



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

Hohp Ref: HOHP/PF/13/0051

Re: Property at 6 Woodrow Court, 17 Woodrow Drive, Pollokshields,
Glasgow G41 5PN (collectively “the Property”)

The Parties:-

Dr Subh Prashad, Western, Victoria Parade, Dunoon (“the Applicant”)

Redpath Bruce Property Management Limited, 103 West Regent Street,
Glasgow (“the Respondent”)

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); Elaine Munroe (Housing Member).

DECISION

The Respondent 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:

The Applicant is the owner of 6 Woodrow Court, 17 Woodrow Drive, Pollokshields, Glasgow, G41 5PN.

The Respondent is the factor who manages the flats within the property at 17 Woodrow Drive.

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 2013).

The Applicant, by his emails of 28 December 2012 and 20 January 2013, notified the Respondent of reasons as to why he considers the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.

The Applicant's emails of 28 December 2012 and 20 January 2013 raised specific concerns regarding the insurance for the building and the cost of same, in particular, how the insurance was obtained and why it was so high in comparison with quotes obtained by the Applicant himself.

The Respondent failed to provide the Applicant with the information which would allow the Applicant to obtain a like for like quote for insurance. The Respondent replied to the Applicant by email of 29 January 2013 threatening court action rather than providing the specific information as to how the insurance quote had been obtained.

The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A Hearing took place at the offices of the Homeowner Housing Panel, Glasgow on 11 June 2013.

The Applicant attended and was represented by Mr Arun Randev who indicated that he was there to both represent the Applicant and act as his interpreter and that he was also an owner of two flats within the same building as the Applicant at 17 Woodrow Drive.

The Applicant gave evidence both directly and through his interpreter.

The Respondent was represented by Robert Campbell, Rowan McCall-Smith and Ian Friel, all of whom gave evidence.

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 dated 21 March 2013; further email lodged by the Applicant dated 17 April 2013 confirming the sections of the Code the Applicant considered that the Respondent had breached; the response lodged by the Respondent dated 30 April 2013 together with the supporting documents contained therein.

Preliminary Matters

It was unfortunate that the Applicant had not indicated in advance of the Hearing that he had intended to be represented. It should be noted that the services of an interpreter were offered to the Applicant by the HOHP in advance of the Hearing and that the Applicant declined that offer. However, both the Respondent and the Committee indicated that they did not object to the Applicant being represented despite no prior notice of this being provided to either the Respondent or the Committee.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 3.3, 5.2, 5.3, 5.4, 5.6 and 5.9 of the Code.

The Code

The elements of the Code relied upon in the application provide:-

“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.

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.

5.3 You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance.

5.4 If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), you must supply all information that they reasonably require in order to be able to do so.

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.

Additional standard for situations where a land maintenance company owns the land:

5.9 On request you must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, the terms of the policy and the name of the company providing insurance cover.”

The Factual Complaints

The factual matters underlying the complaint are:-

Failure to obtain more than one quote for works.

Failure to explain how the common insurance policy is obtained for the 32 properties at Woodrow Court.

Works

As a preliminary matter when giving evidence, the Applicant agreed that he was content with how the property was managed and taken care of by the Respondent. The Applicant confirmed that he did not wish to pursue this issue as he was content with the works which had been carried out, in particular in relation to the garden grounds of the complex.

Other Preliminary Matters

The Applicant, in evidence, accepted that in terms of section 3.3 of the Code, he was content with the breakdown of the charges made by the Respondent in the twice yearly invoices he received and had lodged as part of his application and therefore did not wish to insist upon this

ground.

In the course of giving evidence, the Applicant also confirmed that he had received the document entitled "Key Facts" which had been lodged by the Respondent in which it is declared that the Respondent receives a 20% commission from the Insurer. The Applicant helpfully conceded that he no longer wished to insist on section 5.3 of the Code.

The Applicant accepted that sections 5.4 and 5.9 of the Code were not relevant to his application and he was not insisting on these are grounds.

In terms of section 5.6 of the Code, the Applicant accepted in evidence that he had been provided with the document from Central Insurance entitled "To Whom It May Concern..... Common Buildings Policy" which had been lodged by the Respondent as part of its response. The Applicant accepted that this showed why the Respondent had appointed the Insurer.

Cost of Insurance

However, until the Hearing before the Committee took place on 11 June 2013, the Applicant indicated that he was not clear as to why the premium charged was so high, in particular in comparison with the quotes which the Applicant had obtained from Moneysupermarket.com and forwarded to the Respondent.

The Applicant, through his interpreter, was quite clear in his evidence that he could not understand why the insurance obtained by the Respondent was so expensive when he could, on the face of it, obtain better cover at a substantially lower cost.

In evidence, the Respondent (through Robert Campbell) advised that it had factored the 32 flats at Woodrow Court since 1997. Mr Campbell indicated that he had personally managed these properties since 2002. He advised that the Respondent used the services of a broker, Central Insurance, to obtain the best insurance quote for these properties. He referred to the document entitled "To Whom It May Concern" (referred to above) which demonstrated that seventeen companies had been asked to provide quotes to insure the 32 flats at Woodrow Court with only six companies being willing to provide quotes, the balance of eleven refusing to do so. He advised that the property at Woodrow Court was last valued in 2007 on an informal basis when the replacement cost of the property was found to be lower than the cover then in place. It had not been valued since.

At this point, the Applicant indicated that this was the first time that he

had been aware that 17 companies had been asked to provide quotes.

The Respondent continued to provide evidence by way of Ian Friel who advised that the Respondent has 10,500 clients, is regulated by the FSA and obtains block insurance. He accepted that the Respondent had received a 20% commission for the policy in question. He advised that it was open to any owner to obtain an alternative quote and that the Respondent had previously changed insurers as a result of an owner doing this as the Respondent wants its clients to achieve the best deal. He advised that the reasons for choosing LV as the insurer were clear from the document provided by the broker. He also referred to the document lodged by the Respondent entitled "LVE Liverpool Victoria Summary of Cover" which summarises the cover provided by this insurance policy. Along with this document, he also made reference to the document lodged by the Respondent and referred to above entitled "Key Facts" which he advised should be read along with further documents which were available on the Respondent's website which clearly provide the basis upon which the insurance quotes are obtained. Mr Friel helpfully continued to explain that the insurance for blocks of housing is a very different market from the one from which the Applicant had obtained his quotes on the internet from moneysupermarket.com. They were not like for like and could not be treated as such. The online quotes did not provide for a block policy. Mr Friel explained that the claims experience or history was not required for an online quote. He advised that the claims losses under block insurance can be very substantial and therefore it was very important that there was a full awareness of losses when seeking block insurance. Mr Friel explained that this is why the Respondent used the services of a professional broker to ensure that all contingencies were covered. Mr Friel advised that all details of losses are disclosed by the broker and that it is part of the broker's role to generate interest in providing block insurance. Mr Friel pointed out that in the present case only six out of seventeen insurers offered to provide insurance at all for the 32 properties at Woodrow Court. Mr Friel indicated that the claims history for the property is very important. The Respondent confirmed that there was a significant claims history within the block at Woodrow Court. He further indicated that the Respondent has a block policy which covers a huge number of its clients' properties, not just the 32 at Woodrow Court.

At this point, the Applicant advised that he had, up until the hearing, not been aware that this was the basis upon the insurance had been quoted for and obtained. He had not realised that the claims history for the block was important and relevant. He confirmed that he now finally understood why the quotes which had been obtained on the internet by him were not comparing like with like. He advised that it was a pity that this had not been made clear by the Respondent before the hearing as there was every

likelihood that the hearing would not have required to take place.

It is a matter of regret that something so simple to explain has reached such an advanced stage. In terms of all of the documentation lodged and referred to by the Respondent, the full explanation of how the basis of the quote had been obtained had not been made clear to the Applicant until the hearing, despite repeated requests by the Applicant for such an explanation.

It was pointed out to the Respondent by the Committee that the Applicant could not have obtained like for like insurance quotes as he had not been provided with sufficient information by the Respondent to allow the Applicant and his co-proprietors to seek alternative insurance quotes. It was pointed out to the Respondent by the Committee that the document from LV does not reveal the sum insured for the whole building at Woodrow Court. None of the documentation revealed the claims history for Woodrow Court. The Committee pointed out that it would have been impossible for the Applicant to obtain a like for like quote without this information.

The Respondent accepted that it does not provide details of the specific sums insured within the insurance document from LV.

The Respondent accepted that it was not clear who or what Central Insurance was. The document provided by Central Insurance did not clarify the status of Central Insurance or provide contact details for Central Insurance. It is not clear if Central Insurance is a company.

When asked for clarification by the Applicant, the Respondent confirmed that it had no relationship with Central Insurance other than a contractual one. The fact that such a question was asked and in fact had been in the mind of committee members further underlined the shortcomings of the documentation and information provided.

The Committee therefore decides that the Respondent's conduct in this matter, in particular its failure to adequately respond to the Applicant's various requests for clarification surrounding the basis upon which the insurance was chosen, constituted a failure to comply with section 5.2 of the Code. The Committee decides that there was no failure in terms of sections 3.3, 5.3, 5.4, 5.6 and 5.9 of the Code in respect of the Respondent's conduct.

Observations

The Committee acknowledges that the Respondent is required to deal with relatively new matters in the form of the Act and the Code.

We were pleased to note that the Respondent accepted that if lessons were to be learned from the hearing, these would be taken away and the Respondent would incorporate these into its daily procedures. While the Applicant did not ask specific questions in relation to the information required for a like for like quote, it was clear from the correspondence by the Applicant to the Respondent that the Applicant wanted to compare like for like insurance quotes. However, the Respondent failed to provide the Applicant with sufficient information to allow him to do this. The issue is one of communication and we feel that the Respondent did not engage fully with the Applicant in relation to the concerns he had raised regarding the apparent high cost of the insurance obtained. For example, if there is a significant claims history in respect of Woodrow Court, this was not mentioned in any of the correspondence by the Respondent.

When questioned, the Respondent said that it did not advise the homeowners as a group about the number of insurance claims and the effect that such claims might have on the amount of insurance being paid. It seems likely that many of the homeowners will be unaware of the number of claims and the question then arises that if they knew then might they not be prompted to take some action to try to prevent such claims? As already touched upon, no information was provided as to when the block was last valued and given that the last value, which itself was informal, was 6 years ago, the Respondent might also consider giving this information to the homeowners on a more regular basis. We feel that the Respondent should provide homeowners with a level of information which would allow them to obtain their own like for like insurance quotes and which should include the history of claims. Furthermore, we felt that the homeowners were referred to various different documents by the Respondent to try and clarify how and why insurance was obtained and, from a communication point of view, this was less than clear and would be better contained within one document. The information provided by the Respondent was fragmented and was not given proactively. We were also concerned that there was no address or contact details provided for the insurance broker used by the Respondent which simply added to an overall impression of a lack of transparency by the Respondent and the lack of the “clear information” required by the Code. Finally, we felt that it was regrettable that the Respondent made no effort to meet with the Applicant to discuss matters which may have avoided the need for the hearing altogether.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make the following property factor enforcement order:

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:

1. Issue an apology to the Applicant in respect of the Respondent's failure to communicate adequately in terms of providing details for the basis of the choice of insurance, contrary to the Code.
2. Make a payment to the Applicant of £25 in recognition of the inconvenience caused to him.
3. Provide by recorded delivery post to all 32 homeowners at Woodrow Court specific details of the block insurance cover obtained by the Respondent including the sums covered both in respect of the block policy and the homeowners' share of this, specific details of how this policy was procured including full details of the claims history together with sufficient information to allow the homeowners to obtain for comparison their own insurance quotes on a like for like basis.
4. Provide documentary evidence to the Committee of the Respondent's compliance with the above Property Enforcement Factor Order by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.

Section 19 of the 2011 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 this decision to the parties should be taken as notice for the purposes of section 19(2) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2) (b) reach the Homeowner Housing Panel's office by no later than 14 days after the date that this decision 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 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.

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..

Patricia Anne Pryce

Chairperson

Date. *27/6 July 2013*