



**Decision of the Homeowner Housing Committee issued under Section 19 of the
Property Factors Act 2011 and Regulation 26 of the the Homeowner Housing Panel
(Applications and Decisions) (Scotland) Regulations 2012**

Ref: HOHP PF/13/0140

The Property: 60, Glencoats Drive, Paisley PA3 1AW

The Parties: –

**MR ESA JAN, residing at 44, Broomhouse Court, Edinburgh EH11 3RN ("the
Homeowner")**

and

**ROSS & LIDDELL, 5, Glasgow Road, Paisley PA1 3QS per Hardy MacPhail, solicitors
5th floor, Atlantic Chambers 45 Hope Street Glasgow G26E ("the Factor")**

Committee Members:

David Preston (Chairman); Scott Campbell

DECISION:

The Committee found that the factors had: not failed to comply with paragraph 2.1 of the Code of Conduct for Property Factors ("the Code of Conduct"); not failed to comply with paragraph 5.3 of the Code of Conduct; failed to comply with paragraph 5.6 of the Code of Conduct; and not failed to carry out the factor's duties as alleged by the homeowner.

BACKGROUND:

1. By application dated 11 October 2015 the homeowner applied to the

Homeowners Housing Panel ("the Panel") to determine whether the factors had failed to comply with the Code of Conduct by breaches of sections: 3.1 (later amended to 2.1); 5.3; and 5.6.

2. The application was accompanied by written representations and the homeowner lodged various documents and copy correspondence in support of his application.
3. By Minute dated 10 February 2016 the President of the Panel intimated her decision to refer the application to the Committee and a hearing was scheduled to take place on 29 March 2016.

Productions:

4. Between the date of the application and the date of referral, the homeowner submitted further documents for the attention of the Committee. Copies of these documents were provided to the factors along with the Notice of Referral.
5. The factors submitted an Inventory of Productions dated 17 March 2016. Due to an administrative oversight the Committee had not been provided with a copy of the inventory or the productions. However, on the basis that it would be directed to the relevant parts, the Committee was content to proceed. The Chairman confirmed with the homeowner that he had received a copy as sent to him under cover of a letter from Mr Ritchie. The homeowner advised that although he had received the letter and the productions, he had not known why it had been sent to him and had not read them. The Chairman confirmed that the homeowner had, nonetheless, had an opportunity to read and consider the productions had he so wished.
6. At the start of the hearing the Chairman directed that the parties should number the homeowner's productions for ease of reference during the hearing. As the documents will be referred to herein, the numbered documents are as follows:
 - i. Application dated 11 October 2015 together with amended Section 7 and 2

- page handwritten note from homeowner.
- ii. Letter from factors dated 19 August 2015.
 - iii. Note addressed "To whom it may concern" dated 6 September 2015
 - iv. Letter from factors dated 24 August 2015.
 - v. Letter from factors dated 27 August 2015.
 - vi. Copy Certificate of "Block" Common Buildings Insurance.
 - vii. Gresham Underwriting Ltd Statement of Facts for Residential Let Property Owners and Property Owners Quotation dated 2 September 2015.
 - viii. Letter from factors dated 8 September 2015.
 - ix. Copy Land Certificate REN73575 in respect of 50 Glencoats Drive, Paisley.
 - x. Copy Statement and Invoice from factors dated 26 October 2015.
 - xi. Letter from factors dated 24 August 2015.
 - xii. Letter from factors dated 4 August 2015.
 - xiii. Letter from factors dated 12 November 2015.
 - xiv. Copy Schedule of Management Information dated 1 June 2015.
 - xv. Homeowner's representations re "Communication & Insurance"
 - xvi. Homeowner's representations re "Vote/Listen".
 - xvii. Copy letter addressed "To whom it may concern" from Alan Curley, 50 Glencoats Drive, Paisley.

Hearing:

- 7. A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 29 March 2016. Present at the hearing were: the homeowner, who represented himself; Mr Brian Fulton, on behalf of the factors, who was represented by Mr Michael Ritchie, Solicitor, Hardy MacPhail, Solicitors, Atlantic Chambers 45 Hope Street Glasgow G2 6AE. Both the homeowner and Mr Fulton gave oral evidence.
- 8. At the start of the hearing the Chairman introduced the Committee and outlined the procedure to be followed during the hearing.

Findings in Fact:

- i. The homeowner purchased the property at auction in December 2014 and was the registered proprietor from 12 December 2014.
- ii. The factors were registered under the Property Factors (Scotland) Act 2011 under reference number PF00196 and had been appointed as Managing Agents for the property in terms of clause Eight of the Deed of Conditions by Scottish Homes registered 15 May 1992. They had remained as Managing Agents from that time until the termination of the factors' appointment on 28 January 2016.
- iii. Following his purchase of the property, the homeowner took no steps to find out who the factors were and made no attempt to contact them to find out any arrangements regarding the factoring. He did not contact the other owners in the block to obtain such information. He did not live at the property which was occupied by a friend before a tenant moved in. He only occasionally visited the property and collected mail. He did not have any arrangement for mail being forwarded to him. Accordingly the Committee found that specific items of correspondence could easily have gone missing.
- iv. The factors became aware of the change of ownership on receipt of the letter from TLT, Solicitors dated 15 May 2015 (factors' production 3) and took steps to contact the homeowner by correspondence addressed to the property to provide full details of their services.
- v. The homeowner raised questions with the factors about the cost of the communal cleaning contract and the factors acted upon the homeowner's request to arrange for the cancellation of the contract. The factors sought to obtain the views of all the proprietors within the block but initially the response did not represent the majority in favour of cancellation. When the homeowner raised further questions, the factors carried out further enquiry and ascertained majority of proprietors being in favour of the cancellation and terminated the contract.
- vi. The factors sent the letter of 4 August 2015 (factors' production 6) to the homeowner, addressed to the property, enclosing the voting mandate.

- vii. The voting mandate was set out in clear terms.
- viii. The homeowner had arranged for his property to be insured from the date of his purchase. He raised questions with the factors as to the cost of the premium and the level of cover. As a result of the homeowner's questions about the level of cover, the factors arranged a review of the insurance provision at the property resulting in an increase in the sum insured from £700,000 to £1 million.
- ix. The factors referred the question of responsibility for the insurance arrangements to their brokers on whose advice they totally relied. They did not provide the homeowner with the basis on which either they or their brokers appointed the insurance provider although they did advise that a significant amount of work had been done at their policy renewal the previous year to review their choice of broker and insurer. This review, however, was the first review known by Mr Fulton to have been carried out.
- x. The factors included information about the commission payable to them by the insurers on the Insurance Certificates issued by them.
- xi. On 12 August 2015 the factors imposed a charge in their invoice of 26 October 2015 in respect of a Sheriff Officers' fee in the sum of £10.18. The homeowner had specifically requested that his account be noted as being in dispute before 6 August 2015 and the factors confirmed by email dated 19 August 2015 that the account was noted as being in dispute until the end of August 2015.

Homeowner's Representations:

- 9. The homeowner said that he had purchased the property at auction in December 2015. He bought the property as seen and was told by the solicitor that he was responsible for any outstanding liabilities etc. He was told that there was a property factor but was not advised of their identity. He did not live in the property and said that he had given a key to a friend who had lived there until a tenant had moved in. He did not know for how long his friend had stayed. The homeowner lives at 44 Broomhouse Road, Edinburgh EH11 3RN. He made no enquiry as to

the identity of the factors and became aware of Ross & Liddell when he collected mail from the flat in May or June. He thought that the mail had been invoices or statements from the factors. He denied that he had received the letter of 1 June 2015 and had not seen the Service Level Agreement. He said that he had telephoned the factor on a number of occasions between June and August and had told them to correspond with him by email. He said that he had advised the factors that he did not live at the property and gave them his address in Edinburgh. At the beginning of August 2015 the homeowner provided his home address to the factors by email. The Committee did not have a copy of the email advising the correspondence address but the email from the factors to the homeowner dated 5 August 2015 (within factors' production 21) refers to the homeowners email of 2 August "...in respect of your recent purchase ..." and notes that: "future correspondence is to be issued by email"; requests an alternative correspondence address; and asks the homeowner to register online for paperless correspondence.

10. The homeowner complained that he had not been contacted by the factors. In particular he complained that he had not been provided with a copy of the factors' Written Statement of Services and when he had requested a copy from Mr Fulton in January 2016, he had been provided with a copy of the Schedule of Management Information and not the Written Statement of Services.
11. The homeowner further complained that he had not been given an opportunity to vote in respect of the cancellation of the cleaning contract. He said that he had not been sent a voting form and that in any event the form was confusing and misleading. He denied having received the factors letter dated 4 August 2015 (factors' production 6). He complained that the factors had given false information about the outcome of the vote. He said that he had been told by phone that there had been 3 forms returned and that only 2 had agreed to the cancellation. He was then told by letter dated 24 August 2015 (factors' production 8) that 3 out of 6 owners had disagreed to the cancellation. He had then spoken to the owners and 4 of them were in favour of cancellation. A letter from the factors dated 12 November 2015 (factors' production 11) then said that 3 mandates had been

returned, 2 of which stated a preference for the original contract to continue, and 1 wishing it cancelled. The homeowner maintained that this information was either false or misleading which was a breach of paragraph 2.1 of the Code of Conduct and was also a failure to carry out the factors' duties..

12. With regard to the insurance arrangements for the property, the homeowner explained that he had put landlords insurance in place from the date he purchased the property at a considerably lower premium than that which was being charged by the factors. He complained that he had questioned the level of premium with the factors. He explained that he had insured the property from the date of his purchase as he was unaware of the factors arrangements or of the insurance provided by them. He had been given advice to the effect that the value of the building would be in the region of £1 million but he maintained that he had been told that the factors insurance was for approximately £600,000. He therefore complained that not only was the premium excessive, but the property was under insured. He was concerned that as a result of the level of under insurance, any claim would have been rejected by the insurers. Following his complaints about the level of insurance the factors arranged insurance for £1 million.
13. The homeowner referred to the insurance details which he had lodged at production 7 which confirmed premium of £875 for cover of £1 million and maintained that a difference of £300 for the cost of premium was excessive and that the factors should have alternative, competitive quotes.
14. The homeowner submitted that this amounted to a breach of paragraphs 2.1 and 5.6 of the Code of Conduct.
15. The homeowner had complained that the factors had failed to provide information about the commission they received from the insurers but when he was referred to final paragraph on the rear of the Insurance Certificates (factors' productions 14 & 15), he accepted that the information was provided but observed that he had not been aware of it previously and would be surprised if any of the other proprietors were aware of the level of commission.

16. The homeowner also complained that the factors had imposed a Collection Fee on 12 August 2015 referred to in the Invoice dated 26 October 2015 (homeowners production 10) which was at the time the account was in dispute. He said that because of the fact that the account had been sent to a debt collector, his credit rating had been affected and he had had a mortgage cancelled.

Factors' Representations:

17. Mr Ritchie referred the Committee to the documentation lodged on behalf of the factors and to the written representations submitted. He also led evidence from Mr Fulton, the factors' Managing Director.

18. Mr Fulton explained that the factors had received the letter dated 15 May 2015 from TLT, Solicitors (factors' production 3) which was the first intimation they had of the homeowners' purchase of the property at auction in December 2014. Following receipt of that letter the factors had sent the letter dated 1 June 2015 (factors' production 4) to the homeowner being a Schedule of Management Information and enclosing their Service Level Agreement.

19. Mr Fulton said that the factors had no record of telephone calls from the homeowner and Mr Fulton advised that the homeowner's details had been put on to their system on 5 August 2015 following his email of 2 August 2015.

20. Mr Fulton referred to productions 5, 26 and 10 being: letter to the homeowner dated 13 July 2015 - an inspection report on the property which had taken place on 25 June 2015; letter to the homeowner dated 4 August 2015 regarding the proposed cancellation of the communal cleaning contract enclosing a voting mandate; and letter to the homeowner dated 8 September 2015 advising that the factors had heard from one owner who had wrongly completed the voting form and who was, in fact, in agreement with the cancellation of the contract which

had resulted in a majority decision to terminate the contract which the factors advised would be ended with effect from 2 October 2015.

21. With regard to the particular issue of the cleaning contract, Mr Fulton advised that the initial letter had been sent to the property which was the only address the factors had for the homeowner as at 4 August 2015. Three of six voting forms had been returned in favour of cancelling the contract which was not a majority. Thereafter, on receipt of the letter from the homeowner dated 6 September 2015 (homeowner's production 3) which indicated that Mr Curley was in favour of cancellation they had made enquiry of Mr Curley (factors' production 9) to clarify his position and when they received his amended vote (factors' production 7) they had implemented the instruction and set about cancelling the contract.
22. In relation to the questions raised by the homeowner about the insurance arrangements, Mr Fulton referred the Committee to the terms of their appointment under clause Eight (Three) of the Deed of Conditions which gave them power to decide on, take out and maintain a common insurance policy for the flats and, at their discretion, make any changes.
23. He advised that Insurance Certificates were issued annually and referred to their production 15 being the insurance certificate from May 2015/May 2016 which was from the time that they had been made aware of the change of ownership. He also referred to the letter of 27 August 2015 (factors' production 20) which advised of an amendment to the sum insured following their review of the policies. He also referred to the insurance certificate at production 14 which covered the period from the review at 31 August 2015/15May 2016. He also referred to productions 17 - 19 being the: Statement of Demands & Needs; the factors Terms of Business; and the Insurance Renewal information which had been sent to the homeowner with the letter of 23 July 2015 (factors' production 16). Mr Fulton also referred the Committee to their production 21 which was an email from the insurance manager, Ms Glendinning, to the homeowner in response to his enquiry about the insurance, explaining the factors' position and providing details of the basis on which the arrangements were made. That email made it clear that the factors proceeded on the advice of their brokers and that

there would be an increase in the sum insured from approximately £700,000 to £1 million which had resulted in a reduction in the annual premium.

24. The factors therefore accepted that the property had been undervalued but Mr Fulton advised that he had never experienced an insurance company rejecting a claim on the basis of under insurance. He advised that an average clause may apply which would result in a claim being paid in part. In answer to questions from the committee, Mr Fulton accepted that this particular review of the level of insurance in August 2015 was the first review which had been undertaken on the property for many years.

Reasons for Findings:

25. The Committee was satisfied from the terms of the correspondence and emails that the factors had taken all reasonable steps to make contact with the homeowner and to advise him of their services. The homeowner had made no effort to identify the factors and while he had visited the property periodically and collected mail he had not taken reasonable steps which would have been open to him to ascertain the identity of the factors or to ensure that mail addressed to him at the property was redirected to his Edinburgh address. The Committee noted that once contact had been established and the homeowner's details had been entered into their system communications had proceeded smoothly.
26. With regard to the cancellation of the cleaning contract the Committee was satisfied for the reasons stated above that the letter of 4 August 2015 (factors' production 6) had been sent to the homeowner at the property and that the factors were not responsible for him not having received it.
27. The Committee was satisfied that the information provided by the factors about the steps taken in relation to the voting and to the subsequent confusion and ultimate termination of the cleaning contract was sufficient to demonstrate that the factors had acted properly and in accordance with their duties.
28. The Committee was also satisfied that the information which had been provided

by them about the results of the vote had been accurate as at the time it was provided and accordingly did not find that any information provided was false or misleading.

29. The Committee found that the homeowner had made a reasonable enquiry of the factors about the cost of the insurance premium when compared with that which he had obtained when he insured the flat at the time of his purchase, even although at that time the building had been insured by the factors for less than 70% of the valuation at which the homeowner obtained cover. The response from the factors by email of 5 August 2015 (factors' production 21) pointed out that "our brokers have secured a premium saving for you, with Mrs Glendenning advising you should seek the advice of your broker regarding the alternative quotation they have provided and ask that they provide a summary of cover differences for you". The Committee was of the view that it was incumbent upon the factors to demonstrate to the homeowner the basis for appointment of insurance provider and details of the cover and calculation of the premium. It is not for the homeowner to obtain and provide such detail. It would have been reasonable for the factors to request that the homeowner provide them with detail of the terms of insurance which he had obtained, which could have been referred to their brokers for a comparison of the cover and an explanation of the comparative levels of premium. However the email from Ms Devenney dated 5 August 2015 stated that the homeowner had been provided with a final response to his concerns regarding the insurance and it was apparent that the factors had no intention of investigating the level of premium any further.
30. Ms Glendenning, the factors' insurance manager, in her email of 19 August 2015 placed total reliance for arrangement of insurance on their brokers. That email states that it goes *some* way to addressing the homeowner's concerns about the level of insurance premiums and explains that there had been a change of broker. It neither explains the reasons for such a change nor the process by which the new broker was accepted. The letter does not give any details as to how and why the insurance provider was moved to Zürich Insurance. It only explained that the factors had confidence in their brokers' knowledge of the

market place.

31. The factors' position was that as Managing Agents in terms of the titles it was for them to determine the sum insured, unless agreed by a majority of owners. The Committee was of the view that the Act superseded the provisions of the titles and took precedence in the requirement as specified in paragraph 5.6 of the Code Conduct to demonstrate how and why the insurance provider was appointed.
32. The email of 29 August 2015 advised that the sum insured was to be increased from £700,000 to £1 million, which was in line with the value which had been suggested by the homeowner. Mr Fulton stated at the hearing that he was not aware of any previous review of the insurance of the property having taken place for many years despite the terms of considering the choice of broker and insurer at least every three years as stated by Ms Glendenning in her email of 29 July 2015 (factor's production 21)
33. The Committee was concerned that the email from the factors to the homeowner of 6 August 2015 referred to the fact that the homeowner had requested that his account be held in dispute and the email of 19 August 2015 confirmed that this was the case until the end of August. However during that period, on 12 August 2015, the factors had levied a charge and imposed a Sheriff Officers' collection fee of £10.18 as reflected in the invoice dated 26 October 2015. The Committee noted that the homeowner claimed that he had been prejudiced by this situation in that his credit rating had been adversely affected and he claimed to have had the offer of a mortgage withdrawn. However this specific issue had not been raised by the homeowner in his application and accordingly the Committee were not in a position to make a formal finding.
34. The Committee was satisfied that, the factors had provided information about the commission received by them.-

PFEO

35. Having found that the factors had failed to comply with paragraph 5.6 of the Code of Conduct, the Committee considered under section 19(1)(b) whether to make Property Factor Enforcement Order.
36. In view of the fact that the factors' appointment had been terminated by the homeowner and the other proprietors in the block, the Committee could not identify any benefit to be derived from the factors being required to execute any action. However the Committee expects, and strongly recommends, that in order to comply with the Code of Conduct, the factors should take cognizance of the Committee's findings as detailed in paragraphs 29 to 33 above and implement organisational procedures accordingly.
37. Accordingly the Committee determined not to make a PFEO.

11-Apr-16

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON