



**Decision of the Homeowner Housing Committee
issued in terms of an Application made
under Section 19 of the Property Factors (Scotland) Act 2011**

HOHP reference: HOHP/ PF/15/0032

Re: Property at 102 Barn Street, Clydebank, West Dunbartonshire, G81 1RB ("the Property")

The Parties:-

Mr E Coyle & Mrs M Coyle, residing together at 102 Barn Street, Clydebank, West Dunbartonshire, G81 1RB ("the Homeowners")

and

West Dunbartonshire Council, having a place of business at 57 Cochno Street, Clydebank, G81 1RQ ("the Factors")

**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:

Andrew Cowan (Chairperson)

Ian Murning (Surveyor Member)

Decision of the Committee

The Factors have not failed to carry out their Property Factors' Duties.

The Factors have not failed to ensure compliance with the Property Factors' Code of Conduct.

The Decision of the Committee is unanimous.

Background

1. By an application dated 20 March 2015 the Homeowners made an application to the Homeowner Housing Panel ("the Panel") with reference to potential breaches of both the Code of Conduct for Property Factors and the Property Factors' Duties relative to the Property ("the Application"). In their Application, the Homeowners alleged that the Factors had failed to comply with the following sections of the Code of Conduct:
 - 1 – duty to provide written statement of services, including the specific requirements set out in paragraph 1.1(a) of the Code of Conduct;
 - 2.1 – duty to provide information which is not misleading or false;

- 5.2 – duty to provide each Homeowner with clear information on insurance premiums, showing the basis upon which any share of insurance premium is calculated and the provision of full details of the insurance policy upon request;
- 5.3 – duty to disclose to the Homeowner any commission, administration fee or other benefit received from the company providing the insurance cover;
- 5.6 – duty to show how and why an insurance provider was appointed;
- 6.3 – duty to show how and why contractors were appointed;
- 6.5 – duty to ensure that all contractors appointed by the Factor have public liability insurance;
- 6.7 – duty to disclose to the Homeowner any commission, fee or benefit in respect of a contractor;
- 6.9 – duty to pursue a contractor or supplier to remedy defects in any service provided;
- 7.1 – duty to provide a clear written complaints resolution procedure; and
- 7.3 – duty not to make a charge for handling complaints unless explicitly provided for in the Property titles or contractual documentation.

2. The Homeowners further alleged that the Factors had failed to carry out the Property Factors' Duties as:

- The Factors do not seem to be involved in any of the repairs to the property.
- Work is carried out by Council Housing Department on the instructions of the tenant.
- A number of bills have been issued for recurring repairs.
- Repair work carried out has been sub-standard and/or caused other damage.
- Bills have been issued for non-existing repairs where no work has been completed.
- Some repairs were necessitated due to damage caused by contractors engaged by Council tenants.

3. In support of their Application the Homeowners lodged with the Panel copies of a letter dated 07 April 2015 in which they intimated to the Factors the nature and extent of their complaint

and those areas of the Code of Conduct for Property Factors and Factors' Duties with which they believed the Factors had failed to comply.

4. By letter dated 04 May 2015 the Homeowners sent to the Panel a copy worksheet which they averred was produced by the Factors and which listed works carried out by the Factors for the period from January 2014 through to August 2015. On that list the Homeowners had highlighted certain works which they stated were "in dispute".
5. On 20 May 2015 the Homeowners lodged with the Panel a copy of the Factors' statement of services together with a copy of the Factors' covering letter of 13 April 2015 and an earlier letter dated 30 September 2013. The Homeowners specifically commented in a letter of 25 May 2015 that they had not received the previous letter dated 30 September 2013 which had purported to enclose a copy of the Factors' written statement of services.
6. On 21 July 2015 the President of the Homeowner Housing Panel referred the Application to the Homeowner Housing Committee ("the Committee").
7. On 4 September 2015, the Committee issued Directions in terms of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012. In terms of the Directions issued, the Committee specifically directed that the Homeowners must lodge further written representations on certain matters by not later than 22 September 2015.
 - (a) In their application the Homeowners refer to "a number of bills for recurring repairs – the initial repair work was substandard and caused other damage". The Homeowners were directed to give further information and specification as to the nature of their complaint in this respect. In particular, the Homeowners were directed to specify those "bills" which they dispute and what work, if any, was substandard and caused other damage to the Homeowners' property.

- (b) In their application the Homeowners state that they "have received bills for non-existing repairs, WDC said work was done when it obviously was not". The Homeowners were directed to produce copies of the bills which they aver were issued for non-existing repairs.
- (c) In their application, the Homeowners state that "some work was due to damage caused by contractors engaged by the council tenants". The Homeowners were directed to confirm the nature of the work to which they referred together with the date such works was carried out.

The Homeowners did not respond to the directions of the Committee in this respect. No further information was received from the Homeowners to give specification of the matters covered by the directions.

The approach of the Committee

8. By letter dated 12 August 2015 the Homeowners had indicated that they did not wish to attend any hearing in relation to the Application nor did they wish to send any further written representations. By letter dated 19 August 2015 the Factors indicated that it was their preference that the Application should be disposed of without any oral hearing.
9. The Committee have considered all relevant papers which have been submitted by both the Homeowners and the Factors in relation to this Application and have based their decisions upon the information contained within that written information. The Committee have considered each part of the Homeowners' complaint in relation to the alleged failure by the Factors to comply with the Property Factors' Code of Conduct and have also considered the complaints made by the Homeowners in which they allege that the Factors have failed to comply with the Property Factors' Duties.

Complaint under section 1 of the Property Factors' Code of Conduct

10. The Homeowners have complained that the Factors have failed to comply with the terms of the Code of Conduct as they have failed to provide a written statement of services.
11. In terms of the Code of Conduct the Factors must provide each Homeowner with a written statement of services. In their written response the Factors have explained that a copy of the Factors' written statement of services was sent to all customers of West Dunbartonshire Council's Factoring Service on or around 30 September 2013. The Homeowners maintain that they did not receive a copy of the statement of services at that time.
12. Following a specific request by the Homeowners to the Factors dated 07 April 2015, the Factors sent a copy of the written statement of services, by letter dated 13 April 2015, to the Homeowners together with a copy of their original covering letter of 30 September 2013. The Committee are satisfied that the Factors took reasonable steps in 2013 to ensure that all Homeowners who received their factoring service (including the Homeowners) were sent a copy of the Factors' written statement of services. Although, for whatever reason, the Homeowners may not have received that original issue of the statement of services in 2013, the Committee note that the written statement of services was available for Homeowners and could be downloaded from the local authority's website.
13. From the written evidence available to it, the Committee have determined that the Factors made reasonable efforts to ensure that all parties who accepted their services (including the Homeowner) were provided with a copy of the written statement of services and that the Factors have not breached the terms of Section 1 of the Code of Conduct.

Complaint under Section 2.1 – duty to provide information which is not misleading or false.

In their application the Homeowners have specifically made reference to clause 2.1 of the Code of Conduct which requires the Factors not to provide information which is misleading or false. The Homeowner has failed to further specify the background or facts of their complaint in this respect,

except insofar as such a complaint may fall under one or other of the sections of the Code considered in this application.

The Committee are satisfied that there is no evidence to support the allegation that the Factors have provided information which is misleading or false.

The Committee have accordingly determined that there is no evidence of any breach by the Factors in relation to their duty under Section 2.1 of the Code of Conduct.

The Homeowners have made reference to a complaint that the Factors have failed to comply with sections 5.2, 5.3 and 5.6 of the Code of Conduct for Property Factors

14. At no point in their Application, or within the supporting paperwork, have the Homeowners specified why they believe the Factors have failed to comply with these sections of the Code, (which relate to common insurance).
15. In their written response the Factors have highlighted that on an annual basis homeowners are provided with information in relation to the common insurance scheme, including details of how the payment is calculated, the sum insured and the premium due by each homeowner.
16. Paragraph 5.6 of the Code of Conduct requires the Factors "on request" to show how and why they appointed the insurance provider. In their written response, the Factors have highlighted that they have no record of any written request being made by the Homeowners.
17. On the basis of the information supplied by parties, the Committee are satisfied that there is no evidence of any breach by the Factors in relation to their duty to provide information relative to insurance as required by section 5.2, 5.3 or 5.6 of the Code of Conduct.

Complaints under sections 6.3, 6.5, 6.7 and 6.9 of the Code of Conduct

18. The Homeowners have complained that the Factors have failed to comply with various parts of section 6 of the Code of Conduct.

- a) The Homeowners make reference to section 6.3 of the Code. That section of the Code confirms that a Factor has a duty "on request" to show how and why they appointed certain contractors. No evidence has been given by the Homeowners of any request having been made for such information. In any case, the Homeowners have failed to indicate which contractor or contractors they are referring to.
- b) The Homeowners make reference to section 6.5 of the Code, which requires the Factor to make and to ensure that all contractors appointed by the Factor have public liability insurance. The Factors have confirmed in their response that all sub-contractors engaged by the Council have appropriate insurance indemnity levels in place in accordance with the Council's payment policy and procedures.
- c) The Homeowners complain that the Factors have failed to comply with section 6.7 of the Code, which requires the Factor to disclose in writing any commission, fee or other benefit they have received from a contractor. The Factors have confirmed in writing in their submission that there are no commissions, fees, payments or other financial benefits paid to the Council by any of its sub-contractors.
- d) The Homeowners complain that the Factors have failed to comply with section 6.9 of the Code in that the Factors had a duty to pursue a contractor to remedy defects in relation to any inadequate work or service provided. In the Direction issued by the Committee, the Homeowners were specifically directed to give further information and specification in relation to their averment that repair work carried out was sub-standard and caused other damage. The Homeowners have failed to further specify their claim in this regard. The Homeowners were further directed to confirm the nature of work to which they referred in their Application, as they had stated that "some work was due to damage caused by contractors engaged by the Council tenants". The Homeowners have failed to provide additional information to comply with the Committee's Direction in this respect. In a letter of 7 April 2015 the Homeowners make reference to sub-standard work to the gutters and adjacent roof tiles of the Property. In relation to this specific complaint, the Factors have commented in their response that these matters were raised with the Factors. At a meeting between the Factors and the Homeowners, the Homeowners had acknowledged that work had been completed to the appropriate standard. The Homeowners did

complain that gutters continued to leak following certain repair work. As a gesture of goodwill the Factors arranged for a repair to the guttering to check and repair any leaking joints to the new gutters with no re-charge to the Homeowners in connection with that work. The Homeowners complained that they were sent a further bill for this work. The Homeowners have failed to exhibit evidence of any such further bill having been sent to them. The Homeowners have also complained that roof tiles at the Property required to be repaired following work which was carried out and instructed by a neighbouring proprietor to an aerial at the Property. The Factors have confirmed in their submission that the Homeowners have been advised that any damage caused by a neighbouring proprietor and other contractors of the private matter are not one to which the Factors were a party.

19. In all the circumstances and having reviewed all the evidence available, the Committee are satisfied that there is no evidence that the Factors have failed to pursue a contractor to remedy defects in any inadequate work or service provided.
20. On the basis of the evidence supplied by the parties, the Committee are satisfied that there is no evidence of any breach by the Factors in relation to their duties under 6.3, 6.5, 6.7 or 6.9 of the Code of Conduct.

Complaints resolution

21. The Homeowners make reference to section 7.1 and 7.3 of the Code in their Application. The Homeowners indicate that they are of the view that the Factors have failed to comply with these sections of the Code.
22. Section 7.1 of the Code requires the Factors to have a clear written complaints resolution procedure. Details of the Factors' complaints procedures are included within section 5 of the Factors' statement of services.
23. The Homeowners further complain that the Factors have failed to comply with section 7.3 of the Code which requires the Factor, unless explicitly provided for in the Property titles or

contractual documentation, not to charge for handling complaints. The Factors have confirmed in their response that the Council does not charge for complaint handling. The Committee are satisfied on the evidence available that there is no evidence to support the Homeowners' complaints in relation to an alleged failure by the Factors relative to these parts of the Code of Conduct.

24. On the basis of the evidence supplied by the parties, the Committee are satisfied that there is no evidence of any breach by the Factors in relation to their duties under section 7.1 or 7.3 of the Code of Conduct.

Alleged breach of Property Factors' Duties

In their Application the Homeowners complain that there are certain duties and legal responsibilities which they believe have not been carried out by the Factors. The Factors have given written responses to each of the Homeowners' complaints in relation to each of the alleged breaches of the Property Factors duties.

- a) The Homeowners complain that the Factors do not seem to be involved in any of the repairs to the Property and work is carried out by Council Housing Department on instructions from their tenants.

The Factors have confirmed in their response that they are the Property Factor acting in accordance with the title deeds relative to the Property and that all reports of repairs from any residents within the block are inspected and, if appropriate, repairs are carried out or instructed by them as Property Factor.

The Committee are satisfied that the Factors have and continue to comply with their duties in this respect.

- b) The Homeowners complain that there have been a number of bills for recurring repairs when initial work was sub-standard and caused other damage.

The Factors have highlighted in their written response that the Homeowners have failed to provide any evidence to support this claim.

The Homeowners were specifically directed to provide further information of their claim in this respect and have failed to do so.

In all the circumstances, there is no evidence to substantiate any such claim as made by the Homeowners in relation to this matter.

- c) The Homeowners complains that repair work has been carried out at the property which is sub-standard and/or caused other damage. The Homeowners have failed to specify in detail the nature of the work which the claim was substandard or which caused other damage. In terms of the Directions issued by the Committee, the Homeowners were specifically directed to give further written information in support of this allegation. The Homeowners have failed to provide such information. The Committee are satisfied that there is no evidence to support the Homeowners' contention in this respect.
- d) The Homeowners complain that they have received bills for non-existing repairs. In terms of the Direction issued to the Homeowners, the Homeowners were specifically directed to produce copies of any bills which they ever were issued for non-existing repairs. The Homeowners have failed to comply with the Direction issued in this respect. The Committee are satisfied that there is no evidence to support the Homeowners' contention in this respect.
- e) The Homeowners contend that some repairs were due to damage caused by contractors engaged by Council tenants. The Homeowners are satisfied that any damage caused by a party other than the Factors to the Property is not the responsibility of the Factors to repair.

The Committee find that there has been no breach of the Property Factor Duties.

Decision

25. The Factors have not failed to ensure compliance with the Property Factors' Code of Conduct as required by section 14(5) of the Act. There is no evidence that the Factors have failed to carry out the Property Factors' Duties.

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:-

- (a) 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 Committee or a Homeowner Housing Committee; and
- (b) 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..."

Andrew Cowan

26/11/15

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Andrew Cowan, Chairperson

Date

