicant inspected the common stair leading to his property. He found that the entrance, lift and stairwell were not clean. He found a missing section of stair trim (which he repaired himself). He found that the main stair door did not close properly. The applicant emailed the respondent detailing his concerns. The respondent replied by email on 26 May 2015 as follows

“COMPLETE RUBBISH, all glass and lift cleaned yesterday

Balance of cleaning will be completed by Friday, please check again, I will do also

all 4 blocks are extensively cleaned once per month

Previous complaint resulted in change of contractor

I was in block 1 on 20th checking lift emergency phone.”

The applicant was angered by the tone and content of the respondent's email, not least because the respondent claimed credit for the work which the applicant had carried out himself.

(h) Early in 2014 the applicant unsuccessfully tried to contact the respondent by email. His emails were returned undelivered because the respondent had changed his email address and his trading address without notifying the applicant. Within a week the respondent contacted the applicant and communication between the applicant and respondent resumed. Throughout the three years that the respondent acted as factor for this property, most of the appellant's emails to the respondent were ignored.

(i) On 2 June 2014 the applicant complained to the respondent that he was not adhering to the property factor's duties and that the property factor was not adequately maintaining the common areas in the larger building. The applicant received no response. On 12 January & 5th February, both 2015, the applicant again wrote to the respondent expressing concerns about the quality of service provided by the respondent. He has still not received a reply. On 16 May 2015 the applicant wrote detailing his allegation that the respondent had failed to comply with the property factors duties and had persistently breached the code of conduct. The respondent has still not replied to the applicant.

(j) By spring 2015, repairs were necessary to damaged rendering on the exterior of the larger building. The respondent had first been told that render was falling from the exterior walls of the building in July 2012. Because the respondent had taken no action, the applicant contacted a number of neighbouring proprietors. The small group formed by the applicant pressurised the respondent into instructing contractors to carry out the necessary repairs. That work was started in Summer 2015 and completed by October 2015. The applicant has paid his share of the repairs. The respondent still retains a £300 contingency payment made by the applicant.

(k) By email dated 22 September 2015, the applicant asked the respondent for confirmation that he had professional indemnity insurance. The respondent has still not replied. Between 2011 & 2016 the respondent has used 4 separate

email addresses in correspondence with the applicant. The applicant has sent the respondent an email asking for a copy of the respondent's written complaints resolution procedure. The respondent has neither replied nor provided any details of the respondent's complaints resolution procedure. The applicant emailed the respondent asking for confirmation that the respondent has retained copies of each of his complaints, the respondent has not replied.

(l) In discussions with neighbouring proprietors the applicant has been told that at least one other proprietor has never paid the factoring charges. In light of that information, the applicant asked the respondent to specify their debt recovery procedure. No response has yet been received from the respondent.

Reasons for decision

8 (a) The committee dealt with this application during the morning of 4 May 2016. The applicant was present and was unrepresented. The respondent neither appeared nor was he represented. The case file reveals that the respondent has been given timeous notification of the date place and time of the hearing. No application was made from an adjournment. The committee resolved to determine this case in the absence of the respondent.

(b) After the committee members were introduced to the applicant and the procedure was explained to the applicant, the applicant answered a number of questions from committee members and took committee members through the documents lodged as annexes to this application. Committee members found the applicant to be a credible and reliable witness. He gave clear consistent and balanced evidence, answering questions from committee members without hesitation.

(c) The fundamental problem in this case is that the respondent chose not to deal with paperwork which is mandatory both in terms of the act and in terms of the code of conduct. The relationship between the appellant and the respondent is wholly undermined because the respondent has never provided a written statement of services, nor has the respondent provided a written procedure for debt recovery, nor has he provided details reasonably requested about the apportionment of buildings insurance costs, nor has he provided a written complaints resolution procedure. As if those errors were not enough, the respondent has compounded his failures by refusing to respond to reasonable requests and to enter into correspondence with the applicant.

(d) The first sentence of section 1 of the code of conduct for property factors states

“you must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner.”

The unchallenged evidence before us is that the respondent, despite taking up appointment in July 2011, has never sent the homeowner a written statement of services. The committee have to find that the respondent has breached section 1 of the code of conduct.

(e) Section 2 of the code of conduct relates to communication and consultation. The applicant claims that the respondent has regularly provided false and misleading information. Part of the applicant's case is that there is some mystery surrounding the appointment of the respondent as property factor. The applicant raised his concerns with the respondent, & the respondent explained that he was appointed by majority of proprietors of that meeting of approximately 8 homeowners. The applicant correctly points out that the burdens contained within the deed of conditions affecting this property require a meeting to have a quorum of 15 homeowners.

(f) The committee find that the manner of the respondent's appointment amounts to little more than background in this case. What is clear from the evidence presented to the committee is that in correspondence the respondent has claimed to carry out maintenance work which has not been carried out, and on two occasions the respondent claimed credit for maintenance work which was carried out by the appellant and one of his neighbours. The clear and consistent evidence before the committee indicates that on those two occasions the respondent provided evidence which was false and misleading. The respondent breaches section 2.1 of the code of conduct.

(g) The documentary and oral evidence placed before the committee make it clear that in 2015 a common repair was carried out to the exterior of the building. The unchallenged evidence placed before the committee indicates that the applicant and four of his neighbouring proprietors were the driving force behind that common repair. The weight of reliable evidence indicates that the respondent did not have a procedure to consult with a group of homeowners and seek written approval for providing work or services. The dearth of correspondence informing homeowners of the respondent's procedures and range of services persuades the committee that the respondent has breached section 2.4 of the code of conduct.

(h) Section 2.2 of the code of conduct provides that the factor "*must not communicate with homeowners in any way which is abusive, or intimidating or which threatens them...*" The applicant's complaint relates to one email (quoted at 7(g) above) dated 25 May 2015. The applicant told the committee that he was angered when he read the email. The committee consider this matter very carefully and finds that the peremptory manner in which the email commences together with the use of capital letters is an indicator that the respondent intended to shout at the appellant. The use of the words "*complete rubbish*" is abusive. It amounts to an accusation of dishonesty. The irony is that the message contained in emails is not just abusive, on the facts as the committee find them to be, the contents of the email render the email itself a dishonest communication. The respondent breaches section 2.2 of the code of conduct.

(i) The first sentence of section 2.3 of the code of conduct is "*you must provide homeowners with your contact details, including telephone number*" the weight of reliable evidence is that the respondent used at least four email addresses during the three years that he was a property factor. He did not at any time advise the applicant of this change of email address or his change of business address. The applicant has not received any correspondence from the respondent providing details of changes in contact details. The respondent therefore breaches section 2.3 of the code of conduct.

(j) Section 2.5 of the code of conduct commences with the sentence "*you must respond to enquiries and complaints received by letter or email within prompt timescales*". The documentary evidence placed before the committee makes it abundantly clear that the applicant repeatedly, throughout the respondent's tenure as property factor, attempted to enter into correspondence with the respondent, only to be ignored. The respondent breaches section 2.5 of the code of conduct because he did not respond to reasonable enquiries and correspondence.

(k) Section 3.3 of the code of conduct commences "*you must provide to homeowners, in writing at least once a year..... Details financial breakdown of charge is made and a description of the activities and works carried out which are charged for.*" On the facts as the committee find them to be the respondent has simply never provided an accounting to the applicant. As a result, the respondent has breached section 3.3 of the code of conduct.

(l) Section 4.1 of the code of conduct obliges the respondent to have a clear written procedure for debt recovery. In September 2015 the applicant emailed the respondent asking for a copy of that written procedure. No meaningful reply was received to that email. The applicant has been in correspondence with the respondent since 2011; throughout that period, he has never seen a written debt recovery procedure. In May 2015 the applicant wrote to the respondent setting out specific detail of what would become the application made in September 2015 to HOHP. The respondent has had fair notice that it is alleged that he has breached section 4.1 of the code of conduct but chooses not to produce a written procedure for debt recovery to HOHP. The only conclusion that the committee can reach is that the respondent does not have a written procedure and so has breached section 4.1 of the code of conduct.

(m) 4.4 of the code of conduct and says

"You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations."

The unchallenged evidence placed before the committee is that, despite enquiry, the respondent has failed to provide a clear statement of the effect that a failure to honour obligations will have on the service of delivery charges. The reliable evidence indicates that the respondent has not applied his mind to the prospect of that eventuality. The committee have already found that the respondent breaches section 4.1 of the code of conduct. By analogy the committee concludes that the appellant breaches section 4.4 of the code of conduct.

(n) Between 2013 and January 2016 the respondent was a registered property factor. Section 5.1 of the code of conduct requires a property factor to maintain professional indemnity insurance. On more than one occasion in the summer of 2015, the applicant asked the respondent to confirm that he carried professional indemnity insurance. The respondent chose not to reply. In May 2015, the applicant wrote to the respondent setting out specific detail of what would become the application made in September 2015 to HOHP. The respondent has had fair notice that it is alleged that he breached section 5.1 of the code of conduct but chooses not to produce evidence of professional indemnity insurance to HOHP. The only conclusion that the committee can reach this

of the respondent does not have a professional indemnity insurance, and so has breached section 5.1 of the code of conduct.

(o) Sections 5.2, 5.6, & 5.7 of the code of conduct cover the provision of information relating to insurance arranged by the respondent. On the facts as the committee find them to be, the only insurance information the respondent provided the applicant with was a copy of the annual certificate of block insurance accompanied by a demand for payment. Each year the applicant wrote to the respondent to correct inaccurate details contained within the certificate of insurance. Despite requests, the respondent did not provide details of the basis of calculation of the insurance premium, nor address of the premises, nor details of the manner of appointment of the insurance provider, nor details of inquiry made which would inform the selection of insurance provider. Despite enquiry, and because of the respondent's failure to answer those enquiries, the applicant knows nothing about the frequency of revaluation for insurance purposes. The respondent's failures mean that he has breached sections 5.2 5.6, 5.7 & 5.8 of the code of conduct.

(p) Section 6 of the code of conduct relates to carrying out repairs and maintenance. It is common ground that, throughout summer 2015, contractors repaired the external rendering of the larger property. On the facts as the committee find them to be, those works were carried out because the applicant and like-minded neighbouring proprietors formed a small unofficial action group. The weight of reliable evidence indicates that the need for repair was first intimated to the respondent in 2012. It was not until three years later that repairs were instructed.

(p) The reliable evidence placed before the committee indicates that the respondent approached the need for repairs to the exterior of the building in a casual manner. In May 2015, the applicant emailed the respondent asking for confirmation that the contractors appointed had the necessary public liability insurance. The applicant received no response. The weight of reliable evidence indicates to the committee that the respondent has breached sections 6.1 and 6.5 of the code of conduct.

(r) Section 7.1 of the code of conduct requires the respondent to include a written complaints resolution procedure setting out reasonable timescales linked to the written statement of services. The committee have already found that the respondent breaches section 1 of the code of conduct because the respondent did not provide a written statement of services. The clear credible and reliable evidence in this case indicates that the respondent has dealt with the appellant's repeated complaints by simply ignoring the appellant. The weight of reliable evidence indicates that the respondent does not have a clear complaints resolution procedure. The respondent has been given fair notice that the absence of a clear complaints resolution procedure is a matter which this committee would consider and has chosen not to produce one.

(s) In emails of May and September 1, 2015 the applicant asked the respondent for confirmation that each of his written notifications of complaint had been retained by the respondent. The respondent ignored the applicant & chose not to reply. The only conclusion that the committee can reasonably reach is that the respondent breaches sections 7.1 and 7.4, of the code of conduct.

(t) The committee therefore find that the respondent has breached parts of each section of the code of conduct. By analogy, and taking an holistic approach to each strand of evidence in this case, the committee find that the respondent breaches the property factors duties as set out in section 17 of the 2011 act.

Decision

9. The committee therefore intend to make the following property factor enforcement order (PFEO)

“Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must

“1. Pay the applicant £300 to reimburse the applicant for payment made by the applicant to a contingency fund for the render repairs carried out in summer 2015.

“2. Pay the applicant £200 representing property factor fees paid by the applicant to the respondent between January and April 2016, when the respondent had been removed from the register of property factors.”

10. Section 19 of the 2011 Act contains the following:

“(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

“(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.

“(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.”

11. The intimation of the committee's decision and this proposed PFEO to the parties should be taken as notice for the purposes of s. 19(2)(a) of the 2011 Act, and parties are hereby given notice that they should ensure that any written representations which they wish to make under s.19 (2)(b) of the 2011 Act reach the Homeowner Housing Panel's office not later than 14 days after the date that the Decision and this proposed PFEO is intimated to them. If no representations are received within that 14 day period, then the committee is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Appeals

12. 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..."

Signed
Chairperson



Date

11/5/2016