



**DETERMINATION BY HOMEOWNER HOUSING COMMITTEE
STATEMENT OF DECISION OF THE HOMEOWNER HOUSING
COMMITTEE**

UNDER

**THE HOMEOWNER HOUSING PANEL (APPLICATIONS AND DECISIONS)
(SCOTLAND) REGULATIONS 2012 (the "Regulations")**

Ref: HOHP/PF/13/0266

Re 7 York Street, Clydebank G81 2PH (the "Property")

The Parties:-

David Hopkirk, 107 Attlee Avenue, Linnvale, Clydebank G81 2SF (the
"Homeowner")

West Dunbartonshire Council, Garshake Road, Dumbarton G82 3PU (the
"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

Jamie Millar (Chairman) and Richard Burnett (Surveyor Member).

Background

1. By application dated 2 September 2013 and received on 2 September 2013 the Homeowner applied to the Homeowner Housing Panel ("HOHP") for a determination whether the Factor had failed to comply with the property factor's duties (the "Duties") and/or had failed to comply with the Property Factor's Code of Conduct (the "Code") in terms of the Act.
2. The application by the Homeowner alleged the following failings on the part of the Factor:-
 - 2.1 Failure to comply with the Code in respect of:-
 - 2.1.1 Written statement of services – Sections 1.1a, A, B, C, D, E and F of the Code; ("Complaint 1")
 - 2.1.2 Communications and consultation – Sections 2.1, 2.3, 2.4 and 2.5 of the Code; ("Complaint 2")
 - 2.1.3 Financial obligations – Section 3.3 of the Code; ("Complaint 3")
 - 2.1.4 Debt Recovery – Section 4.4 of the Code; ("Complaint 4")
 - 2.1.5 Carrying out repairs and maintenance – Sections 6.1, 6.3 and 6.6 of the Code; ("Complaint 5")

2.1.6 Complaints resolution – Sections 7.1 and 7.2 of the Code; (“**Complaint 6**”).

3. Following submission of the Homeowner’s Application HOHP entered into further correspondence with the Homeowner, the purpose of which was to clarify further details in relation to the nature and extent of the Homeowner’s Application. The Application and all correspondence between HOHP and the Homeowner have been copied to the Factor.
4. By letters dated 4 November 2013 HOHP notified the Homeowner and the Factor that the President of HOHP had decided to refer the Application to a Committee of HOHP (the “**Committee**”).
5. Following referral of the Application to the Committee the Homeowner submitted written representations dated 30 January 2014 to HOHP a copy of which was provided to the Factor.
6. Following referral of the Application to the Committee the Factor submitted written submissions dated 26 November 2013 to HOHP a copy of which was provided to the Homeowner by HOHP.

Hearing

7. A hearing on the issues took place at the HOHP office at Europa Building, 450 Argyle Street, Glasgow G2 8LH on 7 February 2014. The Homeowner appeared in person and gave evidence. The Factor was represented by Mr Martin Feeney who gave evidence.

Findings of Fact

9. The Homeowner is the proprietor of the Property, his title being registered in the Land Register of Scotland under title Number DMB66957.
10. The Property is subject to the title conditions contained in Land Certificate Title Number DMB66957 and created by the Feu Disposition by West Dunbartonshire Council in favour of Rose Gallacher registered 5 June 2000 (the “**Title Conditions**”).
11. It is not disputed that the Factor is the duly appointed Factor of the Property in terms of the Title Conditions. The Factor was registered under the Act on 19 December 2012.

Summary of written representations and oral representations from the Homeowner

12. In respect of complaint 1 the Homeowner alleges that the Factor has failed to provide a written statement of services for situations where the land is owned by a group of home owners, thereby failing to set out the required details in relation to section 1.1 a, A, B, C, D, E and F. In particular the Homeowner alleges that the Factor has failed to respond to his enquiries and complaints detailed in writing on 30 July 2013 and 16 August 2013. As the Factor had not supplied a written statement of services it is the Homeowner’s position that it followed that the Factor

did not have a statement of services which satisfied the requirements of sections A, B, C, D, E and F. The Homeowner contends that although the Homeowner's letter of 16 August 2013 requested a copy of the Factor's code of conduct, the Factor would be well aware of what he was requesting but if the Factor found the request ambiguous, the Factor ought to have responded to the Homeowner to confirm what he was requesting.

13. In support of complaint 2 the Homeowner alleges that the Factor has provided false information in relation to an invoice for payment dated 16 May 2012 of £27.21 p for cleaning and repair of the gutter on 16 February 2012, an invoice for payment dated 24 July 2013 for £.95 51 for the cleaning and repair to the gutter on 14 November 2012 and an invoice for payment dated 18 March 2013 for £13.38 for cleaning and repair of the gutter on 20 November 2012. The Homeowner also refers to an invoice for payment dated 24 July 2013 of £44.26 for the removal of a television aerial from the chimney of the Property and the re-siting of the television aerial on the gable.
14. The Homeowner alleges that the gutter has not been repaired at the times specified or if has been repaired, the service was not carried out with reasonable skill and care due to the number of attempts being required to repair the gutter properly.
15. The Homeowner alleges that the television aerial was not re-sited in respect of which he had supplied photographic evidence to the Factor on 30 July 2013 and 16 August 2013 as proof that his television aerial had been removed but not re-sited on the gable of the building.
16. The Homeowner alleges that he was given false information on 30 October 2012 as to the cost of the removal of the chimney in that he was advised that it would be no more than £276.13 p when the final cost was almost double at £446.54.
17. In support of complaint 2 the Homeowner alleges that he has been falsely charged twice for the use of the scaffolding for removing the chimney and at the same time charged for scaffolding for the repair of the gutter while both the jobs were carried out concurrently.
18. The Homeowner alleges that the Factor has failed to consult with him as a homeowner and seek written permission before providing services which incurred a fee.
19. The Homeowner alleges that the Factor has failed to respond to his written enquiries and complaints contained in his letters dated 30 July 2013 and 16 August 2013. The Homeowner alleges that the Factor failed to acknowledge receipt of his letters or keep him informed in writing of any additional time to respond.
20. In support of complaint 3 the Homeowner alleges that the Factor has failed to supply supporting documentation and other appropriate documentation for inspection which was reasonably requested in his

letters of 30 July 2013 and 16 August 2013.

21. In support of complaint 4 the Homeowner alleges that the Factor has failed to supply a copy of their written procedures for debt recovery and in particular how the Factor deals with disputed debts and which was requested on 16 August 2013.
22. The Homeowner alleges that the Factor has failed to inform him of how service delivery will be affected if one or more homeowners do not fulfil their obligations.
23. In support of complaint 5 the Homeowner alleges that the Factor has failed to provide progress of work or an estimated timescale of major repairs totalling £715.59 and has failed following a written request dated 16 August 2013 to show why the Factor had appointed contractors, including cases where the Factor decided not to carry out a competitive tendering exercise or to use in-house staff.
24. In support of complaint 6 the Homeowner alleges that the Factor has failed to provide a written complaints resolution procedure as requested by him in writing on 16 August 2013 and has failed to confirm with senior management that the Factor's internal complaints procedure has been exhausted or notify him of this in writing. The Homeowner further alleges that the Factor has failed to provide details of how the Homeowner may apply to the Home Owner Housing Panel which was also requested in writing.
25. The Homeowner alleges that as a result of the failures of the Factor he was required to incur the expense of purchasing a television aerial for use within the Property.

Summary of written representations and oral representations from the Factor

26. The Factor's position is that the Factor has complied with the provisions of the code of conduct which required that the Factor issue a written statement of services within one year from the date of commencement of the Act or within four weeks of a request from the Homeowner. It is the Factor's position that the Homeowner requested a copy of the Factor's code of conduct and not a copy of the Factor's written statement of services. It is the position of the Factor that the written statement of services was not requested until the Homeowner's notice under section 17 of the Act was issued on 24 September 2013.
27. The Factor's position is that the Factor's statement of services does contain the sections which the Homeowner alleged were not in the statement of services.
28. The Factor contends that it did not intentionally provide information to owners that is misleading or false. In terms of the Title Conditions West Dunbartonshire Council is not required to provide information on

necessary works to homeowners although as a matter of courtesy the Council does in fact provide notifications to homeowners for work to common parts of the blocks including estimated costs. Such notifications do not include wording in relation to costs that says "not more than". Costs can increase where unidentified work is discovered during the period when works are being carried out.

29. The Factor pointed out that West Dunbartonshire Council has delegated authority under the Title Conditions to carry out emergency repairs and to carry out repairs to the value of £500 without authority.
30. As a gesture of goodwill the Factor is prepared to cancel the invoice for cleaning and renewing the gutter raised on 28 September 2012 as its records of this repair are incomplete.
31. The repair of the chimney was classed as necessary and released to the contractor on 1 November 2012 to re-roughcast the chimney. On closer inspection of the chimney from the scaffold erected to carry out the repair, it was deemed necessary and economical to remove and make good. Again it is the Factor's position that West Dunbartonshire Council has delegated authority under the Title Conditions to proceed with this work without notifying owners.
32. A self-build tower scaffold was hired to fit new gutters at the front of the block 1 to 7 York Street. The chimney scaffold was built by the Council's scaffolding team and was not suitable for gutter repairs. The Factor and West Dunbartonshire Council have to abide by health and safety legislation in carrying out repairs and in each case suitable scaffolding was required. The scaffolding for the gutter repair was not suitable to be used for the chimney removal and vice versa.
33. The Factor provided photographic evidence of the existence of four television aerials on the chimney prior to removal. The Factor provided a copy of a report from its contractor who removed the aerials that the contractor removed two operational aerials which were re-sited on the gable wall and removed two non-operational aerials which were not re-sited.
34. In relation to any failure to consult with the Homeowner and seek written permission before providing services the Factor referred to the Title Conditions and the Factor's written statement of services both of which refer to a delegated authority for repairs to be carried out up to a cost of £500. This threshold is in respect of an individual repair and not a series of unrelated repairs.
35. The Factor accepts that West Dunbartonshire Council as Factor had failed to respond to the Homeowner's letters of 30 July 2013 and 16 August 2013.
36. With regard to complaint 4 it is the position of the Factor that its statement of services does contain its procedures for debt recovery. With regard to any debt owed by the Homeowner, an email was sent to

the Homeowner on 9 August 2013 advising him that the Factor did not expect payment in full and for him to contact the Factor to discuss options.

37. With regard to complaint 5 the position of the Factor is that each repair notification issued to owners includes information on timescales for the work required.
38. The Factor accepts that it failed to respond to the Homeowner's request for information dated 16 August 2013 of details of how contractors were appointed.
39. With regard to complaint 6 it is the Factor's position that the duty is to have a clear written complaints resolution procedure. This is contained within section 5: "Complaints Procedure" of the written statement of services a copy of which has been provided to the Homeowner.
40. The Factor concedes that some pre-application correspondence remains outstanding but in mitigation points out that the written statement of services does provide details on how to make a complaint to the Home Owner's Housing Panel.

Determination of Complaints

Complaint 1

41. With regard to Complaint 1, the Committee has noted the precise terms of the Homeowner's letter of 16 August 2013 on which he bases his complaint that the Factor has failed to provide a copy of its written statement of services. The letter contains the following paragraph at the top of page 2:-

"I would appreciate if you could make available a copy of your code of conduct for property factors"

The Committee finds no reference in the letter of 16 August 2013 to a request for a written statement of services.
42. The Committee finds that the first clear and unambiguous request by the Homeowner to the Factor for a copy of the Factor's written statement of services is contained in his letter of 24 September 2013 which was sent to the Factor after the submission of his application to HOHP to satisfy the requirements of S. 17 (3) (a) of the Act.
43. The Factor issued its written statement of services to all its owners on 1 October 2013. The Homeowner was in a position to send a copy of the written statement of services to HOHP on 8 October 2013.
44. The Committee finds that at the time the application was lodged with HOHP no clear and unambiguous request had been made by the Homeowner to the Factor to provide the Homeowner with a copy of its written statement of services nor had the period for providing a copy to

owners under the Act expired.

45. The Committee does not uphold complaint 1 but the Committee finds that the failure to respond to the Homeowner to clarify any ambiguity as to what was being requested by the Homeowner's request for "a copy of your code of conduct for property factors" falls within the ambit of both Complaint 2 and Complaint 3 considered below.

Complaint 2

46. The Committee finds that the Factor has provided estimates of the costs of repairs prior to the work being carried out, the costs subsequently charged did vary from the estimates but the Factor made clear that the estimates could vary. The Committee does not consider that the provision of estimates which subsequently prove to be lower than the cost is misleading as the estimates were clearly indicated to be estimates. The Committee is satisfied that the Factor was justified in instructing two separate scaffolding towers to carry out two separate repairs. The Committee was not satisfied that the Homeowner had proved that an operation television aerial serving the Property had been removed and not re-sited on the gable wall.
47. The Committee finds that the Factor has been acting within the level of delegated authority in the Title Conditions and accordingly the Factor was not required to consult with the Homeowner and seek written permission before providing services.
48. The Committee finds and the Factor has acknowledged that the Factor has failed to respond to the Homeowner's letters of 30 July 2013 and 16 August 2013.
49. The Committee upholds complaint 2 in respect of the failure to comply with section 2.5 (response to enquiries and complaints received by letter or e mail within prompt timescales) but does not uphold complaint in respect of the alleged breaches of sections 2.1, 2.3 and 2.4.

Complaint 3

50. The Committee finds and the Factor acknowledges that the Factor has failed to supply supporting documentation and other appropriate documentation for inspection which was reasonably requested by the Homeowner on 30 July 2013 and 16 August 2013. The Committee finds that the Factor has failed to respond to the Homeowner to seek clarification of the ambiguous request for a copy of the Factor's code of conduct in the letter of 16 August 2013.
51. The Committee upholds complaint 3.

Complaint 4

52. The essence of complaint 4 is that the Factor had not provided a copy of its debt collection procedures. The section 4.1 duty is that the Factor must have a clear written procedure and it is clear from the written statement of services that the Factor does have such a procedure.
53. The Committee does not uphold complaint 4.

Complaint 5

54. The Committee finds that the Factor did issue repair notifications to owners which included information on timescales for the work required. The Committee noted that the Homeowner did not live in the Property and there was some dubiety as to when the Factor was notified that all communications regarding the Property should be sent to the Homeowner at his home address and not at the Property. As the Homeowner was unable to substantiate when he informed the Factor to communicate with his home address the Committee could not uphold a complaint of failure to communicate where correspondence and invoices had been addressed to the Homeowner at the Property.
55. The Committee finds and it was acknowledged by the Factor that the Factor had failed provide the Homeowner with the information requested in his letter of 16 August 2013 on details of how contractors were appointed including cases where the Factor had decided not to carry a competitive tendering exercise or use in house staff.
56. The Committee upholds complaint 5 in respect a failure to comply with section 6.3 but does not uphold complaint 5 in respect of a failure to comply with section 6.1.

Complaint 6

57. The Committee finds that the Factor does have a clear written complaints resolution procedure in its written statement of services but finds that the Factor did not notify the Homeowner that its complaints procedure had been exhausted and that he could apply to HOHP.
58. The Committee upholds complaint 6 in respect of a failure to comply with section 7.2 but does not uphold complaint 6 in respect an alleged failure to comply with section 7.1.

Decision

59. The Committee finds that the Factor has failed to comply with the following sections of the Code in terms of S.17 (1) (b) of the Act:-

Sections 2.5, 3.3, 6.3 and 7.2.

The decision is unanimous.

Draft Property Factor's Enforcement Order

60. The Committee is of the view that it would be appropriate to issue a Property Factor Enforcement Order in respect of the failures to comply with the Code which the Committee has found.
61. Section 19 (2) of the Act states that in any case where the Committee proposes to make a Property Factor Enforcement Order, the Committee must before doing so
- (a) give notice of the proposal to the Factor; and
 - (b) allow the parties an opportunity to make representation to the Committee.

If the Committee is satisfied, after taking account of any representations made, that the 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.

62. The service of this decision to the parties should be taken as notice for the purposes of section 19(2)(a) of the Act and the 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 HOHP's office by no later than 14 days after the date of service of this decision upon them. If no representations are received within that timescale, then the Committee may proceed to make a Property Factor Enforcement Order without seeking further representations from the parties.
63. Failure to comply with a Property Factor Enforcement Order may have serious consequences and constitute a criminal offence.
64. The Committee proposes to make the following Property Factor Enforcement Order:-
- "Within six weeks from the date of issue of the Property Factor Enforcement Order the Factor must:-
- a) Provide to the Homeowner responses to his letters of 30 July 2013 and 16 August 2013 containing the information required to

remedy the breaches of sections 2.5, 3.3 and 6.3 of the Property Factor's Code of Conduct;

- b) cancel the invoice for cleaning and renewing the gutter raised on 28 September 2012 as its records of this repair are incomplete and issue a credit note to the Homeowner or reimburse the Homeowner if this invoice has been paid.”

Right of Appeal

65. The parties' attention is drawn to the terms of Section 22 of the Act regarding their right to appeal and the time limit for doing so. Section 22 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.”

Jamie Millar
Chairman

21 / 02 / 2014
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Date