



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

Hohp Ref: HOHP/PF/13/0082

The Parties:-

The homeowner – John Ross ("the applicant")

The property factor – Hacking & Paterson Management Services ("the respondents")

Committee members

Richard Mill (Legal Chairperson)
Andy Taylor (Surveyor Member)
Liz Dickson (Housing Member)

Decision of the committee

The committee unanimously determined that the respondent has failed to comply with their section 14 duty, in terms of the 2011 Act, to comply with the Code of Practice by -

1. Failing to keep the applicant fully informed of progress of repair work relative to water ingress to the applicant's property, including estimated timescales for completion (a breach of section 6.1 of the Code).
2. Failing to pursue the previously appointed contractor Paragon, who previously carried out defective work in respect of the water ingress to the applicant's property (a breach of section 6.9 of the Code).

By the time the committee made their decision the respondents had, at their sole cost, carried out comprehensive repair works, both externally and internally, to remedy the defective roof. They had also issued an unreserved apology to the applicant and, further, made a payment to the applicant in the sum of £410, representing the return of their service charge during the period of time the breach had taken place. Documentary evidence of the repair work was tendered for the committee's benefit.

In the circumstances the committee did not find it necessary to make a Property Factor Enforcement Order.

Background and earlier procedure

The application to the Homeowner Housing Panel from the homeowner was received on 30 May 2013. The homeowner raised complaints in respect of roof repairs required to be carried out at their property as a result of ongoing water ingress. Earlier repairs had been carried out which had been unsuccessful.

The homeowner stipulated that they were seeking to progress their application with specific reference to paragraphs 6.1 and 6.9 of the Code of Conduct for Property Factors ("the Code").

Notices of referral were issued to parties on 12 November 2013.

The committee requested that the applicant produce a copy of the relevant Deed of Conditions which forms part of the Title Deeds. This was produced.

Following the Notice of Referral being issued, agents acting on behalf of the respondents submitted written representations regarding the applicable timescales to submit written representations. This was on the basis that the statutory requirement allowing the property factor a full 14 day period had, erroneously, not been provided. A Direction dated 28 November 2013 was issued requiring them to prepare written representations given that the necessary time period had by then expired together with a further request that the respondents produce information in connection with the previous repair works to the roof of the property together with colour photographs.

A subsequent letter dated 4 December 2013 was received by the property respondents' agent in which they raised a substantial number of preliminary points but had still not provided written representations nor the items sought within the committee's earlier Direction.

The committee gave careful consideration to the various preliminary points raised and proceeded to issue a lengthy Determination/Direction dated 10 December 2013 extending to some 27 paragraphs repelling the arguments set forth on behalf of the property factor and setting out, once more the respondent's obligation to lodge written representations and to produce the items previously requested by way of Direction. By this time a month had elapsed since the Notice of referral had been issued.

In terms of correspondence received from the respondents' agents on 17 December 2013, the items previously requested were produced and it was unequivocally stated on behalf of the property factor that they accepted that they had, as a matter of fact, breached the provisions of both paragraphs 6.1 and 6.9 of the Code. They also indicated that they had instructed further repair work to be carried out at the applicant's property in early January 2014 and that they hoped that such action may make it unnecessary for the applicant to pursue the case further formally before the committee. Copy correspondence issued by the property factor directly to the applicant seeking resolution was also produced.

The committee sought clarification from the applicant as to whether or not they wished to proceed with their application given the further repair work instructed by the respondents. In terms of a letter received from the applicant on

14 January 2014 they indicated that they did desire to seek a formal Decision from the committee.

The committee proceeded to issue a further Direction intimating to parties their intention to determine the application in the absence of an Oral Hearing in terms of Regulation 18 of the Homeowner Housing (Applications & Decisions) (Scotland) Regulations 2012. The parties were provided with a 7 day period in which to indicate their agreement to dispense with an oral hearing and to provide any further written representations which they wished.

Both parties consented to the dispensing of an oral hearing. The respondents' agent also produced documentary evidence that the repair work had, by then, been concluded.

Findings in Fact

1. The applicant is the homeowner of 17/7 Waterfront Gate, Edinburgh EH5 1AD. The property is one of a number of flats forming part of the Waterfront Gate development in the north of the City of Edinburgh ("the Development").
2. The Development is a modern built housing development. A Deed of Conditions sets out arrangements for, amongst other items, maintenance, repair and renewal of the common parts of the Development.
3. The Deed of Conditions constitutes a Property Manager. The respondents are the designated Property Manager and are the Property Factor for the purposes of the Property Factors (Scotland) Act 2011. The applicant reported ongoing water ingress to the stairwell at their property to the respondents on an ongoing basis from July 2012.
4. The respondents instructed repairs to be carried out to the roof at the property in or about January 2013. The contractors appointed were Paragon Trade Services.
5. Despite the repair works being carried out by Paragon Trade Services, the applicant reported ongoing leaks at the property. Water ingress continued.
6. The respondents did not make payment on behalf of the applicant and other homeowners of the invoice rendered by Paragon Trade Services. They did not pursue Paragon Trade Services to carry out any additional work in implementation of their original instructions and in order to rectify the defective work earlier carried out. They did not actively instruct any other contractors to remedy the defects at the applicant's property.
7. The property factor did contemplate the instruction of further work to adequately rectify the roof problems at the applicant's property but did not keep the applicant fully informed of progress, including estimated timescales for completion.
8. The applicant lodged his application to the Homeowner Housing Panel

on 30 May 2013. Additional information required to be obtained from the homeowner on a number of occasions. Notice of referral letters were issued on 12 November 2013. The respondent's did not immediately seek to rectify the applicant's difficulties. Instead they sought to argue a number of preliminary points which were all rejected by the committee. This caused further unnecessary delay compounding their former failures. Following their preliminary objections to the application being rejected the respondent's did immediately offer to resolve the applicant's difficulties by way of correspondence dated 17 December 2013.

9. In terms of the correspondence issued by the property factor on 17 December 2013 they accepted having breached paragraphs 6.1 and 6.9 of the Code. They indicated that repair work to the applicant's property to resolve the water ingress was instructed to commence, at their sole cost, in early January 2014. They made an unreserved apology. They also offered compensation to the applicant in respect of the substandard service offered to the applicant in the sum of £410.
10. The necessary repair work to the applicant's property was undertaken throughout January 2014. This comprised of external roof works and internal redecoration. Documentary evidence of these works carried out to completion, including related photographs was issued by the respondents to the applicant on 24 January 2014 and from the respondents' agents to the committee on 28 January 2014. This also disclosed payment of the £410 had been made.

Reasons for Decision

The committee had before it sufficient documentary evidence upon which to reach a fair determination of the application. The committee determined the application in the absence of an oral hearing, having intimated their intention to do so to the parties and having noted their consent to

The respondents are a registered property factor. The agent acting on behalf of the respondents confirmed that they accepted that they had breached the provisions of paragraphs 6.1 and 6.9 of the Code.

Following formal acceptance of the breaches of the Code of Practice, the committee acknowledge that the respondents had very expeditiously proceeded to resolve matters favourably to the applicant. As soon as was reasonably practicable after the festive holidays the necessary work commenced and was completed at no cost to the applicant.

It was noted in terms of the documents produced that the works carried out were comprehensive. The previous defective repairs had involved an attempt to remedy water ingress relatively cheaply involving the application of an additional waterproof coating to the surfaces of the mono pitched roof section and associated guttering. The works instructed by the respondents and paid for by them on this occasion included the entire stripping off of the existing mono pitched single layer membrane roof covering and box aluminium guttering, including temporarily disconnecting the outlet pipe from the gutter where connected to the downpipe. Exterior plywood was used to form the new roof decking and upstands at the edge of the gutters, etc. On completion

of this preparatory work these areas were then coated with a seamless fibreglass mat coating system. A new outlet detail where the gutter discharges into the downpipe was also renewed. The application of a final topcoat then took place. All work was carried out after the erection of scaffolding. The internal area of affected plasterboard ceiling was subsequently repaired and redecorated.

The committee concluded on the basis of the evidence available that the works necessary to remedy the problems have been professionally carried out. The committee were of the view that they could not ask the respondents to actively do anything other than what had already been undertaken. In addition to the works programme as aforementioned, a full unreserved apology had already been tendered to the applicant and additionally a payment of £410 had been made representing a return of the applicant's service charge for the duration of the period which they had accepted they had breached the Code.

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 committee records however that it is unfortunate that the respondents breached the Code in the first place and their failures were compounded by their initial attempts to resist the current Application.

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.

Richard Mill

Chairperson

30 January 2014