



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

HOHP Ref: HOHP/PF/15/0101

Title Number: MID141873

The Parties

Nancy Galloway, formerly residing at 171/10 Lower Granton Road, Edinburgh EH5 1GL, and now at Tree Tops, Rock End Avenue, Torquay, TQ1 2DR ("the applicant")

and

Dunedin Canmore Enterprise Ltd, trading as Dunedin Canmore Property Management, 8 New Mart Road, Edinburgh EH14 1RL ("the respondent")

Decision by the Home Owner Housing Panel of an application under Section 16 of the Property Factors (Scotland) Act 2011

The committee, having made such enquiries as it saw fit for the purposes of determining whether the respondent has:

- (a) complied with the property factor's duties created by Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act"); and
- (b) complied with the code of conduct as required by Section 14 of the 2011 Act,

determined that the respondent has complied with both the code of conduct for property factors and with the property factor's duties.

Committee Members

Paul Doyle	Chairperson
Kingsley Bruce	Surveyor Member

Background

- 1 By application dated 30 June 2015, the applicant applied to the Home Owner Housing Panel for a determination of her complaint that the respondent has breached the code of conduct imposed by Section 14 of the 2011 Act. The

applicant also complained that the respondent had failed to adhere to the property factor's duties.

- 2 The application stated that the applicant considered that the respondent failed to comply with Sections 2.1, 2.5, 5.2 & 5.3 of the code of conduct for property factors.
- 3 By interlocutor dated 30 September 2015, the president of the Home Owner Housing Panel intimated a decision to refer the application to a Home Owner Housing Committee. The Home Owner Housing Panel served notice of referral on both parties, directing the parties to make any further written representations.
- 4 By emails dated 2 November and 8 December, both 2015, the applicant responded to the notice of referral. On 30 October 2015, the respondent responded to the notice of referral and provided detailed written representations. Neither party requested an oral hearing. Committee members decided that this case can be justly determined by considering the substantial amount of documentary evidence produced.
- 5 A hearing was held at Europa House, 450 Argyle Street, Glasgow, on 10 December 2015. Committee members considered all of the documentary evidence, and then reserved their decision.

Findings in Fact

- 7 The committee finds the following facts to be established:
 - (a) The applicant became the owner of the property at Flat 10, 171 Lower Granton Road, Edinburgh, on 30 July 2012. That property is a fourth floor flat dwelling-house in a development of houses (known as "Corinthian Quay") built by Elphinstone Homes about 10 years ago. The respondent was appointed as property factor to the development of which the applicant's home forms part at the beginning of 2013. Since lodging her application the applicant has removed from the property and now lives in Torquay.
 - (b) It is part of the property factor's duty to arrange block buildings insurance for the larger development of which the applicant's property forms part. Previous factors charged the applicant £296 for buildings insurance for the nine months to April 2013. The respondent arranged the buildings insurance from April 2013 to December 2013. The charge to the applicant for insurance for that period was £422, which included the respondent's own 20% handling fee. The respondent sent an invoice for £422 of the applicant in October 2013. That invoice came as a shock to the applicant.
 - (c) On receipt of the invoice dated October 2013 the applicant contacted the respondent asking why there had been an increase in buildings insurance premium. In December 2013 the respondent's published a

newsletter circulated amongst all proprietors at Corinthian Quay which contained an article discussing buildings insurance costs. The respondent told the applicant that because of claims history it was likely that within two years' buildings insurance costs would decrease.

- (d) The respondent issued the applicant a quarterly invoice on 7 April 2015 which included a quarterly charge of £137 for buildings insurance levied against the applicant. The applicant believed that that was an excessive charge and set about seeking alternative buildings insurance quotations. On 11 April 2015 the applicant wrote to the respondent asking them to provide all of the details of the history of insurance claims. The respondent replied to the applicant on 15 April 2015. Instead of providing the information that the applicant had asked for, the respondent referred the applicant directly to the insurance company. The applicant immediately wrote back to the respondent repeating her request for details of the buildings insurance and the claims against that buildings insurance. Within 24 hours, the applicant repeated her written request of the respondent.
- (e) On 16 April 2015 there was an exchange of email correspondence between the applicant and the respondent's insurance brokers. The applicant was not satisfied with the information provided by the insurance brokers, but was provided with a summary of the insurance policy. The summary of the insurance policy included the information that the insurance policy was one provided for registered social landlords.
- (f) On 17 April 2015 the appellant emailed the respondent sending a copy of an application for insurance quotation which the applicant wanted to complete, and asking for the information which would enable her to complete that form.
- (g) On 20 April 2015 the applicant received correspondence from another factor operating in Edinburgh, who told her that the respondent has not disclosed the claims history of the buildings insurance policy and had removed the buildings reinstatement value from the information provided to the appellant. In the absence of that information a separate Edinburgh property factor told the applicant that they could not provide a competitive quote for buildings insurance.
- (h) There was a flurry of email correspondence between the applicant and the respondent between 20 and 23 April 2015. In that correspondence the applicant claimed that she was not being given information that she asked for and that it was taking longer than five days to respond to her telephone calls. The respondent told the applicant that they could not respond as quickly as the applicant wanted because it was taking time to obtain the information requested from third parties.
- (i) By 27 April 2015 the respondent provided the applicant with details of buildings insurance claims on the buildings insurance policy for the

previous two years. The information provided indicated that there had been two claims on the buildings insurance policy.

- (j) On 1st May 2015, an employee of the respondent, named Fiona, telephoned the applicant. In the course of that telephone conversation, Fiona told the applicant the reinstatement value of the buildings insurance policy. That was information which the applicant had already gleaned elsewhere. Later the same day, Fiona emailed the applicant explaining the definition of "social housing" preferred by the respondent.
- (k) On 6 May 2015 the applicant wrote to the respondent to express dissatisfaction and stated that she wanted to initiate a complaint. On 11 May 2015, Fiona (for the respondent) called the applicant & followed up that telephone conversation with an email dated 13 May 2015. That passage of correspondence disclosed the claims history of the buildings insurance policy to the applicant.
- (l) In May 2015, the applicant obtained a quotation for buildings insurance which was approximately 50% cheaper than the buildings insurance arranged by the respondents. Towards the end of May 2015 the applicant obtained a comparably cheap quotation for buildings insurance. Because of the applicant's investigations and because she has obtained two quotations for buildings insurance which are significantly cheaper than the buildings insurance arranged by the respondent, the applicant believes that the respondent has breached the code of conduct and failed in the property factor duties. The applicant believes that she, & neighbouring proprietors, have been overcharged for buildings insurance.

Reasons for decision

8 (a) This hearing called before a committee of the Home Owner Housing Panel at 10.00am on 10 December 2015. Neither party was present, nor were they represented. Neither party had requested an oral hearing. The committee considered this application on the basis of the available documentary evidence.

(b) The applicant sets out her claim concisely in 5 typewritten pages attached to her application dated 30/06/2015. She elaborates on her claim in the two letters addressed to the respondent date 12 & 22 July 2015. The respondent relies on a detailed written response, with documentary evidence contained in appendices, sent with their covering letter dated 30 /10/2015.

(c) The applicant claims that the respondent has breached sections 2.1, 2.5, 5.2 and 5.3 of the code of conduct. The fulcrum of the applicant's claim is the increased cost of buildings insurance following the appointment of the respondent as property factors.

(d) Section 2.1 of the code of conduct says "*You must not provide information which is misleading or false.*" It is at least implicit in the applicant's claim that,

because the respondent did not give a full and candid account of the exact terms of the buildings insurance contract and the relevant claims history, the respondent has given false and misleading information.

(e) There is an obligation on the respondent (created by both the code of conduct & the respondent's written statement of services) to provide the applicant with a summary of the buildings insurance cover and to make the full terms of the buildings insurance contract available to the applicant. That is exactly what the respondent has done. The respondent's initial reaction to the applicant's first request was to refer the applicant to the insurance brokers. After the applicant carried out her own investigations there, the respondent provided the applicant with a summary of the insurance policy and the full claims history. The applicant insists that the summary of the insurance policy was incomplete, but there is insufficient reliable evidence placed before the committee for the committee to draw the conclusion that the respondent was withholding information from the applicant. On the facts as the committee find them to be, the committee cannot make a finding that there is a lack of candour on the part of the respondent.

(f) The buildings insurance policy arranged by the respondent is designed as "a *policy for registered social landlords*". In the course of the correspondence between the applicant and respondent, a dispute develops about the meaning of the terms "*social landlord*" & "*social housing*". The applicant insists that the buildings insurance policy costs more than it reasonably should because it is one for registered social landlords, the respondent tries hard to provide a bland definition of the terms "*social landlord*" and "*social housing*". For the purposes of this application, the dispute between the parties about the definition of those terms is entirely irrelevant. What is beyond dispute is that the respondent is a social landlord, and that the Residents Association, of which the applicant is a member, appointed the respondents (as social landlords) as the property factor for the development of which the applicant's home forms part. It is an inevitable consequence that the appointed property factor will be treated by an insurance company as a social landlord. An insurance contract is a contract *uberrima fides*; if the respondent had pretended to be anything other than a registered social landlord then any insurance contract entered into it would be voidable.

(g) In her letter (to the respondent) of 12 July 2015, the applicant argues that the respondent has been dishonest because the respondent has consistently stated that the buildings insurance premium arranged is competitive; that the increases in annual premia are in line with RICS guidance, and that the respondent is entitled to charge a 20% administration fee. There is no reliable evidence before the committee of any dishonest misrepresentation made by the respondent. The documentary evidence before the committee discloses that the respondent responded to the applicant's questions in an honest manner. The applicant may disagree with the facts as the respondent sees them to be, but a disagreement of facts viewed from a different perspective does not amount to dishonesty. In essence the applicant says that the respondent has lied to her, when in fact the true source of the applicant's dissatisfaction is that different insurance, from factors with whom the applicant has no contractual connection, might be available at a lesser price.

(h) Section 2.5 of the code of conduct says

"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)."

(i) The applicant complains that although responses were received to the letters of 11 April 2015 & subsequent enquiries, the responses did not contain the specific information requested, and that one month passed between the date of request of buildings insurance claims history and the provision of that information.

(j) The respondent's written statement of services provides for a target response time of five working days. It does not provide that all of the information requested will be immediately available. The applicant insists that the buildings insurance claims history was at the fingertips of the respondent throughout, but there is no reliable evidence before the committee to indicate either that that information is readily available to the respondent, or that the respondent willingly withheld that information. The documentary evidence discloses that the applicant's first request was sent to the respondent on 11 April 2015. The passage of correspondence that forms the subject matter of matter of the applicant's complaint ends on 11 May 2015.

(k) Throughout the correspondence between the applicant and the respondent, the respondent (at least) acknowledges the applicant's queries within five working days. The committee cannot find any reliable evidence that the respondent has either withheld or concealed information. The correspondence placed before the committee indicates that the respondent took the applicant's requests seriously, acknowledged those requests and explained to the applicant that information asked for had to be recovered from a third party. It is reasonable for the respondent to obtain a breakdown of claims history from the insurers so that reliable information can be passed to the applicant. It would be reckless for the respondent to simply rely on memory to provide the applicant with information the applicant sought to form the basis for an insurance quotation.

(l) The code of conduct requires the respondent to deal with enquiries and complaints received by letter or email "...within prompt timescales..... and to keep home owners advised if you require further time to respond". The reliable evidence placed before the committee (viewed objectively) indicates that that is exactly what the respondent did.

(m) Section 5.2 of the code of conduct says

"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."

(n) The applicant insists that the respondent has not provided details of insurance quotes obtained before the contract of insurance was entered into. The respondent is a social landlord with a significant portfolio of properties. The respondent was appointed by the Residents Association (of which the applicant is a member) to arrange buildings insurance for the larger development of which the applicant's home forms part. The buildings insurance arranged by the respondent is not simply a contract of insurance affecting the applicant's home alone. In order to obtain quotations for insurance the respondent has to disclose information about their commercial activities and information about their portfolio of properties managed throughout Scotland. The committee accepts that the applicant has been asking for information which the respondent cannot disclose to the applicant freely.

(o) In order to address the applicant's concerns, and to provide her with the information that she might need to arrange a buildings insurance policy designed for the development and owners of Corinthian Quay only, the respondent offered (and repeats the offer) to allow the applicant to visit their offices and read the buildings insurance policy there. In the correspondence that passed between the parties throughout April and May 2015 the respondent provided the applicant with a summary of insurance cover.

(p) Section 5.2 of the code of conduct relates to information pertinent to the homeowner's share of the insurance premium, the sum insured, the premium paid, any excesses which apply, and the name of the insurance company. It does not create an obligation on the respondent to disclose every single word of the contract of insurance.

(r) Section 5.3 of the Code of Conduct says

"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."

(s) The applicant summarises this aspect of her complaint in a letter dated 12 July 2015 to the respondent by saying *"When you provided a policy for buildings insurance, who did not disclose that you are simply adding our development to your existing policy for social landlords, while charging a 20% admin fee (or £10,000) for doing so. Rather you implied that the policy was for our development."*

(t) The respondent's written statement of services makes it abundantly clear that an administration charge will be made, that the administration fee will be detailed in the invoice each homeowner receives and that the details are *"..... Available on request"*.

(u) The code of conduct places an obligation on the respondent to disclose administration fees and any other charges made for insurance. The weight of reliable evidence placed before the committee indicates that that is exactly what the respondent did. The applicant's complaint is not so much that an administration fee was charged, but that the applicant does not think that the administration fee

represents value for money. The code of conduct does not make provision for comparing the cost or value of services provided. The weight of reliable evidence indicates that the respondent has met the obligations of the code of conduct.

(v) The applicant complains that the respondent has failed in the property factors duties. In the applicant's typewritten submission, attached to the application dated 30 June 2015, the applicant summarises her complaint by dividing it into six categories. In her letter to the respondent dated 12 July 2015, the applicant sets out an alleged failure to adhere to the property factors duties under seven separate headings.

(w) Careful analysis of the detail provided by the applicant (in both her application dated 30 June 2015 and in her letter to the respondent dated 12 July 2015) draws the committee to the conclusion that the applicant's allegation of a failure to adhere to the property factors duties is simply a repetition of the allegation of various breaches of the code of conduct. As the committee finds that in the facts and circumstances of this case the respondent has not breached the code of conduct, by analogy, on the facts as the committee find them to be, the respondent has not breached the property factors duties.

(x) The committee therefore finds that there is no requirement for a property factor enforcement order.

Decision

9 Neither the code of conduct nor the property factors duties have been breached. A property factor enforcement order is not necessary.

Appeals

10 The parties' attention is drawn to the terms of section 21 of the 2011 regarding their right to appeal and the time limit 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..."

Paul Doyle

Signed
Chairperson

Date 18 December 2015