



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 Ref: HOHP/PF/13/0325

Re: Property at 51 Bannermill Place, Aberdeen AB24 5EB("the Property")

The Parties:-

Miss Julie Thompson, 51 Bannermill Place, Aberdeen AB24 5EB("the homeowner")

Select Property Management Services (Aberdeen) Limited, incorporated under the Companies' Acts (SC402142) and having its Registered Office at 28 Broad Street, Aberdeen and having a place of business at Factor's Office, Bannermill Place, Aberdeen AB24 5EG("the property factor")

Decision by a committee of the Homeowner Housing panel in an application under Section 17 of the Property Factors (Scotland) act 2011 ("the Act")

Committee Members: George Clark (Chairman) and Michael Scott (housing member)

DECISION

**The Committee has jurisdiction to deal with the Application.
The property factor has failed to comply with its duties under section 14 of the 2011 Act.**

The decision is unanimous.

We make the following findings in fact:

- 1 The homeowner is the owner of the Property, which forms part of a development of 323 dwellinghouses by Persimmon Homes Limited, at Bannermill, Aberdeen (“the development”).
- 2 The property factor manages and maintains land on the development (“the land”).
- 3 The land is available for use by the homeowner and the owners of the other properties in the development and the property factor, therefore, falls within the definition of “property factor” set out in Section 2 (1)(c) of the Property Factors (Scotland) Act 2011 (“the Act”).
- 4 The property manages and maintains the common parts of the development and the owners of the 323 properties in the development contribute towards the maintenance costs of the common parts.
- 5 The property factor’s duties arise from a written Statement of Services. The Committee has seen two pro forma versions of a written Statement of Services issued by the property factor relative to the development, but has not seen a signed version of either, and is unable to verify whether either was sent to the homeowner. One version makes reference to the Act and the other does not, so the Committee concludes that the written Statement of Services was updated and amended after the passing of the Act and that the two pro forma documents which the Committee has seen comprise a document prepared when the property factor was appointed, and a revised version which was produced after the passing of the Act. The homeowner, however, denies having received either document.
- 6 The Committee is unable to state the date from which the property factor’s duties arose, but neither party is disputing the fact that they arose prior to the date of the application.
- 7 The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- 8 The date of Registration of the property factor was 25 February 2013.
- 9 The homeowner has notified the property factor in writing as to why she considers that the property factor has failed to carry out its duties arising under section 14 of the Act. She did this by letter of 1 December 2013.
- 10 The homeowner’s letter of 1 December 2013 raised three individual complaints about services provided by the property factor.
- 11 The homeowner made an application to The Homeowner Housing Panel (“HOHP”) dated 6 December 2013 and received by HOHP on 9 December 2013 under Section 17(1) of the Act.
- 12 The homeowner’s concerns have not been addressed to her satisfaction.
- 13 On 27 February 2014, the President of HOHP referred the application to a Homeowner Housing Committee.

HEARING

A hearing took place at the Credo Centre, 14-20 John Street, Aberdeen on 1 July 2014. The homeowner was present at the hearing. She was accompanied by Mr Matthew Henderson, the owner of another flat within the development. Mr Henderson was to give evidence to the Committee in support of the homeowner. The property factor was not present or represented at the hearing, but Mrs Carline Stevens, Property Manager of the property factor, had advised HOHP by letter dated 29 June 2014 that, for personal reasons, she was unable to attend the hearing.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as “the 2012 Regulations”. The Homeowner Housing Panel is referred to as “HOHP”.

The property factor became a Registered Property Factor on 25 February 2013 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the Application dated 6 December 2013 (received by HOHP on 9 December 2013) and documents lodged with it; the homeowner’s letter to the property factor of 1 December; a letter from the homeowner to HOHP dated 7 February 2014, with enclosures, namely a copy of her Land Certificate and of a 22-page document entitled “An Introduction for new clients”, sent to her following a request by her to the property factor on 5 January 2014 for a copy of the written statement of services; a letter from the homeowner to HOHP dated 16 March 2014 with enclosures, including confirmation that she wished the application to be considered at an oral hearing; a letter from the homeowner to HOHP dated 2 April 2014; a letter from the homeowner to HOHP dated 23 April 2014 containing further written representations and enclosures; a letter from the homeowner to HOHP dated 16 June 2014 with enclosure, namely a copy of a letter to the homeowner from The Financial Ombudsman Service dated 28 May 2014; an e-mail from the property factor to HOHP dated 17 March 2014, attaching the property factor’s written representations; an e-mail from Mrs Carline Stevens of the property factor to HOHP dated 22 June 2014, indicating that she might be unable to attend the hearing, but that she would submit a statement to be read on her behalf at the hearing, if she was unable to attend; and a letter from Mrs Carline Stevens of the property factor to HOHP dated 29 June 2014, already referred to.

Preliminary Matters

The Committee considered representations by the homeowner to the effect that she had not seen and had, therefore, not had reasonable notice of the contents of or any opportunity to respond to the letter from Mrs Carline Stevens to HOHP dated 29 June 2104. The Committee, having ascertained from enquiry that the letter had only been received by HOHP on the morning of the hearing, agreed with the homeowner and determined that the letter and its enclosure should not be further considered by the Committee in arriving at its decision.

Summary of Written Representations

(a) From the Homeowner

In her intimation (by letter dated 1 December 2013) to the property factor of her application to HOHP the homeowner stated that the property factor had not responded to an e-mail sent by the homeowner on 25 September 2013, asking for clarification of the AGM minutes, or to the e-mail she had sent on 6 October 2013, asking for a completion date for the decoration of the communal hallway in the block of which the Property forms part. This, she said, breached the requirement of the Code that “all correspondence must be replied to within a reasonable timescale”. This formed the first ground of her complaint.

The second ground of the homeowner’s complaint, as set out in the letter of 1 December 2013, was that the property factor had been asked at the June AGM for a schedule regarding the decoration of the communal hallways and she had asked the property factor three months later, by e-mail, for a completion date, but no such information had been provided. She also asserted that the length of time she had waited for this work to be completed was not reasonable, as it had been paid for on 10 January 2013. The homeowner’s view was that the property factor had breached the requirement of the Code to “inform homeowners of the progress of work, including estimated timescales for completion” and the requirement to prepare a schedule of works.

The third ground of complaint related to the requirement of the Code that the property factor “must not provide information that is misleading or false”. According to the homeowner, the property factor stated in the June 2013 AGM minutes that the property factor had been “cleared by the ombudsmen” regarding the homeowner’s insurance claim when in fact the Financial Services Ombudsman had not even started investigating until November 2013. The property factor had also sent out an incomplete and misleading version of the homeowner’s situation and an incomplete and misleading version of the actual content of the discussion at the meeting. The homeowner had sent the property factor a letter on 7 October which detailed some, but by no means all, of the misleading information sent out to 320 proprietors at Bannermill. The property factor had not sent out any correction to the minutes.

In her application to HOHP, the homeowner stated that she felt that the property factor, by failing to reply to her e-mails, did not respect her and she sought an apology for being ignored and an assurance from the property factor that this would not happen again. She felt that, if detail was to be included in the AGM minutes, it had to give both sides of the story, not just the property factor's "extremely biased side", which made the homeowner look like an owner who was complaining unjustifiably and that the minutes had been all about trying to make the property factor look good to the 320 owners reading them, not about giving an accurate account of the situation or the actual conversation on the night. The homeowner wanted an apology from the property factor for sending out such "blatantly misleading" minutes.

The homeowner sent a further letter to HOHP dated 2 April 2014, in which she referred to a letter from HOHP of 26 March 2014, which had enclosed documents, including copies of two letters which the property factor said had been hand delivered to the Applicant. The homeowner categorically denied having received the two letters.

In a further letter to HOHP dated 23 April 2014, the homeowner stated that she had not received her factoring bill, due in February and had sent two e-mails chasing it up, but both had been ignored. She attached to that letter, copies of e-mails to the property factor dated 23 March and 9 April 2014, both requesting the February factoring bill. She also enclosed a signed statement by Mr James Alastair Graham, Attorney for his wife, Wilma Ann Graham, the owner of a flat forming part of the development. Mr Graham had attended the AGM on 18 July 2013, where he met the homeowner for the first time. He stated that he recollected a great deal of discussion at the meeting regarding insurance and six leaks which had affected the homeowner's flat. In particular, he recalled Mrs Stevens' claim to have been exonerated by the Financial Services Ombudsman over any irregularity and the homeowner expressing surprise at this as she had not yet made representations to the FSO. He felt that the attitude adopted by Mrs Stevens towards the homeowner was antagonistic and far from conciliatory. He also stated that he had told the homeowner about another meeting he had had with Mrs Stevens and another resident, at which, when asked why she did not answer his correspondence she replied "I kept hoping he would go away".

(b) From the Property Factor

The property factor e-mailed HOHP on 17 March 2014 and attached a letter dated 15 March 2014, which stated that written representations were enclosed for consideration by HOHP. These representations comprised photocopies of two letters to the homeowner, signed by Carline Stevens on behalf of the property factor, both dated 8 October 2013. The words "By hand delivered 08/10/13" were handwritten at the top of the first page of one of the letters and "Delivered by hand 08/10/13" was handwritten at the top of the other letter. Taken together,

the letters referred to the homeowner's e-mail of 6 October 2013 and her letter of 7 October 2013. Mrs Stevens said that the statement which she had made at the AGM regarding being exonerated by the ombudsmen followed on from a telephone call she had had with a senior employee at CIS, regarding leaks and complaints that the homeowner had as an owner within the development that was covered by their Block insurance policy. During that conversation, she had asked what would happen with the complaint and was told that it had been investigated and that neither CIS nor the property factor had failed in their dealings with the reports of water ingress. Mrs Stevens presumed from the context of the conversation this meant that the ombudsman had investigated.

Mrs Stevens denied that the minutes of the AGM were her own biased opinion. She had spoken with several other owners who attended the AGM who felt the content of the homeowner's letter of 7 October 2013 was inaccurate and who also could not remember the homeowner raising several of the points that she had stated in the letter that she had pointed out at the AGM. With regard to the internal redecoration, Mrs Stevens referred to the discussion at the AGM, when she had pointed out that the contractors were finding lots of additional issues, in particular with the plaster in the blocks, which had slowed them down considerably. She added that the estimated timescale for the homeowner's block to be completed was 11 April.

Mrs Stevens thanked the homeowner for her e-mail of 6 October 2013 and confirmed that an issue regarding lighting in the block and reported in the e-mail had been attended to. She also repeated an offer made at the AGM to meet privately with the homeowner to resolve the issues with regard to the insurance.

In addition to the two letters, the property factor's written submission included a copy of a letter sent by e-mail to Central Insurance Services Limited ("CIS") on 26 November 2013. The letter dealt primarily with a number of instances of water damage to the Property and was a complaint against CIS. There were handwritten marginal annotations on this copy letter, which the Committee presumed had been made by Mrs Stevens. These annotations contradicted some of the homeowner's statements in the letter.

Summary of Oral Evidence

The homeowner told the Committee that she had never received a Written Statement of Services from the property factor. Her witness, Mr Matthew Henderson confirmed that he had not received one either.

The homeowner then referred the Committee to the copy of the minutes of the meeting she described in her application as the AGM of the Bannermill homeowners held on 18 July 2013. This meeting had been attended by Mrs Carline

Stevens on behalf of the property factor. The minutes indicated that twenty five homeowners attended the meeting. The homeowner drew the attention of the Committee to two sections of the minutes. Firstly, one of the homeowners had requested that each block be issued with a schedule indicating when they could expect the communal internal redecoration to begin in each block. The minute records "CS (Mrs Stevens) to request contractor prepare schedule for client issue". The homeowner told the Committee that the schedule was never issued.

The minutes also contain a section entitled "Block Insurance Cover", part of which deals with various points made by the homeowner when she addressed the meeting. She had told the meeting that she had had numerous leaks into the Property from the flat above and stated that the damage resulted from the flat above not being properly maintained. Mrs Stevens contested that claim. The minutes contain the following: "Miss Thompson had criticised Selects dealings with the insurance for not advising them of damage. CS discussed that Miss Thompson's complaints to the ombudsmen regarding the damage to her property and the insurance policy for the development had exonerated both Select and Central Insurance of any fraudulent or deceptive behaviour dealing with the damages."

The homeowner told the Committee that, as at the date of the AGM, she had not made a complaint to the Financial Services Ombudsman and that she had intervened at the meeting to correct Mrs Stevens' statement, but the minutes do not reflect that and they were not corrected by Mrs Stevens when the homeowner pointed out the omission in her letter to the property factor on 7 October 2013. The homeowner's witness, Mr Matthew Henderson, told the Committee that Mrs Stevens had definitely said at the AGM that the FSO had cleared her of the matter and that the homeowner had corrected her, saying that she had not yet submitted a complaint, but that the minutes did not include that comment, so were misleading and incorrect. The homeowner referred to an e-mail from the Financial Services Ombudsman dated 3 October 2013, which confirmed that the case had not yet been reviewed by anyone at the Ombudsman yet and therefore had not been concluded, and to two letters from the Financial Services Ombudsman dated 3 March 2014 and 28 May 2014, which formed part of her written representations. Both letters confirmed that her complaint was still awaiting the Ombudsman's final decision. The homeowner was of the view that the minutes suggested she was a problem owner, rather than reflecting fairly the actual discussion that took place. Since then, the homeowner appeared to have been removed from the property factor's mailing list for the owners in the development. She had not been given details of the barrier code for the car parking area and had not been sent details of the next AGM, which was due to be held later in the month.

The homeowner categorically denied receiving the two letters purportedly hand delivered on 8 October 2013. She told the Committee that she had a secure letter box and that it had not been tampered with at any time, so any letters deposited in it would have been collected by her, as the only person holding a key to the letter box. The homeowner confirmed to the Committee that, as she had not received those letters, she had had no response from the property factor to her e-mails of 25 September and 6 October 2013. She had not seen the two letters until

copies were sent to her by HOHP on 26 March 2014, as part of the property factor's written representations.

In her concluding remarks to the Committee, the homeowner stated that she had brought forward the three complaints about which she had clear evidence, but they were not the only issues. The developers had originally appointed Trinity Factors to factor the development, but, following an e-mail vote in, she thought, 2012, they were replaced by the property factor, Select Property Management Services, Aberdeen. She described the property factor as a "one-man band", run by Mrs Stevens, a former employee of Trinity Factors. She had one employee, but that person did not appear to have the authority to take any decisions when Mrs Stevens was not there. Mrs Stevens spent much of her time in Canada, was very unprofessional and the homeowner felt intimidated by her. The purpose of the complaint to HOHP was to ensure compliance with the Code of Conduct, to require the property factor to reply to all correspondence within ten working days, to follow proper procedures in relation to the awarding of contracts and to keep owners informed of progress. She felt that the relationship of trust and respect had completely broken down and that minutes of future meetings should be taken by an independent person. She also wanted the papers for the next AGM to include an apology from the property factor for the inaccurate and misleading information in the minutes of the July 2013 AGM.

REASONS FOR DECISION

The Committee determined that the property factor has failed to comply with Sections 1, 2.1, 2.5, 6.1 and 6.4 of the Code, as stated in the Application.

Section 1 of the Code states that the property factor "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". Although the Committee saw two pro forma versions of a written statement of services, the homeowner gave evidence to the effect that she had never received either of them and this evidence was corroborated by Mr Henderson. The Committee determined that, in the absence of any evidence to the contrary, for that reason, the property factor has failed to comply with Section 1 of the Code.

Section 2.1 states that the property factor "must not provide information that is misleading or false". The Committee, having heard the evidence of the homeowner and of Mr Henderson, supported by the written statement of Mr Graham, finds that the minutes of the AGM held on 18 July 2013 provide a misleading record and create a false impression of the discussion at the meeting relating to the position of the Financial services Ombudsman. At the date of the meeting, the homeowner had not made any complaint to the FSO, and the Committee has seen evidence that the complaint had not been determined as at 28 May 2014, so it was misleading and false to state in the minutes that the property factor had been "exonerated" by the FSO. The Committee determined

that, for that reason, the property factor has failed to comply with Section 2.1 of the Code.

Section 2.5 of the Code states that the property factor “must respond to enquiries and complaints received by letter or e-mail within prompt timescales” and that the response times should be confirmed in the written Statement of Services. Based on the evidence before it, the Committee is not satisfied that either of the two letters dated 8 October 2013 was delivered to the homeowner by hand, as the handwritten notes on each would suggest. Consequently, the Committee finds that the property factor has failed to respond to the homeowner’s e-mails of 25 September and 6 October 2013. The Committee determined that, for those reasons, the property factor has failed to comply with Section 2.5 of the Code.

Section 6.1 of the Code states that the property factor must inform homeowners of the progress of work in relation to matters requiring repair, maintenance or attention, including estimated timescales for completion. Section 6.4 of the Code provides that, where the core service agreed with the homeowners includes a planned programme of cyclical maintenance, the factor must prepare a programme of works. The homeowner has provided evidence that the minutes of the AGM on 18 July 2013 state that the property factor would ask the contractor to provide a schedule for issue to the homeowners regarding the programme of communal internal redecoration. The homeowner stated in her evidence that she had never received this schedule and the Committee has also seen the homeowner’s e-mail dated 6 October 2013, in which she requested a completion date for the works in her block. The Committee held that the property factor did not reply to this e-mail and determined that the property factor has failed to comply with sections 6.1 and 6.4 of the Code.

The Committee, therefore, held that the property factor has failed to comply with the Code as required by section 14(5) of the Act and that it proposed to make a Property Factor Enforcement Order. The Committee was also concerned by the evidence led to the effect that the homeowner had not received the factoring bills which should have been issued in February and May 2014, despite having requested these by e-mails of 23 March and 9 April 2014.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

The Committee proposes to make a Property Factor Enforcement Order, as detailed in the accompanying Section 19(2) Notice.

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..."

Signed

Date 1 July 2014

GEORGE CLARK

Chairperson



Notice of proposal to make a Property Factor Enforcement Order made under Section 19(2)(a) 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/13/0325

Re: Property at 51 Bannermill Place, Aberdeen AB24 5EB

The Parties:

Miss Julie Thompson, 51 Bannermill Place, Aberdeen AB24 5EB (‘the homeowner’)

and

Select Property Management (Aberdeen) Limited, incorporated under the Companies Acts (SC402142) and having its registered office at 28 Broad Street, Aberdeen and having a place of business at Factor’s Office, Bannermill Place, Aberdeen AB24 5EG (‘the property factor’)

Committee members: George Clark (chair) and Michael Scott (housing member)

This document should be read in conjunction with the Committee’s Decision under Section 19(1)(a) of the Act of the same date.

The Committee proposes to make the following Property Factor Enforcement Order (“PFEO”):

“Within 4 weeks of the communication to the property factor of the PFEO, the property factor shall (1) issue to all homeowners within the development the current written Statement of Services relative to the development; (2) issue to the homeowner and to any other homeowners within the development who have not already received them, notices of factoring charges as at February 2014 and May 2014; and (3) provide a written undertaking to the Committee

that she will henceforth reply to complaints received by letter or e-mail within the timescale set out in the written Statement of Services.”

Section 19 of the Act provides as follows:

“... (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...”

The intimation of the Committee’s Decision and this notice of proposal to make a PFEO to the parties should be taken as notice for the purposes of section 19(2) (a) of the Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2) (b) of the Act reach the Homeowner Housing Panel’s office by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Committee is likely to proceed to make a property factor enforcement order (“PFEO”) without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

Chairperson Signature 

Date..... 1 July 2014