



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011

Hohp ref:HOHP/PF/16/0016

Top Flat, 120 East Princes Street, Helensburgh, G84 7DH ('the Property')

The Parties:

Mrs Anne Walker residing at Top Flat, 120 East Princes Street, Helensburgh, G84 7DH ('the Homeowner')

James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX ('the Factor')

Committee members:

Jacqui Taylor (Chairperson) and Ian Murning (Surveyor Member).

Decision of the Committee

The Committee determines that the Factor has failed to comply with Sections 2.5 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 23rd November 2012.
2. By application dated 11th February 2016 the Homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the Factor had failed to comply with:-
 2. 1: The following sections of the Property Factor Code of Conduct ('The Code'):
 - Section 2: Communications and Consultation.Sections 2.1 and 2.5.

- Section 3: Financial Obligations.
Section 3.3.
- Section 5: Insurance.
Section 5.5.
- Section 6: Carrying Out Repairs and Maintenance.
Section 6.9.
- Section 7: Complaints Resolution.
Sections 7.1 and 7.2.

3. The application had been notified to the Factor.

4. By Minute of Decision by the President dated 23rd February 2016, the President of the Panel intimated that she had decided to refer the application (which application paperwork comprises documents received on 15th February 2016) to a Homeowner Housing Committee ('The Committee').

5. An oral hearing took place in respect of the application on 6th May 2016 at Wellington House, Wellington Street, Glasgow, G2 2XL

The Homeowner appeared on her own behalf and was accompanied by her partner, Terry O'Neil.

The Factor was represented by Deborah Rummens, Operations Director and Graeme Stewart, Technical Manager.

As a preliminary matter the parties explained that the Homeowner had purchased the Property in August 2004, the common parts of the building 120 East Princes Street, Helensburgh are managed by the Factor and they took over the business of the former factors Grant & Wilson on 2nd March 2015. They also explained that the application largely concerned repairs carried out to the Homeowner's Property on by Bizzy Bee Property Maintenance at the end of September 2014, following an insurance claim to RSA. At the time the factors of the Property were Grant & Wilson. As James Gibb Residential Factors took over factoring of the Property on 2nd March 2015 the Committee asked the parties to explain if they considered that James Gibb Residential Factors could be held responsible for the actings of Grant & Wilson in relation to the matters raised in the application.

The Homeowner explained that she considered that James Gibb Residential Factors should be held responsible for the actings of Grant & Wilson as the same individuals were employed by James Gibb Residential Factors.

Debbie Rummens advised that she does not consider that James Gibb Residential Factors should be held responsible for the actings of Grant & Wilson prior to 2nd March 2015. She explained that James Gibb Residential Factors bought the assets of Grant & Wilson and they did not take over liabilities. She explained that when disputes have arisen in relation to matters that pre dated the appointment of James Gibb Residential Factors they have endeavored to

address the issues and provide factual documentation but not have provided financial recompense.

The details of the application and the parties' written and oral representations are as follows:

Section 2: Communications and Consultation.

2.1: 'The Factor must not provide information which is misleading or false.'

The Homeowner's complaint: '*Misleading information has been provided to me on several occasions eg*

- (i) 11/11/14 from Joanne Gordon
- (ii) 10/7/15 from Lorraine Killin
- (iii) 24/7/15

Lack of clarity about what could/would be changed in discussions in late 2014 and early 2015.

Also McGregor All Trades being engaged and coming out to inspect what needed to be remedied in March 2015 gave me false hope that he would actually be engaged to carry out the remedial work.

On 6/1/15 Lorraine Killin said Ian Currie doesn't own Bizzy Bee but I think Joanne Gordon told me verbally he did.'

The Homeowner's oral representations: The Homeowner explained that Joanne Gordon, representative of Grant & Wilson, inspected the works after she complained that they were not of an acceptable standard. Joanne Gordon assured her that another contractor would repair the defects. This position then changed because Ian Currie of Bizzy Bee Property Maintenance would not pay for another contractor do the work.

Factor's written response: '*In email correspondence dated 30th October 2014, Joanne Gordon, Property Manager, gave the Homeowner an opportunity to select new flooring and send it to her at Grant and Wilson and address it to Ian Currie. However the Homeowner was not prepared to do this. In the email of 11th November 2014 the Homeowner was advised by Joanne Gordon that she had requested an alternative contractor to attend and carry out the work to her flat. Joanne Gordon asked if the Homeowner could confirm what day would be suitable. The purpose was to determine any remedial works required, following the works carried out by Bizzy Bee during September 2014. The Homeowner had stated that the work was not satisfactory and she did not want Bizzy Bee to return to her property. Another contractor, McGregor All Trades, then contacted her and attended the property to assess the works required, as stated in their email. In the email of 10th July 2015 Lorraine Killin, Customer Service Administrator, Lorraine Killin explained that they had been trying to arrange for an alternative contractor to carry out remedial work, following the Insurance Reinstatement work carried out by Bizzy Bee, as she had stated that she did not want Bizzy Bee to return to the flat. Grant and Wilson advised that the matter had been discussed with Bizzy Bee and Bizzy Bee had verbally agreed to pay the cost of any remedial works required. Grant and Wilson confirmed this, despite a verbal assurance from Bizzy Bee, they had not subsequently provided funds to McGregor All Trades, and as a result of this, McGregor all Trades were not*

in a position to carry out any work. Grant and Wilson also confirmed that no work could be carried out until funds had been provided by Bizzy Bee, and that they would continue to pursue Bizzy Bee in this regard.

We cannot agree that either piece of correspondence was misleading or false. To address your concerns with the quality of the work you believed Bizzy Bee had carried out, you were given the opportunity to instruct a contractor of your own choice, and send Grant and Wilson the invoice for settlement. An alternative contractor did attend your flat to assess what remedial work was required. You were advised of the reasons that the alternative contractor could not be instructed, and Grant & Wilson did continue to pursue Bizzy Bee for funds, in an effort to facilitate an alternative contractor to carry out remedial works.'

The Factor's oral representations: Graeme Stewart explained that the information provided was correct at the time. What had originally been agreed to by Bizzy Bee contractors was rescinded and this was explained in the correspondence.

2.5: 'You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).'

The Homeowner's complaint: '*Various emails have been ignored (not responded to within 7 working days, as the Factor contracts to).*

On 24th July 2015, Deborah Rummens said that an agreement had been reached for the initial contractor to release funds to the second contractor, McGregor All Trades, and that it wouldn't take longer than 2 weeks. However I'd heard nothing until I had to contact them on 26th August 2015 (please see emails appendix page 52).

Joanne Gordon ignored the emails I sent on:

13th November 2014

25th November 2014

24th April 2015 and

21st May 2015

The last email I sent to Joanne on 13th November 2014 was ignored thereafter. Please see emails appendix page 67 and 68.

Joanne also didn't contact me the week of 12th January 2015 as Lorraine Killin promised (please see emails appendix page 24).'

Factor's oral representations: Graeme Stewart confirmed that the emails of 13th & 25th November 2014 and 24th April 2015 and 21st May 2015 had not been replied to. In connection with Debbie Rummens' letter of 24th July 2015 Debbie explained that she had understood that the contractors would be in touch with the Homeowner direct.

Section 3: Financial Obligation.

3.3 'You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection and copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.'

The Homeowner's complaint:

'I've never received a breakdown of invoices from Bizzy Bee, despite querying the value of their work/materials many times. I've mentioned this in my complaints of 3/12/14, 19/6/15 and 17/7/15. I am suspicious if Ian Currie of Bizzy Bee used to be employed by Grant & Wilson, and have always maintained the work couldn't have cost anywhere near the £2870 claimed, so I feel I've been defrauded out of at least £1000 that should have come to me/my property via the insurers. I feel this money could have been siphoned off by Ian Currie and/or the factors. There seems to be little clarity of accountability. If invoices are produced. I'm not sure I'd trust them, as surely these can themselves be manipulated.'

The Homeowner's oral representations: The Homeowner emphasized that she is at a loss to understand how it could cost more than £1000 to complete the work. She explained that three men employed by Bizzy Bee attended at her property and worked for half a day. The materials used were in her opinion very cheap and not like for like. The Homeowner confirmed that she had not specifically asked the Factor to provide a more detailed breakdown.

Factor's written response: *'Common charges invoices are issued to all clients on a quarterly basis. Confirmation of the cost of the insurance reinstatement work was included in your November 2014 Common Charges invoice. The cost of reinstatement was noted as £2870, and the insurance settlement towards the cost of this was advised as £2520.'*

On checking the correspondence Grant & Wilson received, we can see that you have stated, in your own opinion, that the cost of the work should have been approximately £1000. We can confirm that the contractor provided an invoice in the sum of £2870. This invoice was submitted to, and accepted by, the Buildings insurer. We are not aware of any request to see the contractor's invoice, however we have enclosed a copy of the invoice for your reference.'

The Factor's oral representations: Graeme Stewart explained that he had not been asked by the Homeowner to provide a copy of Bizzy Bee's invoice before she lodge her application to the HOHP. However a copy of the invoice was provided with his letter dated 5th February 2015. The invoice provided by Bizzy Bee would have been sent to the insurance company and if they required further verification they would have asked for it.

SECTION 5: INSURANCE

5.5 'You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.'

The Homeowner's Complaint: *'I have not been kept informed of the process of my claim/remedying of the work, nor was I offered the chance to have the work done myself. I*

was never given a choice of contractor, having to trust the choice by the Factor (whom I pay to do this for me). I have had frequently had to chase the state of play with the Factor rather than them contacting me.'

The Homeowner's oral representations: At the hearing the Homeowner explained that she wished to withdraw this part of the application.

SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

6.9 'You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.'

The Homeowner's Complaint: '*The Factor has only pursued the contractor to redo the work themselves, not for them to pay for another contractor, and the Factor has not paid themselves from another contractor to remedy the work then claim it back from Bizzy Bee. Although Bizzy Bee had agreed verbally, they have now refused to release money, and the Factor refuses to take this further with them.'*

The Homeowner's oral representations: The Homeowner explained that the defects have still not been rectified. The works were completed by Bizzy Bee on 30th September 2014. She phoned Grant and Wilson the next day to complain about the standard of work. Joanne Gordon inspected the works on 17th October 2014 and described them as 'a disaster'. The Homeowner explained that there are defects in the kitchen, bathroom and hall. Nails are poking through the laminate flooring which is of a poor quality, in the bathroom the boards are not flat, in the hall the flooring has not been sealed and you can feel the heat of the pipes below. There is also a level difference between the hall and dining room and a threshold strip had been installed to disguise the defect.

Factor's written response: '*The contractor was contacted immediately, when Grant & Wilson were advised you were not satisfied with the work that was carried out. The Property Manager met with the contractor in Grant & Wilson's office, and the owner of Bizzy Bee was surprised to be told that there was an issue with the reinstatement work. The contractor was willing to return to the Property, but you clearly advised that you did not want the original contractor to return. In an effort to attempt to remedy the situation, and make every effort to assist you, Grant & Wilson arranged for a third party contractor to attend to inspect the reinstatement work. Grant & Wilson received a verbal agreement from Bizzy Bee that they would pay the cost of any remedial work that was required. The Property Manager informed you of this, and that the third party contractor would only be able to carry out the remedial work if they were provided with funds by Bizzy Bee. Grant & Wilson contacted Bizzy Bee on a number of occasions, requesting that funds be provided, and were told that they would be.*

We last contacted them on 9th October 2015 asking that they arrange for the work to be carried out directly with the third party contractor, within one month. Bizzy Bee then contacted us to advise that they were willing to return to your property, and that they no longer believed it was appropriate to have a third party contractor attend the property at their cost, when they were willing to return themselves. We notified you of this on 6th November 2015, and asked if you would be willing to allow Bizzy Bee the opportunity to rectify matters. You returned to us on 8th November 2015 to advise that you did not want Bizzy Bee to return to your property. You acknowledged you had been asked this before, and reiterated you would not allow Bizzy Bee

to return to rectify matters. We confirm that the only reason the contractor had not returned to carry out remedial work, was because of your refusal to have Bizzy Bee return to rectify matters.

We confirm that the only reason the contractor had not returned to carry out remedial work, was because of your refusal to have Bizzy Bee return. Grant and Wilson gave you the opportunity to instruct a contractor of your own choice and forward the invoice to them addressed to Bizzy Bee, which you refused. They tried to arrange for a third party contractor to attend, and for Bizzy Bee to pay the cost of any work to be carried out by the third party contractor. Grant & Wilson had received a verbal agreement from Bizzy Bee, continued to try to have them pay the third party contractor, until eventually Bizzy Bee withdrew the offer to pay for another contractor to attend.

We confirm that the contractor was actively pursued, did agree to return to the property, but you refused to allow the contractor to return. We subsequently had to advise you, on 19th November 2015, as you would not allow Bizzy Bee to return, that all alternatives had been exhausted.'

The Factor's oral representations: Graeme Stewart explained that it is standard practice for the Factor to contact the contractor if there have been defective works carried out and give the contractor an opportunity to rectify the defects. A stalemate had been reached as Grant and Wilson had pursued the original contractor. He had agreed to remedy the defects but the Homeowner refuses to allow them access to her property. He confirmed that the annotation on the copy invoices that had been produced showed that Grant and Wilson had paid the contractor by BACS on 31st October 2014.

Deborah Rummens explained that Ian Currie of Bizzy Bee has the biggest obligation in relation to this matter. His obligation is to repair the defective works. Debbie explained that any new contractor would be doing the remedial works as a favour. Ian Currie originally said he would pay for another contractor to do the required remedial works but subsequently withdrew this offer. As Ian Currie has offered to carry out the remedial works there is nothing further they can do.

SECTION 7: COMPLAINTS RESOLUTION

7.1 'You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.'

The Homeowner's Complaint: '*The Factor seems to have no specified procedure re complaints against contractors.*'

Factor's written response: '*We confirm we do have a written complaints procedure, which links to the information already provided in our written statement of services. A copy of James Gibb Residential Factors complaints handling procedure is enclosed, but we do not have a historic copy of Grant & Wilson's complaints handling procedure, as all Grant & Wilson branded documentation was disposed of during the rebrand of the business to James Gibb Residential factors during August 2015.*'

Decision

This head of complaint is not upheld.

Bizzy Bee had been pursued by both James Gibb Residential Factors and Grant and Wilson to remedy the defective works. The Committee sympathized with the Homeowners position and were surprised that Grant and Wilson had paid the contractor's account after becoming aware that the works had not been satisfactorily carried out. However James Gibb Residential Factors could not be held responsible for this as this matter predated the date they commenced factoring the Property. Ian Currie of Bizzy Bee had confirmed to both Grant and Wilson and James Gibb Residential Factors that he would carry out the required remedial works. However, in terms of the Code of Conduct there is no requirement for the Factors to instruct a different contractor to carry out the remedial works when the original contractor is prepared to do the required works and the failure in the works being completed is due to the Homeowner refusing to allow the access required.

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Decision.

This head of complaint is not upheld. The Factor's Written Statement of Services includes their complaints procedure.

Property Factor Enforcement Order.

In all of the circumstances narrated above, the Committee finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act to comply with the requirements of the Code of Conduct in respect of section 2.5 of the Code of Conduct.

The Committee therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Committee to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Committee.

The Committee proposes to make the following Order:

'The Factor must pay the homeowner £ 75 for the inconvenience she had suffered from their own funds and at no cost to the owners.'

'The said sum to be paid within 2 months of the date hereof.'

Appeals.

The parties' attention is drawn to the terms of section 21 of the 2011 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 a period of 21 days beginning with the day on which the decision appealed against is made.'

Chairperson