



**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/13/0044

Re: Property at Play Area Rumford Grange, Falkirk ('the property')

The Parties:

Mr. David Willson residing at 62, Craig Crescent, Rumford Grange, Falkirk FK2 0EN
(‘the homeowner’)

Newton Property Management having a place of business at 87, Port Dundas Road,
Glasgow G4 0HF (‘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:

Karen Moore (Chairperson);

Charles Reid Thomas (Surveyor Member) and

Helen Barclay (Housing Member)

Decision

Background

1. The property factor's date of registration as a property factor is 10 November 2012.
2. By application dated 5 March 2013 the homeowner applied to the Homeowner Housing Panel for a determination that the property factor had failed to comply with sections H (written statement of services), 2.4 and 2.5 (Communications and Consultations) and 6.3 and 6.6 (Carrying out repairs and maintenance) of the

Property Factor Code of Conduct ("the Code") as required by section 14(5) of the 2011 Act.

3. On 8 May 2013, the Committee made the following Direction:

"Direction in terms of Rule 13 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

Direction 1

The Factors are to provide to the Committee and to the Homeowner as soon as possible and no later than 14 days prior to the Hearing the following documentation:-

A copy of the title deed or contract document which shows how the Factors are appointed and the extent of the Factors' power and authority to instruct work in respect of the development of which the Property forms part.

Direction 2

The Factors are to provide to the Committee and to the Homeowner as soon as possible and no later than 14 days prior to the Hearing the following documentation:-

A copy of the Factors' office procedures, if any, for (i) putting contracts out to tender and (ii) assessing tender bids. If the Factors do not have standard or written procedures, details of how the Factors guide their staff in these processes.

Direction 3

The Factors are to provide to the Committee and to the Homeowner as soon as possible and no later than 14 days prior to the Hearing the following documentation:-

A copy of the tender documentation for the ground maintenance works in relation to the topping up of bark at the Property invoiced on 7 November 2012 under Factors' invoice number 198891. If an informal process was adopted and there is no tender documentation, copies of the full correspondence and notes of telephone calls and meetings, if any, between the Factors and the contractors who submitted bids for the contract.

Reasons for Direction 1

It would be helpful for the Committee to have a full understanding of the basis on which the Factors have been appointed and the extent of their power and authority to instruct and procure works and services.

Reasons for Direction 2

It would be helpful for the Committee to have a full understanding of the way in which the Factors instruct and procure works and services.

Reasons for Direction 3

It would be helpful for the Committee to have a full understanding of the basis on which the Factors instructed and procured the works in this case."

5. The property factor complied with the Direction on 9 May 2013.

6. The Parties made no further written representations to the Committee.

Hearing

7. A hearing took place on 14 June 2013 at the Homeowner Housing Panel offices at Europa House, 450 Argyle Street, Glasgow. The homeowner did not appear. The property factor was represented by Mr. Macdonald and Mr. Cochrane both of whom work within the property factor's organisation. Mr. Macdonald gave oral evidence to the Committee. No other witnesses or parties gave evidence. The Committee had the benefit of the application and the copy correspondence which accompanied the application all as submitted by the homeowner and copied to the property factor. The Committee had the benefit of the property factor's responses to the Directions which responses had been copied to the homeowner. The Committee did not have benefit of the Statement of Services which was not submitted by either party. In any event, the issue of the Statement of Services postdated the date of the complaints by the homeowner.

Preliminary Issues

8. At the outset, the Committee considered the homeowner's complaint that the property factor had failed to comply with Section H of the Code and expressed the view that, as there is no section H in the Code, the homeowner had intended to refer to Section 1 paragraph C.h of the Code and that the Committee intended to proceed on that basis. The property factor did not object and so the Committee proceeded on the basis of a complaint of non-compliance of Section 1 paragraph C.h of the Code.

9. The Committee asked Mr. MacDonald to clarify the content of the property factor's responses to Directions 2 and 3.

In respect of Direction 2, Mr. MacDonald explained that :-

The property factor has a tender process in place for the ground maintenance of the common amenity areas but that this does not include two play areas of which the property is one.

Three companies are on the tender list as approved contractors. The tender is renewed every three years by a restricted tender process to the three approved contractors.

Approved contractors are appointed on a basis of price and quality.

Approved contractors must have public liability insurance.

In respect of reactive or minor works and works to the play park, ad hoc quotes are obtained from the approved contractors and other contractors who specialise in the type of work required.

There was no monetary or work type ceiling above which a formal tender process for additional works would be carried out. There was no formal process for consulting with owners in respect of additional works. This was a matter of discretion and professional judgment on the part of the property factor taking into account the nature and cost of the works required, the fact that the owners expect the property factor to "get on with it" and to bear in mind "a duty not to spend recklessly".

In respect of Direction 3, Mr. MacDonald explained that the quarterly inspection and annual report are carried out by one of the approved contractors, Active Playground Management Limited.

Mr. MacDonald had with him a copy of the quarterly inspection report and offered to submit this to the Committee. As the homeowner had not had sight of this report, the Committee invited Mr. Macdonald to withdraw his offer to submit the report which he did.

10. In response to an additional clarification question by the Committee, Mr. MacDonald stated that a Statement of Services for the property was issued in February 2013.

Evidence on behalf of the factor.

11. Mr. MacDonald made an oral statement on behalf of the property factor and answered questions put to him by the Committee. Mr. MacDonald gave evidence in a straightforward, professional and open manner and conceded deficiencies in the property factor's processes where it was fair to do so. Mr. MacDonald answered questions directly and to the best of his belief and gave the Committee no reason to doubt the veracity of his account.

12. Mr. MacDonald stated that the property factor had received a complaint from an owner in the development (not the homeowner), that the property was in a dangerous condition. The property factor later received a report from an owner in the development (not the homeowner) that an accident had occurred. The property factor therefore carried out the tender process for the supply and spreading of bark at the property ("the works"), which is at the root of the subject of the homeowner's complaint. The tender was carried out on an informal basis by email. Two contractors, Active Playground Management Limited and Horticultural Services, were

chosen from the approved contractors list and one other specialist contractor, Earth Angels, was approached. Mr. MacDonald explained that there are few specialist landscaping contractors.

13. Mr. MacDonald stated that the initial tender was for 30 cubic metres of bark, but on the advice of Active Playground Management Limited, the amount of bark required was reduced to 15 cubic metres. Active Playground Management Limited and Horticultural Services were invited to re-tender for the reduced amount. Earth Angels were not invited to tender as their tender had been high. Mr. MacDonald stated that the lowest quote was accepted and the works were carried out by Horticultural Services. Mr. MacDonald confirmed that the emails which form part of the application comprise the whole written documentation of the tender process.

14. Mr. MacDonald stated that there had been no prior notice or discussion with the owners in the development and accepted that no explanation accompanied the invoice which included the cost of the works.

15. Mr. MacDonald acknowledged that there had been correspondence between the homeowner and the property factor regarding the account for the works which culminated in the homeowner making a complaint to the property factor and subsequently making the application to the Homeowner Housing Panel. Mr. Macdonald stated that the property factor considered that the homeowner had requested only copies of the quotes and that the property factor had genuinely believed that it had answered the homeowner's requests. Mr. Macdonald stated that it was not until the homeowner made the application to the Homeowner Housing Panel that the property factor realised that the homeowner was seeking additional background information on the tender process. Mr. MacDonald acknowledged that, in hindsight, the property factor could have provided the homeowner with further and more detailed information than had been provided and accepted that the property factor had "fallen foul" of the Code in this respect.

Factual findings of the committee.

16. The homeowner's home and the property forms part of a development of 127 residential properties at Rumford Grange, Falkirk ("the development"). There are areas of amenity ground and a play park within the development of which the owners of the development have a common ownership. The homeowner's title to his home and his common interest in the property is registered in the Land Register of Scotland under Title Number STG41975 ("the Land Certificate"). A full copy of the Land Certificate was produced to the Committee by the property factor in response to Direction 1.

17. The basis of the property factor's appointment in respect of the property is Deed of Declaration of Conditions by Redrow Homes (Scotland) Limited registered 7 September 2000 and reproduced as entry number 4 in the Burdens Section of the Land Certificate. Clause (First) (8) (ii) of the Deed of Declaration of Conditions

defines the common parts of the development as including the open spaces and amenity areas within the development. The Deed of Declaration of Conditions at Clause (Thirteenth) provides for the appointment of a property manager to take charge of the management, maintenance, repair and renewal of the development common parts, and, at Clause (Sixteenth) provides that "the property manager shall have power to order to be executed any repairs, renewals, painting, planting and landscaping as may be considered necessary or desirable for the preservation, use or enjoyment" of the development common parts. Clause (Sixteenth) declares that the costs incurred by the property manager form part of the maintenance costs. Clause (Seventeenth) of the Deed of Declaration of Conditions states that the maintenance costs are to be borne equally by all of the owners in the development.

18. In respect of the common parts of the development, the property factor had two tender processes: a formal restricted process for contractors to be approved for regular maintenance works for the open spaces and amenity areas and an informal process for tendering for works to the play parks of which the property forms part. In respect of additional works outwith the regular maintenance, the property factor has no formal process to consult with owners and has no fixed monetary or repair limits.

19. In or around October 2012, the property factor, in response to a request from an owner in the development (not the homeowner), instructed maintenance work, namely the supply and spreading of bark, to be carried out at the property.

20. The property factor obtained quotes for the supply and spreading of 30 cubic metres of bark from three contractors. The three contractors were Active Playground Management Limited, Horticultural Services, both of whom are above mentioned approved contractors, and Earth Angels, a specialist company. The quotes, all exclusive of VAT, were:-

Earth Angels - £1,925.00

Horticultural Services - £1,800.00

Active Playground Management Limited – no quote for 30 cubic metres, but quote for 15 cubic meters of £1,350.00

Active Playground Management Limited qualified their quote by advising that only 15 cubic metres of bark would be required. The property factor invited Horticultural Services, to re-quote for the lesser amount. Earth Angels were not invited to re-quote. The Horticultural Services' re-quote was £1,300.00. The property factor accepted this as the lowest quote and instructed Horticultural Services to carry out the work.

21. In November 2012, the property factor issued Account Number 13708101 to the homeowner on which account an item of ground maintenance during October 2012 is charged at £1,690.00, being Horticultural Services' invoice of £1,300.00 plus VAT. The homeowner queried this item with the property factor, initially by telephone. A

series of emails were exchanged between the homeowner and the property factor during January 2013.

22. The substance of the emails were a request by the homeowner for :-

- i) The three quotes and detail of the costs and breakdown of the work required;
- ii) Details of the evaluation and how it provided value for the residents and
- iii) The standard which the property factor should follow in tendering for additional work.

23. The property factor's first written response was by email of 14 January 2013 to the homeowner providing the homeowner with the amounts of the quotes and a brief explanation that Horticultural Services were selected because their quote was the most competitive and that they were assigned contractors performing ongoing communal maintenance duties. The homeowner repeated his request for the three items as narrated in paragraph 17 above throughout January. The further responses from the property factor did not expand substantially from that provided on 14 January 2013 other than the property factor provided the homeowner with copies of the emails from the three contractors submitting their quotes.

24. The property factor did not provide the homeowner with the full information requested by him. The property factor only provided the homeowner with part of the information requested by him being the amount of the quotes and with copies of the contractors' emails detailing the quotes. The property factor did not provide the homeowner with the quarterly inspection and annual reports which were carried out by Active Playground Management Limited.

25. The property factor issued the Statement of Service in February 2013.

Decision of the Committee

26. With reference to the homeowner's application, the Committee found that the property factor did not fail to comply with Section 1 paragraph C.h of the Code. The reason for this decision is that no evidence was before the Committee to support this failure.

27. With reference to the homeowner's application, the Committee found that the property factor failed to comply with Section 2.4 of the Code by failing to have a procedure to consult with owners in respect of additional works. The reason for this decision is that the property factor conceded that, in respect of additional works outwith the regular maintenance, the property factor has no formal process to consult with owners and has no fixed monetary or repair limits.

28. With reference to the homeowner's application, the Committee found that the property factor failed to comply with Section 2.5 of the Code by failing to deal with complaints as fully and as quickly as possible. The reason for this decision is that the

property factor could have provided the homeowner with information on the tender process, details of how the tender was evaluated and copies of the quarterly and annual inspection reports when the property factor first received the homeowner's complaint in January 2013 but did not do so.

29. With reference to the homeowner's application, the Committee found that the property factor failed to comply with Section 6.3 of the Code by failing to show how and why it appointed contractors. The reason for this decision is that the property factor could have provided the homeowner with information on the formal tender process and the informal method of contractor selection but did not do so

30. With reference to the homeowner's application, the Committee found that the property factor did not fail to comply with Section 6.6 of the Code. The reason for this decision is that the property factor provided the homeowner with copies of the documentation being the quotes.

31. The Committee therefore determined to issue a Property Factor Enforcement Order which will follow separately.

32. This decision is unanimous.

Appeals

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. 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 date on which the decision appealed against is made..."

Karen Moore

Chairperson Signature

Date. 10 June 2014



**Notice under Section 19(2) of the Property Factors (Scotland) Act
2011('the Act')**

hohp reference: HOHP/PF/13/0044

Re: Property at Play Area Rumford Grange, Falkirk ('the property')

The Parties:

Mr. David Willson residing at 62, Craig Crescent, Rumford Grange, Falkirk FK2 0EN
(‘the homeowner’)

Newton Property Management having a place of business at 87, Port Dundas Road,
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Committee Members:

Karen Moore (Chairperson)

Charles Reid Thomas (Surveyor Member)

Helen Barclay (Housing Member)

**The Committee’s Decision of even date has been issued to the Parties setting
out the Committee’s findings and reasons.**

In accordance with Section 19 (3) of the Act, having been satisfied that the property factor has failed to comply with the Section 14 duty, the Committee must make a Property Factor Enforcement Order.

Before making an order, to comply with Section 19(2) of the Act, the Committee before proposing an order must give notice of the proposal to the property factor and must allow the parties to give representations to the Committee.

The Committee proposes to make the following Property Factor Enforcement Order:

"Within 28 days of the date of the communication to the homeowner of the Property Factor Enforcement Order, the property factor must:

1. Issue an apology to the homeowner in respect of the property factor's failure to deal with his complaints as fully and as quickly as possible.
2. Put in place a procedure to consult with owners in respect of additional works and provide the homeowner with a copy.
3. Provide the homeowner with a copy of the quarterly and annual inspection reports prepared by Active Playground Management Limited."

The intimation of this decision to the Parties should be taken as notice in terms of Section 19(2)(a) of the Act and the Parties are hereby given notice that should they wish to make any written representations in relation to the Committee's proposed Property Factor Enforcement Order that they must be lodged with the Homeowner Housing Panel within 14 days of the date of this Decision. If no representations are made, the Committee will proceed to make the Order as proposed. If written representations are made, they will be considered by the Committee prior to the making of any Order. The Committee may decide to convene a further Hearing, prior to the making of any Order.

The property factor should note that failure without reasonable excuse to comply with a Property Factor Enforcement Order is a criminal offence in terms of Section 24 of the Act. Additionally, the Scottish Ministers can take any failure into account in respect of the future registration of the property factor on the register of property factors."

Karen Moore

Chairperson Signature ...

Date... 10 June 2014