



Property Factor Enforcement

of
the Homeowner Housing Committee

(hereinafter referred to as the Committee)

under Section 19(3) of the Property Factors (Scotland) Act 2011 ("the Act")

HOHP reference: HOHP/PF/13/0329

Re: Property at Flat 6/1, Coxfield, Gorgie, Edinburgh, EH11 2SY ("the Property")

The Parties:-

Mr Ian Graham, residing at Flat 6/1, Coxfield, Gorgie, Edinburgh, EH11 2SY ("the Homeowner")

And

James Gibb Residential Factors, 4 Atholl Place, Edinburgh, EH3 8HT ("The Factor")

Further reasons

1. In its Decision dated 7 July 2014 ("the Decision"), the Committee determined that the Factors have failed to comply with their duties as a Property Factor under Section 17(5) of the Act. 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 PFEO on 7 July 2014 and allow the parties 14 days to make representations to the Committee.
3. Written representations were received from the Homeowner in a letter dated 19 July 2014. In that letter, the Homeowner made certain written representations:-
 - (a) the homeowner has requested that the final order issued by the Committee should require the Factor to send hard copies of the Property Factor Enforcement Order to the Owner's Association Volunteer's Representatives "to give them the background/future role as set out in the PFEO by the HOHP Committee". The Committee do not consider that it is appropriate that the

Factor should be ordered to send copies of their decisions to any other parties than those who were party to the original proceedings;

- (b) the Homeowner has requested that the Property Factor should be ordered to send a letter of apology to each of the owners at the development in which the Homeowner's property is situated. The Committee do not consider that it is appropriate that the Property Factor should be ordered to make such an apology in the circumstances of this particular case; and
- (c) the Homeowner makes further representations in relation to the question of whether the Factors misled or provided false information to the representatives of the Owner's Residents' Association. The Committee are of the view that the only evidence which they should consider in relation to this matter is that which was considered and presented at the hearing in relation to this case. No further evidence will be considered in relation to this matter and accordingly the Committee will not be amending their Decision in respect of any matters raised by the Homeowner.

4. The Factor made written representations to the Committee by letter dated 28 July 2014:-

- (a) the Factor does not accept the Committee's Decision that they have breached Section 60.3 of the Code of Conduct. The Committee have now made their Decision in that respect and no further evidence can be heard on this matter;
- (b) the Factor highlights that the Code requires that tender information should be made available "if applicable". They highlight that to their knowledge there is nothing contained within the Code which stipulates what format tender requests should take or the levels of details required. The Committee are of the view that the nature and extent of tender information which should be available may depend upon the nature and extent of the contract being tendered. Nonetheless in all cases the Committee would expect that to comply with the Code the Factor is able to demonstrate a clear audit trail of the process which they have followed in recommending or selecting any particular contractor;
- (c) the Factor consider that the measures proposed for the PFEO are outwith the legal authority of the Committee to make such an enforcement. The Committee are not able to comment on matters which may be points of law for consideration in any appeal.

- (d) The Factor maintains that the Committee' Decision states that they made recommendations to Residents Committees to accept particular quotations. The Factor maintains that no recommendations were made and that the quotations were provided to the Residents' Association who made their own decision. The Committee do not accept the Factor's position in this respect. The Factor obtained a number of quotations and presented them to a Committee of representatives of the Homeowner. In doing so, they gave certain information from certain contractors (but did not include all information from all contractors). The inference from the paperwork which was provided to the Homeowners was that the Factor was making recommendations in relation to certain works.
5. In General, the Committee did not consider that the representations of the Homeowner or the Factor in the correspondence received following the issue of the Committee's Decision was material, given that representations are not an opportunity to present fresh evidence. In all the circumstances, the Committee remains satisfied that the Factor has failed to comply with their duty under Section 14 of the Act and adheres to the terms of their Decision of 7 July 2014.
6. The Committee therefore issues the following Property Enforcement Order:-
- (a) within 28 days of the communication to the Factor of this PFEO the Factor must make payment to the Homeowner of the sum of £100, being a reasonable assessment of the cost incurred by the Homeowner in pursuing his complaint through the HOHP, to include taking copies of documentation and making same available to all parties etc;
- (b) within 3 months of the date of communication to the Factor of this PFEO, the Factor must agree with the Homeowner's Association Committee procedures for all future communal works which require to be tendered in accordance with section 4.4 of the Factor's written statement of service. Such procedure should indicate amongst other things:-
- (i) the cost limit and process by which they will obtain multiple quotes for works including how they will ensure tenders can be compared on a like for like basis and an audit trail of recording that will be available on request.
- (ii) a format of reporting to the Residents' Association Committee following the conclusion of the process for obtaining quotes and a procedure for

recording the Committee's decision and intimating that record to the Committee for future reference.

- (iii) An agreement with the Residents Association Committee on what records of meetings and other decisions made with Residents Association Committee should be circulated to all owners in the development for their information.

Failure to comply with the Property Factor Enforcement Order without reasonable excuse may have serious consequences and may constitute an offence under Section 24 of the Act.

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. 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

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Date

27/10/14

L McManus
Witness, Laura McManus, Secretary,
7 West George Street, Glasgow, G2 1BA

27/10/14