



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

HOHP Reference: HOHP/PF/13/0294

Re: Subjects at 4 Muir Street, Renfrew, 805 Dalmarnock Road, Glasgow and 278B London Road, Glasgow

HOHP Reference: HOHP/PF/14/0093

Re: subjects at 278B London Road, Glasgow

Parties

Mr Dale Hughes residing at 59 Braid Road, Edinburgh, EH10 6AR ("the Homeowner")

Grant and Wilson Property Management Limited, being a company registered in Scotland and having their place of business at 65 Greendyke Street, Glasgow, G1 5PX ("the Factors")

DECISION BY THE COMMITTEE OF THE HOMEOWNER HOUSING PANEL IN RESPECT OF APPLICATIONS UNDER SECTION 17 OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011

The Committee, having conducted a hearing into the applications made by the homeowner, having considered the evidence provided at the hearing and provided by way of written submissions by the parties have determined that the factors as property factors have failed to comply with the Code of Conduct for Property Factors as required by Section 14(5) of the Act and accordingly the Committee have determined to issue a Property Factor Enforcement Order.

BACKGROUND

1. By application dated 25th September 2013, the homeowner made an application to the Homeowner Housing Panel in respect of various matters relating to the properties at Muir Street, Renfrew, Dalmarnock Road, Glasgow and London Road, Glasgow. Reference number HOHP/PF/13/0294 was allocated to that application. Subsequently, by application dated 23rd June 2014 the homeowner made a subsequent application to the Homeowner Housing Panel in respect of matters arising from the property at 278B London Road, Glasgow. After sundry procedure it was agreed that both applications would be considered together and the matter remitted to a Homeowner Housing Committee.
2. Various attempts were made to set a date for a hearing. There were difficulties in fixing a date which was suitable to both parties. Eventually a date was set for a hearing to take place on 30th September 2015.
3. Prior to the date of that hearing, the factors wrote to the Homeowner Housing Panel indicating that they did not wish to attend the hearing but wished the hearing to proceed to deal with their responses via their written submissions only. The homeowner attended the hearing.

SUMMARY OF COMPLAINTS AND ALLEGED BREACHES

4. In his applications, the homeowner had listed a variety of complaints regarding alleged breaches of the Code of Conduct which can be summarised as follows. He also indicated that he believed the factor had failed to carry out the property factor's duties as set out in the Act. At the hearing he withdrew that part of his complaint and focused solely on alleged breaches of the Code
5. With regard to complaint reference 13/0294 he alleged breaches in respect of the following paragraphs of the Code of Conduct:-

Paragraph 1.1a - Information regarding the factors' authority to act
Section 1D(l)(m)(n) – Complaints regarding timescales and procedures
Section 1E(n) – Declaration of financial interest of the factor
Paragraph 2.1 – Providing false or misleading information
Paragraph 2.4 – Procedures to obtain consent of homeowners before doing work
Paragraph 2.5 – Responding promptly to complaints and enquiries
Paragraph 3.1 – Making financial information available if factoring arrangement was terminated
Paragraph 3.2 – Returning funds to homeowners
Paragraph 3.3 – Providing billing at least once a year and supplying supporting documentation
Paragraph 5.2 – Providing clear information regarding insurance
Paragraph 5.3 – Disclosing any commission paid
Paragraph 5.6 – Showing how providers for insurance were appointed
Paragraph 5.7 – Providing documents regarding any tender process
Paragraph 6.3 – Showing how the factor appointed contractors
Paragraph 6.6 – Making documents regarding tenders available
Paragraph 6.7 – Disclosing commission fees or any benefits obtained from a contractor
Paragraph 6.8 – Disclosing any financial interest the factor may have with any contractor
Paragraph 7.1 – Having a written complaints policy
Paragraph 7.4 – Retaining all correspondence for at least three years

6. In general the complaints raised in this application were that the factor had failed to provide proper accounting, had failed to advise the homeowner of a conflict of interest, had failed to advise the homeowner regarding the insurance policies and had failed to deal with issues which had followed a complaint.
7. With regard to application number 14/0093, the alleged breaches of the Code of Conduct were as follows:-

Paragraph 2.1 – Providing false or misleading information
Paragraph 2.4 – Procedures to obtain consent of homeowners before doing work
Paragraph 2.5 – Responding promptly to complaints and enquiries
Paragraph 6.1 – Having procedures to allow work to be reported
Paragraph 6.3 – Showing how the factor appointed contractors
Paragraph 6.6 – Making documents regarding tenders available
Paragraph 7.1 – Having a written complaints policy
Paragraph 7.2 – Providing a final decision when the internal complaints policy was exhausted

8. With regard to these complaints, the homeowner was complaining that there were concerns over works which had been instructed to a rear door and soffits to the building at 278B London Road and he was complaining generally that the factor had ignored or delayed dealing with his complaints.

THE HEARING

9. The hearing took place on 30th September 2015 in Wellington House, Glasgow. The Committee members were James Bauld, Chairperson and Colin Campbell, Housing Member. The homeowner was present at the hearing and represented himself. The factors were neither present nor represented but had provided written submissions in advance of the hearing and had indicated to the Committee that they wished the submissions to be treated as their representations.
10. The hearing proceeded by means of the homeowner presenting his case to the Committee. He had also provided a note of his own written representations in advance and he took the Committee through those representations. He was questioned by the members of the Committee and answered those questions openly.
11. The homeowner commenced his submission to the Committee by dealing firstly with the application under reference 13/0294. He had prepared a brief written note of his submission which set out three outstanding headings.
12. The first complaint was the factor's failure to intimate the conflict of interest which the homeowner perceived to exist. He believed that one of the contractors who was used regularly by the factors was a company called Grierson. He indicated Ian Currie who was employed as a contracts manager for the factors was a director of Grierson as was Heather Mitchell who was a spouse of a director of Grant and Wilson. It is understood that Mrs Mitchell is no longer a director of Grierson. His concern that there was a lack of transparency and also that it made common sense to believe that there may well be a conflict of interest. He said that he had asked Grant and Wilson on many occasions to disclose the connections but they had not done so. With regard to the written response from the factor contained in page 4 of their response, he noted that the factors claimed that Mr Ian Currie was only engaged "on an ad hoc" basis by the factor to help co-ordinate contractors. However, he pointed out that Ian Currie was also described as the factor's contracts manager and the assumption must be he was an employee of the factor. The suggestion that he was being engaged only on an "ad hoc basis" must mean that he was self-employed. He accepted that while he could not gainsay the submission from the factors that there was no economic advantage derived from Grierson, he still queried how this could be an independent contractor. He said that the factors had indicated they had a list of contractors but that Grierson almost appeared to be universally used as one of the contractors from whom quotes were obtained. He conceded that since the Property Factors Act had come into force the factors had been slightly more transparent in their choice of contractors and that he did not accept the submission from the factors that contractors were engaged on a rotational basis. He submitted that the spirit of paragraphs 6.7 and 6.8 of the Code had been broken if not the Code itself. He conceded the factors did eventually disclose an interest and it was his position that the use of Grierson was a breach of both paragraphs 6.7 and 6.8 of the Code. His position was that there was clear and close contact between the factors and Grierson and that they were contractors who were used regularly. With regard to the idea that the factors did not derive any "benefit" from the relationship with Grierson, the homeowners position was that as one of the directors of Grierson was an employee of the factor, he queried how he could be a director of one company and an employee of the other. He queried which his fulltime day job was and how he would dip in and out of doing work for Grant and Wilson to do work for Grierson. His position was that Mr Currie being an employee of the factor and a director of Grierson created a clear inference that there was a financial interest. He also submitted that another contractor, R & M Joinery were run by a close relative of Linda Thomson who was also a director of the factors. He indicated he had asked a direct question regarding this and had received no response and said that the lack of response simply supported the general terms of his application that there was a conflict of interest.
13. The second complaint which was still outstanding in the homeowner's view were his complaints regarding the block insurance policy and the factor's failure to answer queries regarding same. He indicated he had never received an insurance schedule

from them. He indicated that the factor was no longer the factor for the properties at Muir Street in Renfrew. He indicated that when they were the factors he had never questioned the premiums and had always paid the bills. He indicated he was misled by by the terms of certain documents received from the factor regarding the premiums being charged. He referred to a document which had been attached to his original application (doc C). This document bore to be notes form the factors. In the paragraph which covered "Insurance", it indicated that "in the majority of tenement properties there is provision in the titles for a common insurance policy to which it is mandatory all owners contribute". The Notes went on to say that if no premiums were charged in the factors' accounts in May or November then it could be assumed that there was no common policy and homeowners would be required to arrange their own. The homeowner indicated that such premiums were charged in his accounts in respect of all properties and accordingly he assumed that common policies were mandatory. However he later discovered that the title deeds for both properties in Muir Street, Renfrew did not have a requirement in the title deeds that a common policy was required. He said that in or around March 2013 he had obtained a quote for an annual premium of approximately £155.72. At that point he was being charged £210 a year by the factor. He also indicated that the quote he had obtained at the lower figure also included landlord's contents cover and was a superior quote to the policy obtained by the factor. His position was that the premiums for the properties at Muir Street were on average approximately £55 too high each year. He indicated those premiums had persisted for at least 7 or 8 years. He accepted he was stuck with the block policies for the London Road and Dalmarnock Road properties. The homeowner was asked why he considered that the Committee could go back beyond 1st October 2012 which was the date the Act came into force. His position was that the failure to provide information regarding the block insurance policy and his allegation of overcharging was something that pre-dated October 2012 and that Regulation 28 of the Home Owner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 covered the position. His position was that he should receive compensation in respect of overpaid insurance premiums.

14. The factors' written submissions indicated that their view was that the homeowner's quote for the insurance was not on a like for like comparison basis across all elements including price, service, claims procedure and reliability. Their position was that the factor had a fiduciary duty to ensure that any insurance arranged was fit for purpose. Their position was that their policy was sent to owners every year and could be viewed on their website. They disclosed details of any commission received from external brokers.
15. The third and final aspect of the homeowner's complaints in respect of this application related to the factors' failure to deal with his complaints. He indicated he had made complaints to them and that they had simply failed to follow their procedure. He took the view that the factors had simply hidden behind an email which they had sent saying that he had to complete "a complaints form". He pointed out that the written statement of services received from the factor indicated they would deal with the complaint if it was put in writing. His position was that he had sent several emails which were clearly complaints and that the factors had simply failed to deal with them.
16. The response from the factors in their written submission to this matter appears to be a statement that there was insufficient specification by the homeowner of occasions where the factor had failed or delayed to communicate or correspond with them with regard to complaints but they denied they had failed to deal with his complaints or had communicated with him in a way which was abusive, intimidating or threatening.
17. The homeowner then turned to the second application under reference number HOHP/PF/14/0093. Again he had provided a brief written submission. He indicated that there were basically three headings to this complaint.
18. Firstly he complained that regarding the factors' position that there was an agreement to have work done to the rear door. He was not satisfied that the factor had obtained appropriate permissions. His position was that some of the work done was actually an

alteration to the property and they had no authority to do it. He also complained that the method by which the factor attempted to obtain consent from the owners was to write to the owners and indicate that if they did not object they would be treated as voting in favour. He complained that that was not the proper way to agree something by a majority. His position was that a failure by an owner to respond is not a vote either way and is certainly not a vote in favour of a proposition. He also complained that certain letters in respect of this matter were sent to him at the property address. He pointed out that the factors were aware of his home address and indeed had communicated with him at his home address in respect of other matters. They wrote to him with regard to the soffit work at his home address but with regard to the rear door work they sent a letter addressed to the occupier at the property address in London Road.

19. He indicated he had been advised by the factors that the work to the rear door was required for health and safety reasons. However, he pointed out it took over two years from the initial indication that work was required until the works being carried out. He also complained that the factors had failed in the corresponding period of two years to seek fresh quotes from contractors. He again complained that the factors had failed to provide him with a response to a complaint and had simply ignored it. They had responded by requiring him to complete a specific complaints form which he again stated was not in accordance with the complaints policy set out in their written statement of services.
20. In their written response (pages 3 and 4) the factors set out their comments with regard to the complaints in relation to the failure to progress works at 278 London Road. Their position was the homeowner's complaint was not accepted. They did not express any comment on the homeowner's position that obtaining a majority required positive votes in favour of works. They simply claimed that they did obtain a majority instruction from the owners at flats A, C, D and F within the building. They accepted they had carried out a variation to the door and installed one with fewer glass panels, both to restrict future costs for repairs but also to maximise security of the property.
21. The homeowner concluded by saying that the factors now appeared to have been taken over by a company called James Gibb. He produced a recent letter which now bore to be from Grant and Wilson Residential Factors. He indicated the invoices were still coming from Grant and Wilson but some were now in the name of James Gibb. It did appear to the owner that James Gibb had acquired the business of Grant and Wilson. He had recently received a letter dated 10th August for an outstanding debt.
22. The hearing was then concluded and the Committee thanked Mr Hughes for attending. During the hearing it was not possible to fully question Mr Hughes with regard to the factors' position other than to refer him to the written submission. Similarly there was no opportunity to challenge his views on many matters owing to the absence of the factors or a representative. Accordingly, the Committee required to make a determination based on the evidence heard from Mr Hughes and the papers which had previously been submitted.

DISCUSSION AND DECISION

23. The Committee were aware that the property factors had also previously acted as a letting agent for Mr Hughes in respect of these properties. That arrangement had been terminated. It appeared clear to the Committee that the difficulties in that relationship had also caused friction in the relationship between the parties as homeowner and property factors.

24. The Committee, having considered all the evidence, did not accept that the property factor had failed in every alleged breach of the Code of Conduct. However, the Committee took the view that there were failures by the property factors to comply with the terms of the Code of Conduct in respect of certain matters.
25. The Committee noted that the breaches of the Code of Conduct alleged by the homeowner contained similarities between the two separate complaints. There was a significant overlap between the two complaints particularly with regard to the property at 278B London Road. The Committee had previously decided that both applications should be determined in a single hearing and the Committee decided, that in determining whether there were any breaches of the Code of Conduct, to consider all the evidence across both complaints.
26. With regard to Section 2 of the Code of Conduct which deals with communication and consultation, the Committee took the view that the property factor had failed in respect of various duties arising under this Section. Section 2.4 requires property factors to have a procedure to consult with homeowners and to seek their written approval before providing work or services what could incur charges or fees in addition to those relating to the core service. With regard to the works at 278B London Road it is noted that the property factors in seeking the approval to carry out works in respect of the replacement door wrote on 10th October 2013 to "Co-owners" at 278 London Road. They did not appear to write to the homeowner at the correspondence address which they had for him which was 59 Braid Road, Edinburgh. There is no explanation for this failure to write to the homeowner at the correct address. Indeed they had written to him on 7th October 2013 in connection with repairs to the soffit of the same property. They had sent all invoices to this address. It should be noted that they had spelled the address incorrectly as "Briad". The Committee were also concerned that the method by which the property factors treated a non-response as a positive vote. Such a process did not necessarily mean that they were obtaining approval. The title deeds to the relevant property indicated that the correct method of obtaining approval for such works was that a meeting of the proprietors should be called and that it was competent at such a meeting to obtain approval for works to be carried out by obtaining a majority of the votes of those present. No evidence was led to show that any meeting was convened. There is no provision in the title deeds to allow work to be carried out by seeking authority simply by means of writing letters to owners. There is nothing in the title deeds which allows a lack of response to a letter to be treated as a positive vote in favour of works. In any event there was no reason for the property factors to send a letter in respect of these works addressed to "Co-owners" at 278 London Road, Glasgow. The property factors were clearly aware of the homeowner's correct address and all correspondence should have been sent to him at that address. The Committee find this is a clear breach of Section 2.4.
27. With regard to Section 2.5 the property factors are required to respond to enquiries and complaints received by letter or email within prompt timescales. The Committee took the view that the homeowner had made numerous complaints to the property factor and that they had failed to deal with these complaints. The Committee also note that in terms of the Code of Conduct, Section 7 headed 'Complaints Resolution', all property factors must have a clear written complaints resolution procedure which they must follow. The Committee find that the property factor has such a clear written complaints resolution procedure and it is clearly set out in their Written Statement of Services. The Committee however find that the property factors have failed to follow that complaints resolution procedure. There is nothing in the complaints resolution procedure set out in the Written Statement of Services which requires any homeowner to complete any specific "complaints form". The procedure set out in the Written Statement of Service simply indicates that a complaint can be made in writing either by post or by email. The procedure then indicates that once a complaint is received it will be processed. It is absolutely clear that the property factor in this case failed to follow their complaints procedure. Reference is made to an email dated 4th April 2014 from Sharon Cosgrove, Senior Property Manager at the property factors to the homeowner. In that email she indicates "As previously advised should you wish to intimate complaint you will require

to follow are (sic) complaints procedure by emailing LorraineK@grantandwilson.co.uk direct". This email is in response to an email from the homeowner which clearly sets out a complaint and requests that the property factor deal with it in connection with their procedure. The response of 4th April 2014 is a clear attempt to avoid dealing with complaints and is a clear breach of both Sections 2.5 and Section 7 of the Code.

28. The homeowner also alleges breaches of Section 6 of the Code in connection with the procedures followed by the factors relating to the instruction of work and the appointment of contractors. With regard to the works which were eventually carried out at 278 London Road, works appeared to proceed on the basis of estimates which were more than two years old. It appears that the property factor did not attempt to obtain fresh estimates or seek to re-tender the work. The Committee notes that the work in respect of the rear door was awarded to Griersons. The quote from Griersons was dated 18th August 2011. The property factors in their written submission produced copies of documents which had been sent to owners dated 2nd March 2012 requiring a response by 16th March 2012. They then sent the further letter addressed to "Co-owners" in October 2013. There appears to be no explanation of any attempt to seek fresh quotes for the work despite the fact that the quote by that stage was more than two years old. The Committee find that the failure to respond to the homeowners complaints in respect of this matter is a breach of Section 6.3 of the Code of Conduct.
29. The Committee took the view that the complaints raised by the homeowner in respect of alleged breaches of Section 3 of the Code mainly related to complaints he had with regard to the actings as a letting agent. These were matters out with the remit of the Committee.
30. The Committee also noted the homeowner's complaints with regard to Section 5 of the Code which relates to the duties of the property factors when they are arranging any type of insurance for homeowners. The Committee accepted the homeowner's evidence that when he terminated the arrangements for the property factors to act as his letting agent in respect of his properties at Muir Street, Renfrew, he was able to obtain buildings insurance at a level of premium which was lower than that previously obtained by the property factor. However the Committee took the view that there was no breach of the Code of Conduct. The Committee took the view that the property factor had provided the homeowner with relevant information showing the basis upon which their share of insurance premium was calculated and had provided relevant details of the policy. It was open to the homeowner at any time during the currency of that insurance to seek alternative quotes and to seek alternative insurance. There is no requirement in the Code for a property factor to suggest to homeowners that they should seek alternative quotations. Accordingly the Committee finds that there was no breach of Section 5 of the Code. Similarly the wording within the document which is mentioned in paragraph 13 of this decision was not misleading or false. It did not state that insurance premiums would only be charged if a block policy was compulsory in terms of the title deeds. It was a matter for the homeowner to check his title deeds to ascertain whether block insurance was a compulsory matter. The homeowner could have received such information from his solicitor when the property was purchased. Accordingly the committee were not persuaded that there was a breach of section 2.1 of the Code in relation to the provision of false or misleading information
31. Accordingly the Committee determined that a property factor enforcement order should be made and the terms of the proposed factor enforcement order are set out in the attached document.

APPEALS

32. The parties' attention is drawn to the terms of section 22 of the Act regarding the right to appeal and the time limit for doing so. That section provides:

- (1) Any appeal on a point of law may only be made by summary application to the Sheriff against a decision made by the President of the Home Owner Housing Panel or a Home Owner Housing Committee.
- (2) Any appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.

Signed.....
Chairperson

Date..... 18 November 2015

Witness.....

Date..... 18 November 2015

CLARE MULLEN
SOLICITOR
7 WEST GEORGE ST
GLASGOW