



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

**Property Factor Enforcement Order**

Hohp ref: HOHP/PF/15/0021

Re: 4/1 Hawthornden Place, Edinburgh EH7 4RG (the property)

The Parties:

Ms Claire Kirbitson, 21 Brunstane Road, Edinburgh EH15 2EZ (the homeowner)

Life Property Management Limited, Regent Court, 70 West Regent Street, Glasgow G2 2QZ (the property factor)

**Committee members:** Sarah O'Neill (Chairperson), Ian Mowatt (Surveyor member)

**Background**

1. In its decision dated 10 September 2015 and issued on 15 September 2015 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 ("the Act") in respect of section 6.1 of the code of conduct for property factors. The reasons for the committee's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the committee issued a Notice of Proposal to make a Property Factor Enforcement Order (PFEO) on 15 September 2015, and allowed the parties 14 days to make representations to the committee.
3. No written representations were received from the homeowner by the deadline. An email was received from David Reid, Director with the property factor on 30 September. Although this was received one day after the deadline for representations, the committee decided to take these representations into consideration in making a determination as to whether to issue a PFEO/ the terms of any such PFEO.
4. In his email, Mr Reid stated that the property factor considered the proposed PFEO to be somewhat punitive in the circumstances. He pointed out that the

homeowner had made a number of complaints, none of which were upheld, aside from her complaint under section 6.1 of the code of conduct. He said that the property factor was therefore disappointed to have been penalised for one small oversight in its communications with the homeowner, particularly when the dampness issue was ongoing for a number of years and the upheld complaint related only to a three month period.

5. He said that, in any event, between April and July 2014, the homeowner's father, by whom she was represented at the hearing, remained in regular correspondence with the property factor regarding other issues, and had not mentioned the survey report which was the subject of the upheld complaint. He stated that this cast some doubt on the importance of the findings to him and to the homeowner.
6. With regard to part 2 of the proposed PFE0, he went on to point out that, given that the application has been brought by the homeowner, the effect on her father was not a relevant consideration in determining whether to make an award of compensation to the homeowner.
7. The committee has carefully considered the written representations received from the factor. While the committee accepts that the other complaints made by the homeowner were not upheld, and that the failure to comply with section 6.1 of the code of conduct related to a relatively short period in the context of these complaints, it continues to take the view that the property factor failed to comply with that section of the code. While the property factor stated in its representations that the homeowner's father was in regular correspondence with it during that three month period, no evidence was led before the committee to substantiate this.
8. The written representations submitted by the property factor to the committee prior to the hearing included no reference to any correspondence between the email of 10 April from the surveyor to the property factor regarding the findings from his inspection and the email from the homeowner's father to the surveyor dated 7 July 2014. In any case, the committee considers that the onus was on the property factor to keep the homeowner informed as to progress, rather than on the homeowner or her father to chase this up.
9. With regard to the proposed compensation payment of £100 set out in the proposed PFE0 in respect of the stress and inconvenience caused to the homeowner and her father by the property factor's failure to comply with section 6.1 of the code of conduct, the committee accepts the point made by the property factor that this should not take into account the effect of this failure on her father. The committee takes the view, however, on the basis of the homeowner's evidence to the committee, that she also suffered stress and

inconvenience as a result of the failure to comply. The committee therefore deletes the words 'and her father' from part 2 of the proposed PFEO in this decision.

10. The Committee therefore issues the following Property Factor Enforcement Order ("PFEO"):

1. Within 28 days of the communication to the factor of this Property Factor Enforcement Order, the factor must:
  - a. Issue a formal written apology to the homeowner in respect of the property factor's failure to comply with its duties under sections 6.1 of the code of conduct for property factors.
  - b. Make payment to the homeowner of the sum of £100 in recognition of the stress and inconvenience caused to her by the property factor's failure to comply with its duties under section 6.1 of the code of conduct.
  - c. Provide documentary evidence to the committee of its compliance with the above by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.

**Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.**

#### **Right of appeal**

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. 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 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.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Sarah O'Neill

Chairperson Signature

Date.....15/10/15.....