



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

Hohp ref: HOHP/PF/16/0094

Re: Property at Flat 17E Glenhove Road, Cumbernauld, Glasgow, G67 2LG

The Parties:-

Mr. Norrie Moane, 17E Glenhove Road, Cumbernauld, Glasgow, G67 2LG ("the Homeowner")

Sanctuary Scotland Housing Association Limited, Sanctuary Cumbernauld, Floor 8, Fleming House, 2 Tryst Road, Cumbernauld, Glasgow, G67 1JW ("the Factor")

Decision by a Committee of the Homeowner Housing Panel In an Application under Section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Patricia Anne Pryce (Chairperson); Robert Buchan (Surveyor Member); Sally Wainwright (Housing Member)

Decision

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, determines unanimously that, in relation to the Homeowner's Application, the factor has not complied with the Code of Conduct for property factors.

In all the circumstances of the case, the Committee did not consider it necessary to make a Property Factor Enforcement Order.

We make the following findings in fact:

The Applicant is the owner of the flatted dwelling house, Flat 17E Glenhove Road, Cumbernauld which is situated within a block of eight flatted dwelling houses.

The Applicant has owned this property since 2006.

The Respondent is the property factor for this block and is the owner of four of the eight flatted dwelling houses located in this block.

The Respondent 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 (7 December 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents received in the period of 29 June 2016 to 27 July 2016, the Convener with delegated powers under Section 96 of the Housing (Scotland) Act 2014 referred the application to committee on 28 July 2016.

Hearing

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 28 September 2016.

The Applicant did not attend.

The Respondent was represented by Mrs. Heather Elder who is the Acting Factoring Manager employed by the Respondent, Mr. Campbell Kinloch who is Head of Housing and Communities employed by the Respondent and Mr. Adrian Waddell who is employed as a Project Manager by the Respondent.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 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 Committee had available to it and gave consideration to: the Application by the Applicant which comprised of all paperwork submitted by the Applicant in the period of 29 June 2016 to 27 July 2016, letter by the Applicant dated 24 August 2016, emails by the Applicant to the Homeowners Housing Panel received 22 and 27 September 2016 together with enclosures contained therein together with letters by the Respondent to the Homeowners Housing Panel ("HOHP" hereinafter) dated 22 August and 24 August, both 2016, together with enclosures contained therein.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.1, 2.5, 3.3, 6.3, 6.6, 6.9 and 7.1 of the Code.

The Code

The elements of the Code relied upon in the application are as follows:-

Section 2.1

You must not provide information which is misleading or false.

Section 2.5

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).

Section 3.3

You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

Section 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 in-house staff.

Section 6.6

If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be 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.

Section 6.9

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

Section 7.1

You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints

against contractors.

Preliminary Issues

1. The Committee on its own initiative issued a Direction dated 17 August 2016 under Regulation 13 of the 2012 Regulations requiring the parties to produce certain documents. The Committee confirmed that the Respondent had complied fully with this Direction. However, the Committee noted that the Applicant had not produced a copy of his title deeds in respect of the property within the time limit provided within the Direction. The Applicant had sought and been granted an extension of this time limit by the Committee which then required the Applicant to produce the documents by 15 September 2016. The Applicant failed to comply with this extended time limit. The Applicant finally produced an electronic copy of his title deeds by email dated 22 September 2016, however, the copy was of such poor quality that the Committee could not clearly read the title deeds. The Applicant was requested by telephone call on 27 September 2016 by a Clerk from the Panel to provide a clearer copy but he advised that he was away from home and did not have the documents with him and could not produce a further copy. The Committee decided that it could proceed to consider the case at the hearing without a further copy of the title deeds.
2. The Applicant confirmed by his response to the Panel dated 24 August 2016 that he did not intend to attend the hearing on 28 September 2016. The Applicant further confirmed in his email to the Committee of 27 September 2016 that he would not be attending the hearing. The Applicant did not seek an adjournment of the hearing. The Committee decided that it could continue with the hearing in the absence of the Applicant and would consider the written submissions made by the Applicant. The Respondent offered no objection to this course of action.
3. Mr. Waddell on behalf of the Respondent advised that the Respondent's three businesses were now merged into one under the collective name of Sanctuary Scotland. He advised that the registration of this business as a property factor was still pending and being looked at by the Scottish Government. He advised that the property factor in respect of the present application had been Cumbernauld Housing Partnership trading as Sanctuary Cumbernauld but now all of the businesses had been transferred to Sanctuary Scotland including the assets and liabilities of all three businesses. However, the new body was still not registered. When pointed out by Committee that the registered factor in this application was Sanctuary Scotland Housing Association Limited, Mr. Waddell advised that it was in fact Sanctuary Cumbernauld who factored the property.

The Factual Complaints

These will be addressed in the order of the alleged breaches of the Code:-

1. Breach of Section 2.1

Mr. Waddell advised that he did not believe that the Respondent had provided the Applicant with misleading or false information at any point. He advised that the Respondent was not clear on the basis of the submissions of the Applicant as to how the Applicant believed that this part of the Code had been breached by the Respondent. He advised that the Respondent was not clear how the Applicant believed that the Respondent had misled the Applicant.

Mr. Waddell advised that the Respondent had provided sufficient back up to the invoice of 30 November 2015 which was the source of the complaint of the Applicant. He explained that when the Applicant had complained about the lack of information on the invoice, the Respondent had provided back up information from the contractor to explain why the handset which formed part of the communal door entry system had been replaced. He explained that the Applicant had suspected that the handset which required to be replaced was vandalised by the occupant of the flat in which it was located but that the Respondent had queried this with the contractor who had confirmed that it was an intermittent problem and not as the result of vandalism as this particular box in the contractor's invoice had not been ticked indicating that vandalism was suspected.

Mr. Waddell referred to Item 2b of the Respondent's productions which was the further information requested by the Applicant and received from the contractor. Mr. Waddell advised that it is very difficult to prove vandalism but if it can be proved then the Respondent has no hesitation in recharging the cost to the particular household rather than treating it as a communal cost.

Mr. Waddell referred to Item 2a of the Respondent's productions which demonstrated that this was a communal repair which was charged to the block of flats in which the property was located.

Mrs. Elder helpfully advised that the Applicant believed that vandalism had been the cause of the replacement of the handset being required due to a previous incident he had claimed had taken place in a particular flat within the building. However, Mrs. Elder confirmed that the handset was located in a different flat altogether, hence the Applicant's assumption was erroneously founded in any event.

When questioned by Committee about what other misleading or false information the Respondent may have provided to the Applicant, Mr. Waddell confirmed that he was not aware of any time where this type of information had been provided to the Applicant.

On balance of all of the evidence which the Committee heard together with the written evidence which the Committee had before it, the Committee is of the opinion that there has been no breach of Section 2.1 of the Code. While the Committee notes that the copy of the Respondent's letter dated 8 January 2016 to the Applicant when sent again to the Applicant may have contained the wrong date, this was a simple clerical error. There was no evidence before the Committee to suggest that the Respondent had provided false or misleading information to the Applicant. The Committee is clear that there has been no breach of Section 2.1 of the Code.

2. Breach of Section 2.5

Mr. Waddell helpfully accepted that the Respondent had breached this part of the Code and had confirmed this to the Applicant in the Respondent's letter to the Applicant dated 19 May 2016 and numbered Item 14 of the Respondent's productions. Mr. Waddell confirmed that this letter had contained an apology to the Applicant for this breach. Mr. Waddell explained that the delay was due to the time of year over Christmas and New Year when the Respondent issues around 1200 invoices together with the particularly difficult weather conditions encountered at that time. However, he accepted that the response to the Applicant had taken too long and that a holding letter should have been sent to the Applicant rather than waiting until 8 January 2016 to provide a substantive response to the Applicant's telephone query of 10 December 2015.

Mrs. Elder confirmed that, as a result of the delay which led to this breach, the Respondent has amended its procedures and now, if it becomes apparent that a substantive response cannot be made within the timescales, a holding letter is sent to an owner.

Given the foregoing, the Committee notes that the Respondent accepts that there was a breach of Section 2.5 of the Code. However, the Committee further notes that the Respondent apologised to the Applicant in respect of this breach and has also amended its procedures to ensure that, so far as possible, such a breach is not repeated in the future. The Committee is therefore of the opinion that the Respondent has breached Section 2.5 of the Code.

3. Breach of Section 3.3

Mr. Waddell advised that he was of the opinion that the Respondent had not breached this Section of the Code. He submitted that the Respondent sends invoices to homeowners every six months and that these invoices contain a clear description of the works carried out. In relation to the invoice in question dated 30 November 2015, Mr. Waddell referred to the description of the works contained in this invoice, Item 3 of the Respondent's productions. The description made it clear about what repair was carried out.

Furthermore, Mr. Waddell confirmed that, when requested by the Applicant, the Respondent provided further back up evidence to the Applicant which consisted of Items 2a and 2b of the Respondent's productions, namely, the back invoices from the contractor in question, Interserve. Mr. Waddell advised that these back up documents answered the queries the Applicant had made.

Having considered Items 2a and 2b together with all of the evidence before it, the Committee agreed with Mr. Waddell's submissions. Given all of the foregoing, the Committee is of the opinion that there is no breach of Section 3.3 of the Code.

4. Breach of Section 6.3

Mr. Waddell referred Committee to Point 4 within Item 14 of the Respondent's productions which is the letter dated 19 May 2016 by the Respondent to the Applicant. He advised that this clearly contained the information as to how and why the Respondent had appointed the contractor, Interserve. He confirmed that the Respondent could not give out complete information regarding the appointment of

contractors as some of the information was commercially sensitive. He explained that there was a competitive tendering exercise and that Interserve was successful. He further submitted that the Respondent had provided the Applicant with sufficient information. Furthermore, he confirmed that the Respondent could not simply provide the tendering documents as a whole but only a redacted version of these with the commercially sensitive information removed which is what had been provided to the Applicant within the letter of 19 May 2016.

Mr. Waddell was clear that the information provided by the Respondent by letter 19 May 2016 demonstrated to the Applicant why and how Interserve was appointed as the successful contractor.

The Committee notes that the Applicant did request tender information in his letter of 4 April 2016 which was responded to by Mrs. Elder's letter of 19 April 2016 advising of the sensitive nature of the documentation that the Applicant was apparently seeking. The Applicant replied by letter 11 May 2016 reiterating his request but on this occasion referring to seeking information which could be redacted. It appeared to Committee that there was an element of confusion between the parties with the Respondent considering the Applicant's initial request as one for the whole of the tender documents in this matter. When the Applicant clarified that his request was for appropriately redacted information, the Respondent complied accordingly and without question.

Given the foregoing, the Committee is of the opinion that there was no breach of Section 6.3 of the Code. However, the Committee notes that the Respondent had no difficulty in providing the appropriate information to the Applicant once the Applicant had clarified that he was seeking redacted information only.

5. Breach of Section 6.6

Mr. Waddell advised that there was no breach of this section as quite simply the Applicant had not asked to view nor receive such tendering documentation.

The Committee agreed with Mr. Waddell's submission, having considered all of the evidence before it. In light of this, the Committee is of the opinion that there was no breach of Section 6.6 of the Code.

6. Breach of Section 6.9

Mr. Waddell advised that the Applicant had not complained about a defect by the contractor in this case. He advised that the Applicant was of the erroneous belief that the handset needed to be replaced due to an act of vandalism carried out by the occupant of the property where the handset was located. Mr. Waddell submitted that the Applicant had not complained about the workmanship of the contractor. Further, Mr. Waddell submitted that the Applicant had only complained about the information provided by the contractor but Mr. Waddell disagreed with the Applicant's contention as Mr. Waddell stated that the contractor had confirmed that the handset suffered from an intermittent fault and that there was no evidence of vandalism.

The Committee accepted Mr. Waddell's submission. Given this, the Committee is of the opinion that there was no breach of section 6.9 of the Code.

7. Breach of Section 7.1

The Committee accepted that the Respondent had a clear and simple Complaints Procedure which was easy for homeowners to follow. However, the Committee questioned the Respondent about where within the procedure was information about how the Respondent would handle complaints against contractors to be found. All three representatives of the Respondent accepted that the Complaints Procedure leaflet did not contain information on how the Respondent would handle such complaints. To that extent, all three accepted that the Complaints Procedure did not comply with Section 7.1 of the Code.

However, Mrs. Elder, Mr. Kinloch and Mr. Waddell undertook to review the Respondent's Complaints Procedure to ensure that it could be amended to include reference as to how the Respondent deals with complaints against contractors.

Given the foregoing, the Committee is of the opinion that there has been a breach of Section 7.1 of the Code, although the Committee notes that the Respondent accepts this and has undertaken to review this and amend the procedure accordingly.

Reasons for Decisions

Section 19(1)(b) affords the Committee discretion as to whether or not to make a Property Factor Enforcement Order. The Committee concluded that there would be no purpose, justification or necessity to do so in this particular case. The Respondent rectified the breach of Section 2.5 of the Code by amending its procedures to include a holding letter where a substantive response is not possible within its timescales in its written statement of services. The Respondent also provided the Applicant with a written apology in respect of this breach within its letter to the Applicant of 19 May 2016. In relation to the breach of Section 7.1 of the Code, the Respondent undertook to the Committee to review and amend its Complaints Procedure leaflet to include reference to how the Respondent deals with complaints about contractors. All of the above appears to be a fair and equitable resolution of these breaches in all the circumstances of the case.

Appeals

In terms of Section 22 of the 2011 Act, any appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any appeal must be made within 21 days beginning with the day on which the decision appealed against is made.

Signed
Patricia Anne Pryce
Chairperson

Date 28 September 2016.....