



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”)**

hohp Ref: HOHP/PF/13/0069

Re Flat 2/1, 24 Prince Albert Road, Glasgow G12 9JG (the Dwelling-house”)

The Parties:-

Ms Joan Railton, Flat 2/1, 24 Prince Albert Road, Glasgow G12 9JG (the “Homeowner”)

Glasgow West Housing Association Limited, 5 Royal Crescent, Glasgow G3 7SL (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), Mike Links (Surveyor) and Scott Campbell (Housing Member).

DECISION

The Committee determined that there has been no failure to comply with the Property Factors Code of Conduct and that there has been no failure by the Factor to carry out the Factor's duties.

The decision is unanimous.

Background

1. By application dated 7 May 2013 and received on 7 May 2013 the Homeowner applied to the Homeowner Housing Panel (“HOHP”) for a determination whether the Factor had failed to comply with the Property Factors Duties (the “Duties”) and/or had failed to comply with the Property Factors 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 Breach of the Code in respect of:-
 - 2.1.1 Written Statement of services;
 - 2.1.2 Carrying out repairs and maintenance;
 - 2.1.3 Complaints resolution;
- 2.2 Failure to carry out the Duties.
- 3. Following submission of the Homeowner's Application the 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 20 June 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 Factor submitted written submissions dated 2 July 2013 a copy of which was provided to the Homeowner.
- 6. The Committee issued Directions on 16 July 2013 to the Homeowner and the Factor requiring the Homeowner to provide to the Committee and to the Factor as soon as possible and no later than 14 days prior to the Hearing a copy of the Land Certificate or title deeds evidencing the Homeowner's title to the Dwelling-house and identifying the common rights pertaining to the Dwelling-house and requiring the Factor to provide to the Committee and to the Homeowner as soon as possible and no later than 14 days prior to the Hearing a copy of the deed of conditions relating to the development (the "Development") of which the Dwelling-house forms part. The Directions were implemented by the Homeowner and the Factor.

Hearing

- 7. A hearing on the issues took place at the HOHP office at Europa Building, 450 Argyle Street, Glasgow G2 8LH on 12 August 2013. The Homeowner appeared in person accompanied by John Stewart who both gave evidence. The Factor was represented by Ms Elaine Travers who gave evidence.

Preliminary Point

- 8. The Committee had noted that the Applicant had not responded to a request from HOHP to identify those sections of the Code which it was alleged had been breached by the Factor. It was explained that only acts or omissions of the Factor after the date on which the Factor was registered under the Act could be considered by the Committee. The Committee invited the Applicant to look at the terms of the Code and identify those sections which she considered had been breached since the date of 12 December 2012 when the Factor was registered.

9. The Application had alleged breaches in respect of Statement of Services; Carrying out Repairs and Maintenance; and Complaint Resolution. In relation to Statement of Services the Applicant stated that she did not believe that the Statement of Service issued to her was correct in that the Applicant was of the opinion the Factor had not provided the services set out in the Statement. The Applicant agreed that the Factor had issued a Statement of Service within the timescales laid down in the Code. It was pointed out to the Applicant that this was a complaint of a failure to provide the services and not a complaint about the Statement of Services. It was accepted by the Applicant that this was correct and it fell within her following complaint of failure to repair. In relation to the failure to repair the Applicant identified an ongoing failure to diagnose and deal with the problem of low water pressure within the Development. In relation to the alleged breach of the Code in relation to Complaint resolution, the Applicant accepted that the Factor had implemented the Complaint procedure laid down in its Statement of Service.
10. In relation to the alleged breach of the Factor's Duties, the Applicant confirmed that her complaint was the Factor's failure to diagnose and deal with the low water pressure in the Development.

Findings of Fact

11. The Applicant is the registered proprietor of the Dwelling-House with Title Number GLA192289. The Dwelling-House and the development are subject to a Deed of Declaration of Conditions by City of Glasgow District Council recorded in the General Registers of Sasines on 5 August 1992 (the "**Deed of Conditions**").
12. It is not disputed that the Factor is the duly appointed Factor of the Development in terms of the Deed of Conditions. The Factor was registered under the Act on 12 December 2012.
13. The Factor issued its Written Statement of Services to the Applicant on 3 May 2013. The Statement of Services was issued within the timescales laid down by the Act.
14. The Applicant had submitted a complaint to the Factor in relation to the issue of the provision of a mains water supply to the Dwelling-house. This complaint was dealt with by the Factor in accordance with the Factor's Complaints Handling Procedure.
15. The domestic water supply to the Dwelling-house and certain other dwelling-houses in the Development is taken from a communal water tank situated in the attic of the Development. Some dwelling-houses in the Development have a domestic water supply from the mains.
16. The Applicant's central heating boiler in the Dwelling-house no longer conforms to the Gas Regulations and she requires to install a new boiler.
17. The water pressure from the water supply to the Dwelling-house is not sufficient to support the installation of a new combination boiler. The Applicant has received advice that the water supply to the Dwelling-

house must be connected to the mains to achieve the necessary pressure to support a new combination boiler. The Applicant has been advised that a connection to the mains could be obtained from a mains pipe situated in the attic supplying other dwelling-houses in the Development with a branch pipe then being led through cupboards in Flat 4/1 and Flat 3/1 to the Dwelling-house.

18. As well as being the Factor of the Development, the Factor is an owner of various dwelling-houses in the development which are let as social housing. The Factor is the owner of both Flat 4/1 and Flat 3/1 and both flats are let to tenants.
19. The Factor does not consider the Applicant's proposal for connection to the mains is suitable. The Factor has concerns for future maintenance of and access to a mains water supply passing through two other dwelling-houses in the Development. The Factor has proposed to the Applicant an alternative proposal for connection to the mains water. The Factor has suggested that connection be taken from a main water pipe within a store room on the same level as the Dwelling-house and piped from there to the Dwelling-house. The route would take the pipework out for attachment to an exposed wall on the external balcony of the Development. The Applicant has received advice that this is not the best option and has concerns about the exposure of the mains water pipe to frost as it will be on an external wall.
20. There is a cost implication for the Applicant in that the Factor's proposals will be more expensive than the Applicant's proposals but this has not been fully and accurately quantified.
21. The Factor has offered to meet certain additional costs associated with their proposals in relation to control of asbestos as a result of the works comprised in the Factor's proposals.

Summary of written representations and oral representations

19. The issue between the Applicant and the Factor is the impasse between them as to which proposals are implemented to provide the Applicant with a mains water supply to permit the installation of a new combination boiler in the Dwelling-house.

Reasons for decision

22. The Committee is of the view and it was accepted by the Applicant that there has been no breach of the Code in respect of Statement of Services as the complaint in respect of the Statement of Services was agreed by the Applicant to be unfounded.
23. The Committee is of the view and it was accepted by the Applicant that the Factor has dealt with the Applicant's complaint in accordance with the Factor's complaints procedures and accordingly there has been no breach of the Code in respect of Complaints Procedure.
24. In respect of the alleged breach of the Code in respect of repairs and maintenance and the alleged failure to perform the factor's duties these complaints both focus on the Applicant's perception that the Factor has

failed to provide or permit the provision of a mains water supply to the Dwelling-house. The Committee finds that the Factor has in fact provided a proposal for the mains water supply to the Dwelling-house. In these circumstances, the Factor is not in breach of the Code nor has the Factor failed to perform the factor's duties.

25. The Committee further noted that in terms of the Deed of Conditions the Factor as factor of the Development does not have rights of access to or passage through other dwelling-houses in the Development for the installation of a water mains supply pipe.

Right of Appeal

26. 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

4/9/2013

Date