



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 2012

HOHP reference: HOHP/PF/14/0157

Re: 3A Craigton Street, Faifley, Clydebank, G81 5BZ ('the property')

The Parties:

MS Gillian Greig, 3A Craigton Street, Faifley, Clydebank, G81 5BZ ('the homeowner')

Ross and Liddell Ltd, 60 St Enoch Square, Glasgow, G1 4AW ('the property factor')

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).

Committee Members

Martin McAllister (Chairperson) and Ann McDonald (Housing Member).

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 failed to carry out the property factors duties as defined in the 2011 Act . Determines that, in relation to the homeowner's Application, the factor has complied with the Code of Conduct for property factors and has carried out the property factor's duties.

Background

1. By application dated 13th October 2014 and a revised application of 27th November 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 application alleged multiple breaches of the Code. The specific matters complained about in relation to breach of the Code were breach of Sections relating to Communications and Consultation, Financial Obligations, Debt Recovery, Insurance, Carrying out Repairs and Maintenance and Complaints Resolution. After the application had been lodged the parties attempted to resolve matters without success and the matter was referred to a Homeowner Housing Committee (the Committee) on 15th April 2015.

2. Following service of the Notice of Referral, the homeowner made written representations on 7th May 2015 and the property factor made written representations on 4th June 2015.

3. Hearings were fixed and adjourned for various reasons and productions were lodged by the parties. Directions were issued and, in compliance with one of them, the homeowner made written representations dated 16th October 2105 to be considered at the Hearing because she had indicated that she was not going to attend to give oral evidence.

Hearing

4. A hearing took place in respect of the application on 4th November 2015. The homeowner was not present and the property factor was represented by Mr Malcolm Ritchie, solicitor. Mr Brian Fulton, director of the property factor, and Mrs Rita Glendinning, an employee, were present and both gave evidence.

Preliminary Matters

5. Prior to the Hearing commencing, the Committee examined all the papers before it which included the applications and accompanying papers, representations by the parties comprising original responses to the notice of referral, subsequent representations by the parties, including the representations made by the homeowner on 16th October 2015 and the productions lodged by the parties. The Committee considered that there were certain matters where it had sufficient evidence to make a determination without hearing oral evidence. The Committee resolved to intimate the specific matters when the hearing convened.

6. When the Hearing convened the Committee made available to the property factor copies of the property owner's written representations dated 16th October 2015 and indicated that it was prepared to allow a short adjournment to allow the property factor time to read them.

The Committee advised the property factor that it did not require to hear evidence on a number of aspects of the homeowner's application because, on the basis of the evidence before it and the representations made by parties, it did not consider that, in these matters, the property factor had failed to comply with the Code or breached the property factor's duties. With reference to the Code the matters are 3.5a, 3.5b, 5.1, 6.4, 6.5, 6.7 and 7.1. The Committee considered that it was entitled to come to a view on these matters because of the written evidence before it and the written representations made:

3.5a. The property factor produced a letter from auditors confirming that funds relating to "clients" are kept separate.

3.5b. No evidence was before the Committee to indicate that a sinking or reserve fund exists.

5.1. The property factor had submitted written evidence which satisfied the Committee.

6.4. No evidence was before the Committee to indicate that a planned programme of cyclical maintenance was part of the core service agreed with homeowners. The property factor's service agreement included inspection of the property on a regular basis and there is no evidence that such inspection regime was not complied with.

6.5. The Committee was satisfied with the written evidence produced by the property factor.

6.7. The homeowner in her written representations conceded that there is no commission, fee or other payment or benefit provided to the property factor by any contractor.

7.1. From the documentation produced before the Committee it was satisfied that there was no breach of this section of the Code.

The Committee indicated that it would require to hear evidence on the other matters raised in the application. The Hearing then adjourned for an hour to allow the Mr Ritchie and his client time to consider the written representations of the homeowner.

7. When the Hearing reconvened Mr Ritchie indicated that he would like the matters concerning insurance dealt with first to allow Mrs Glendinning, the property manager's insurance manager, to leave after her evidence had been taken. The Committee was happy to consent to this approach, but first indicated that it would

welcome Mr Fulton providing it with an over view of the development where the Property is situated.

8. Mr Fulton said that the Property is one of a number of developments in the Faifley area which are factored by his company. He said that they consist of blocks of flats situated in common grounds. He said that the Property is in a development of 56 properties and that costs are divided amongst all the owners of the properties. He said that the Property is in a development where there has been a history of debt recovery problems. He said that owners had initially been written to in 2011 highlighting this issue. He said that his company came to the point where it could no longer continue to manage the development with the then current level of debt and it terminated its factoring services in May 2014. He said that the property factor had been bearing the cost of the debt. He said that his company continue to make recoveries from indebted proprietors even though it has ceased factoring services on the properties and that these recoveries are credited to the accounts of owners so reducing what they owe. Mr Fulton confirmed that his company was not charging administration fees for this ongoing recovery work.

9. The Committee then proceeded to consider evidence on the various alleged breaches of the Code and it was agreed to take each heading in turn. It was agreed to deal with matters concerning insurance at the same time.

10. *3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds, or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).*

5.2 You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.

5.6 On request, you must be able to show how and why you appointed the insurance provider, including any cases where you decided not to obtain multiple quotes

5.7 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for

inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you can make a reasonable charge for providing this, subject to notifying the homeowner of this charge in advance.

5.8 You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes for building insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.

It is clear from the application and the representations from the homeowner that the information which the homeowner considers that the property factor had not provided was the information that she and her fellow owners required from the property factor to facilitate the arranging of a replacement insurance policy.

The homeowner's position regarding insurance as set out in her application and her representations are that she was not given sufficient information to allow her to arrange insurance and that she was not provided with information on the broker's tendering process. The homeowner also made it clear in her representations that the alleged breach of 3.1 of the Code relates to what she considers the property factor's failings in not providing her with the information necessary for her to arrange to put insurance cover in place. The Committee was referred to an email exchange between the homeowner and Mrs Glendinning and in particular one of 23rd September 2014 where Mrs Glendinning set out details of the steps to be taken to arrange insurance.

Mrs Glendinning explained that the particular share of premium paid by each homeowner is not equal for each property but is calculated by having regard to two aspects. The first is the share attributable to the common areas and the second relates to the flat itself and this is governed by the size of the flat and any request by a homeowner or his/her solicitor to fix a particular value on a flat. She said that policies are indexed linked annually to take into account inflation.

The property owner's view is that she did not have sufficient information to arrange a policy. She provided no specific evidence from a broker or an insurance company detailing any lack of information required to arrange another insurance policy. The homeowner said that she required four pieces of information to arrange the policy:

- i. The total sum insured for the Development
- ii. Information in relation to the title deeds regarding insurance required. This would cover the number of properties in the development to be factored and arrangements for common repairs
- iii. Material used in the construction of the flats.
- iv. Claims experience.

Mrs Glendinning said that the information which was provided to the homeowner was confirmation of the total sum insured and claims experience. The Committee noted that the evidence provided showed the value of cover. The homeowner had stated that she had been provided with conflicting evidence of claims experience. The Committee had sight of two pieces of written evidence detailing the claims experience which had slightly different totals. Mrs Glendinning explained that any such information is effectively a snap shot, showing the claims history at a particular date and that she would expect it to differ on various dates. The Committee was referred to the property factor's production 5 which is an email from Mrs Glendinning to the homeowner dated 3rd November 2014 regarding information on the insurance policy and the claims history in particular. Mrs Glendinning indicated that she had considerable experience in arranging insurance policies and that the information provided to the homeowner would have been sufficient for her to obtain insurance. She said that she considered as they were no longer the factor for the building that it was for the homeowner to provide to any broker or insurance company details of construction and information from the title deeds. She said that a broker or insurance company should have been able to provide an insurance quotation if the four pieces of information had been provided to it.

Mrs Glendinning set out the process by which she arranges insurance policies. She cited, by example, the placing of insurance cover which had been undertaken in 2014. She said that she asked four brokers to tender. The brokers were provided with the total sum involved and claims experience. Two were eliminated because they could not provide blanket cover and the necessary extensions required such as not requiring individual owner and tenancy information at each change and unoccupied property cover. A broker was selected and the next stage was for the broker to negotiate with insurers, an insurer to be selected and cover to be placed.

The Committee had sight of the certificate of insurance and noted the fact that commission is referred to in that certificate. They also noted that there were four versions of factor's service level agreement (SLA) before the Committee. These had four differing dates on them. Mr Fulton explained that such documents are developing documents and are regularly revised and amended. The Committee had versions dated February 2012, January 2013, November 2013 and April 2015. The 2013 versions relevant to the period being considered refer to disclosure of insurance commission.

In response to a question on what information on the insurance tender process was given to owners Mr Fulton and Mrs Glendinning said that general information regarding the insurance broker and many other matters regarding property insurance would be included in newsletters sent to homeowners. The Committee was referred to the property factor's production 22 and the information sheet headed Executive Summary which was from Willis, the insurance broker being used at the time. It referred to the 2013 insurance renewal. It was confirmed that this had not been sent to homeowners. Mrs Glendinning and Mr Fulton said that the homeowner had not

asked for specific information regarding the tendering of insurance. They also said that a majority of homeowners had not requested that a revaluation take place. The Committee noted that the 2012 version of the SLA made no reference to revaluations. Mrs Glendinning said that index linking would address issues of increasing reinstatement costs. The Committee noted that the property factor's current SLA (which it considered was not relevant to the homeowner's application) states that the property factor will not carry out a revaluation unless specifically instructed by the homeowners.

11. 4.1 You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.

4.2 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.

4.6 You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to limitations of data protection legislation).

4.7 You must be able to demonstrate that you have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging those remaining homeowners if they are jointly liable for such costs.

4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.

Mr Ritchie referred the Committee to the 2013 Service Level Agreement, (SLA), which he said evidences that the property factor had in place a procedure for dealing with debt recovery. The homeowner's representations made reference to the number of versions there were of the SLA. She also indicated that she did not consider that, in her case, when she was sued for payment, the debt recovery process was consistently and reasonable applied. The homeowner stated that she considered the accounts sent to her to be confusing especially because of the differing figures.

In evidence Mr Fulton said that at any point the sum due by a homeowner would be a statement of what is owed that particular day. He said that charges and payments going forward change the liability. In the homeowner's case he said that the balance of £75.59 due at the end of March 2012 had grown to £626.94 by December of that year. The Committee was referred to the property factor's production 21 which was described by Mr Fulton as a screen shot from the IT system showing that on that date (which appeared to be 14th December 2012) the property owner owed £626.94 and that she had been issued with standard first and second reminder letters. The

homeowner's position as represented to the Committee is that she did not get any such letters. Mr Fulton said that homeowners receive quarterly statements which show the debt owed by them at the date of the statement. He said that the homeowner would have received such statements. The Committee was referred to the property factor's productions 25 relating to the court action which had been raised against the homeowner. Mr Fulton set out the steps that his company had taken in trying to recover the debt due by proprietors in the development. He said that it did not take many homeowners to default on their obligations before the debt rose to a significant level. He said that homeowners had been advised of the issue of debts owed by proprietors. In her representations the homeowner said that she now understood why the various figures were given in the invoices and that there had not been misrepresentation, the information provided however was confusing. She accepted that the property factor had advised homeowners of debt recovery matters, but that no explanation had been given as to why it had accumulated to such an amount and why court actions had not been previously taken. Mr Fulton said that court actions were raised, decrees obtained, sheriff officers instructed and notices of Potential Liability registered. Mr Fulton said that two letters had been sent to the homeowner before court action was raised against her.

The Committee was referred to the property factor's productions 25, 6a, b and c which comprise copies of letters sent to the homeowner advising of level of debt owed by proprietors in the development and the consequences arising out of non payment of the sums due. The Committee noted the copies of letters dated 2nd November 2012, 17th April 2013 and 26th March 2014 which are copies of letters sent to the homeowner regarding the level of debt and which set out the position and the consequences for other homeowners arising from the default of some.

12. *6.3 On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use of in- house staff.*

6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be made available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.

6.7 You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.

Mr Fulton said that, in relation to Code item 6.3, no specific request had been made by the homeowner in relation to appointment of contractors. The homeowner's representations indicate that she was not referring to any specific request but rather to each "job she was billed for." Mr Fulton said that there were really two categories of repairs. One was in relation to general jobbing work where the approved

contractor list was used and the other was in relation to a specific piece of work involving maintenance or renewal where estimates are sought from contractors. Mr Fulton said that before his company admitted any contractor to the approved contractors' list a process was gone through to evidence such matters as insurance, health and safety information and hourly rate and overall value. The SLA advised that an approved list of contractors was used for routine items and that for larger works estimates obtained.

Mr Fulton said that he was unaware of any historic requests for information from the homeowner. In the application the homeowner refers to an email exchange with Ryan Lochtie of the property factor dated 15th July 2014 where she was seeking such information. Mr Fulton pointed out that this was two months after the factoring arrangement had been terminated.

In relation to 6.6 of the Code, Mr Fulton referred to the property factor's production 26.7 which comprise a number of documents in relation to the possible appointment of contractors to carry out fencing work. He said that this demonstrates the steps taken by his company when seeking to have a specific piece of work done.

13. *7.4 You must retain (in either electronic or paper form) all correspondence relating to a homeowner's complaint for three years as this information may be required by the homeowner housing panel.*

Mr Fulton said that there may be a misunderstanding in relation to this. The homeowner had asked for a file in her name but there is no such file in the name of the homeowner. Files were in respect of the development. These would include all correspondence received from owners. Mr Ritchie said that the obligation in terms of that section of the Code was to retain not to produce and that anyway the homeowner would presumably have copies of any complaint she had made.

14. *2.1 You must not provide information which is misleading or false.*

Mr Ritchie invited the Committee to consider that no evidence either oral or written indicates that any misleading or false information had been provided by the property factor.

All invoices have the periods referred to, although they do not show the date the invoice was issued. One error made wrongly charging for a contractor Berryden visit was immediately corrected once it was advised. The reason for the change in the number of properties that the irrecoverable debt was split between was due to having to remove those properties involved from the apportionment of debt.

The homeowner's representations make clear that her position is that the communications she received from the property factor or its agent in relation to accounts and the sum due by her was evidence of breach of this item of the Code. In her representations the homeowner does now accept that the total amounts being asked for were correct.

15. Property Factor's Duties

The homeowner produced evidence that the property factor had not have its property factor registration number in all correspondence emanating from it. The Committee noted that in later and current communications from the property factor the property factor registration number had been included.

Submissions

Mr Ritchie invited the Committee to make no finding against the property factor. He asked the Committee to consider the evidence it had heard, the written representations made and to come to the conclusion that there had been neither breach of the Code or a failure in carrying out the property factor's duties.

The Committee took from the homeowner's representations that she is seeking the Committee to make a finding that there had been breach of the Code and that the property factor had not carried out the property factor's duties.

Discussion

The members of the Committee considered the evidence comprising the documents before it including the representations of the homeowner and it also had the oral evidence of Mr Fulton and Mrs Glendinning. It also had the advantage of the considerable number of productions lodged by the parties. In considering the application the Committee recognised that it was in a rather unusual position because the homeowner had chosen to submit written submissions rather than give oral evidence and her representations could not be tested by the property factor. Conversely the property factor's oral evidence could not be tested by the homeowner. The Committee found the evidence of Mrs Glendinning and Mr Fulton to be credible and reliable.

The Committee considered that the matters before it could helpfully be divided into the following groups:

Matters relating to insurance (possible breaches of sections 3.1, 5.2, 5.6, 5.7 and 5.8 of the Code.)

Debt recovery issues both general in relation to the debt owed by proprietors of the Development and specific in relation to the debt owed by the homeowner (possible breaches of Sections 4.1, 4.2, 4.6, 4.7 and 4.8 of the Code.)

Matters relating to repairs and instruction of contractors (possible breach of Sections 6.3, 6.6 and 6.7 of the Code.)

Retention of material (possible breach of 7.4 of the Code)

Provision of misleading or false information (possible breach of Section 2.1 of the Code.)

Breach of Property Factor's Duties.

Insurance

The Committee formed the view that Mrs Glendinning had a very high level of expertise in matters relating to insurance of properties and of developments of flats in particular. It was impressed with the quality of information provided by her in the emails sent to the homeowner and the helpful approach that she adopted. The Committee accepted that any new insurer would need certain information and that the four items set out by Mrs Glendinning seemed to be a reasonable summary of what would have been required. There was nothing in the homeowner's representations which contradicted this or any evidence produced by the homeowner which demonstrated that this was not correct. The Committee considered that construction of the building and liability in terms of the title deeds was a matter for the homeowner and not the property factor. The Committee also considered that the claims history provided would have been sufficient for a new insurer to deal with the matter and it accepted Mrs Glendinning's evidence in this regard.

The Committee accepted the written and oral evidence regarding information provided to the homeowners in the development and Ms Greig in particular with regard to the selection of insurer, broker, allocation of premium and the issue with regard to revaluations. It did however note that it would have been helpful in the interests of good communication to have provided to owners more information than it did in its general correspondence on this matter in its newsletter on why the choice of insurer was made on renewal and when it tendered for Broker services.

Debt recovery issues

The Committee had some sympathy with the homeowner in relation to information provided to her in connection with what she owed at various times. The Committee accepted that this might well have been confusing. On balance, however, it considered that the homeowner had been provided with information with regard to the fact that she did owe money to the factor although she may well have been advised of differing amounts. The Committee could come to no view as to whether or not the reminder letters had been sent. The property factor's system showed that they had but the homeowner does not accept that she received them. The written evidence including the service level agreements persuaded the Committee that the property factor had in place a written procedure for debt recovery. The Committee accepted the evidence of Mr Fulton that the homeowners had been made aware of the consequences of some homeowners not paying and the copy letters lodged by the property factor supported this.

The Committee was satisfied that the property factor did take reasonable steps to recover debts. It raised court actions, obtained decrees, instructed sheriff officers to implement decrees and registered notices of potential liability. The Committee considered it to the property factor's credit that it continued to make recoveries to reduce the liability of homeowners even though it no longer factored the development and that it was not making charges for this work.

Repairs and instruction of contractors

The Committee accepted completely the evidence of the property factor in relation to the alleged breaches. It considered that the homeowner had produced no evidence in this regard which substantiated that there was any failing of the property factor in this regard.

Retention of material.

The Committee had difficulty in establishing what the homeowner's point was in this matter. She said that she had asked for her file and that none had been produced. The Committee accepted that there was not a specific file on the homeowner held by the property factor but rather a file on the development as a whole. The Committee also considered that there had been no evidence to substantiate the contention that the property factor had not retained correspondence.

Provision of misleading or false information

The Committee considered all the evidence to consider whether any information provided to the homeowner was false or misleading. It could not identify any false information provided to the homeowner. The homeowner considered that information provided to her on monies owed by her was misleading. The Committee accepted that, as presented, it may at times have been confusing but did not consider that such information was misleading.

Property factor's duties.

The Committee found no evidence that the property factor had not been carrying out the property factor's duties. It had been arranging repairs, allocating responsibility for payment amongst the proprietors, arranging insurance and pursuing proprietors for payment. The Committee noted that the property factor did not have its property factor registration number on all correspondence which technically could be breach of the duty but the Committee was satisfied that these failings occurred in the early days after the Act came into force and that this is not a continuing failing. The

The Committee considered that, in relation to the application before it, that the property factor had complied with the Code of Conduct for Property Factors and had complied with the property factor's duties.

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

Martin J. McAllister

23rd November 2015