

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

hohp Ref: HOHP/PF/13/0300

Re: **Property at Flat 2/2, 18 Montague Street, Glasgow, G4 9HZ (collectively
“the Property”)**

The Parties:-

**Mrs Urmila Malhotra, 251 Great Western Road, Kelvinbridge, Glasgow, G4 9EG (“the
Applicant”)**

Walker Sandford, 5 St Vincent Place, Glasgow, Glasgow, G1 2DH (“the Respondent”)

Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Maurice O'Carroll (Chairman) and Brenda Higgins (Housing Member)

Decision of the Committee

The Respondent has failed to comply with its duties under s 14(5) of the 2011 Act.

The decision is unanimous.

Background

1. By application dated 9 September 2013, the applicant applied to the Homeowner Housing Panel for a determination of whether the respondent had failed to comply with the duties set out in sections 2.2, 3.3 and 4.9 of the Code of Conduct imposed by section 14(5) of the 2011 Act.

2. On 15 October 2013, the Applicant submitted an amended application. The amended application specified alleged breaches in terms of sections 2.1, 2.2, 2.5, 3.1, 3.2, 4.1, 4.3, 4.8, 4.9, 7.1 and 7.2 of the Code. The amended application was permitted, intimated to the Respondent, and formed the basis of the hearing into the complaint by the Applicant.

3. By application dated 27 June 2013, subsequently amended on 14 October 2013, the Applicant complained to the HOHP in identical terms (following amendment of each application) in relation to a property owned by the Applicant and managed by the Respondent at Flat 1/2, 91 Sanda Street, Glasgow. Due to the considerable factual overlap between the two complaints, they were both conjoined for consideration by the Committee to the Homeowner Housing Panel. The Sanda Street application was allocated case reference PF/13/0235 and this decision requires to be read in conjunction with the decision in relation to that property.
4. By letter dated 23 December 2013, the President of the Homeowner Panel intimated a decision to refer the application to a Homeowner Housing Committee. A notice of referral was served on both parties as at that date. An intimation on the same date was made to both parties in relation to the Sanda Street property referred to in the preceding paragraph.
5. A hearing before the Committee was set down for 7 March 2014 within the Europa Building, Argyle Street, Glasgow in respect of both applications. This decision relates only to the hearing in relation to the Montague Street property under HOHP reference PF/13/0300. A decision in relation to the Sanda Street property under reference PF/13/0235 has been issued under separate cover of even date.
6. By letter dated 26 January 2014, the Respondent sought to have the application to the HOHP dismissed on the basis that the factoring services in relation to the property ceased during 2009. Accordingly, it was argued that as the Property Factors (Scotland) Act 2011 which came into force on 1 October 2012 and did not have retrospective effect, the HOHP Committee did not have jurisdiction to hear the application.
7. Following service of the Notice of Referral and respondent's representation, a Direction was issued dated 20 February 2014. The Direction indicated that the hearing set down for 7 March 2014 would be convened to hear the challenge to the Committee's jurisdiction. Thereafter, if the challenge were not to be successful, the Direction indicated that substantive evidence further to the application would be heard from both parties. The Direction also required that the Respondent lodge copies of all invoices and other documents which constituted and vouched the sum of £1482.09 which it claimed was due to it by the Applicant.
8. In response to the Direction, both parties submitted productions. The Respondent timeously complied with the requirement regarding invoices set out in the Direction and did so on 5 March 2014. The Applicant submitted her own copies of invoices and items of correspondence in three separate bundles received on 5 and 6 March 2014.

9. The hearing duly proceeded as arranged at Europa House, 450 Argyll Street, Glasgow on 7 March 2014. The Applicant did not appear but was represented by her husband, Mr Yoginder Malhotra and Mr Michael Rourke. Mr Rourke made submissions in relation to the jurisdiction determination, whereas Mr Malhotra gave evidence in relation to the application itself. The Respondent appeared and was represented by Mr Paul McGonagle, who gave the sole evidence on their behalf, and also by Ms Carolyn Moore, solicitor with Messrs Peacock Johnston who made submissions in relation to the jurisdictional issue. Both parties were asked questions by the Committee members in relation to the documents submitted prior to the hearing and also arising from the evidence given at the hearing itself.

Preliminary determination on jurisdiction

10. The jurisdiction of the Committee to entertain the complaints in relation to factors' duties arises from the date of 1 October 2012 and in relation to compliance with the Code from the date of the Respondent's registration as factors which was 1 November 2012. It was argued on behalf of the Respondent that the jurisdiction of the Committee cannot apply retrospectively and that it was contrary to the principles of natural justice (sic) for the Committee to make any findings in relation to legislation which was not in place at the time of the events complained of. The Respondent does not currently have any duties in relation to the Property. They could not, for example, enter onto the Property in order to carry out works on behalf of the owners in the common stairwell nor demand payment for such works as their factoring services ended in 2008.
11. Regulation 28 (1) of the Homeowner Housing Panel (Application and Decisions)(Scotland) Regulations 2012 ("the 2012 Regulations") provides "subject to paragraph (2), no application may be made for the determination of whether there was a failure before 1 October 2012 to carry out the property factor's duties." Regulation 28(2) provides that the committee "...may take into account any circumstances occurring before 1 October 2012 in determining whether there has been a continuing failure to act after that date."
12. The phrase "may take into account" indicates that it is a matter of discretion on the part of the Committee, the extent to which they choose to take into account matters and circumstances occurring before the commencement date of the 2012 Regulations of 1 October 2012 in determining whether they find that there is a failure to comply with factors' duties after that date.
13. A Notice of Potential Liability ("NPL") had been registered against the Property by the Respondent on 11 September 2007 in respect of charges which it alleged were due by way of common factoring services. That Notice was renewed on 22 April 2009 and again on 19 March 2012. It was observed that the latest NPL had been registered prior to the entry into force of the 2011 Act. However, it was a

matter of agreement that it was still extant as at the date of the hearing, since it was only due to expire on 18 March 2015.

14. For the Applicant, Mr Rourke argued that the NPL had continuing effect and constituted an ongoing legal relationship as Factor and Homeowner between the parties. It was a continuing assertion of the relationship of factor and homeowner and provided an ongoing security for the alleged debt in relation to common charges further to that relationship. The Committee also had regard to Mr Rourke's letter dated 5 September 2013 in relation to this issue.
15. Having heard the parties' submissions, and having been persuaded that a formal determination was necessary prior to the hearing of any evidence, the Committee adjourned to consider the Respondent's preliminary objection in relation to jurisdiction. It determined as follows:
16. It was accepted that the complaint was concerned with a historic debt from 2007 to 2009. It was also accepted the Respondent was not presently providing factoring services to the Applicant. However, in terms of s 13 of the Tenements (Scotland) Act 2004, a NPL may only be registered by the owner of a flat, the owner of another flat in the same tenement and by a manager. The Respondent as factor falls into the latter of these limited categories. It is only by virtue of that status that they are entitled to register a NPL in security of "relevant costs" (broadly, communal maintenance works) as that term is defined in s 11(9) of the 2004 Act.
17. It appeared to the Committee that the Respondent cannot seek to have matters both ways. They sought at one and the same time to assert that they were no longer factors of the Property and yet continued to benefit from an ongoing statutory security over the Property in relation to communal works by virtue of registering the NPL as factors. In that regard, a NPL can be distinguished from ordinary diligence as part of a court process involving a debtor and creditor. It was conceded on behalf of the Respondent that, in order to register the NPL, it would have required to represent to the Keeper of the Registers of Scotland that it was doing so in its capacity as property manager (i.e. factor). That concession was undoubtedly correct, albeit reluctantly made, as the Keeper would have been obliged by statute to refuse the application for registration otherwise, as it would not have been competent under the Act.
18. The Committee was therefore of the view that it had jurisdiction to hear the present application by reason of Regulation 28(2). Although the conduct complained of occurred prior to the entry into force of the Act, the registration and subsequent renewal of the NPL constituted a continuing assertion, with legal effect, of the relationship between the parties as factor and homeowner. The position applied *a fortiori* the Sanda Street property, given that the latest renewal of the NPL post-dated the entry into force of the Act. However, it also applied to the Montague Street property since the NPL remained extant and in force

following that date as a result of the renewal by the Respondent in March 2012. Given that the NPL was registered in respect of charges which are currently in dispute and the subject-matter of the application, their imposition and the continued demand for payment of them potentially constitutes ongoing conduct involving a failure to comply with the factors' duties to the present day.

Committee Findings

Having determined that it had jurisdiction to hear the application, the Committee made the following findings after hearing the evidence of both parties pursuant to Regulation 26(2)(b)(i) of the 2012 Regulations:

19. The Applicant is the heritable proprietor of the Property which is known as and forming flat 2/2, 18 Montague Street, Glasgow, G4 9HX, registered in her name under Title number GLA83404 on 7 January 1999. The Property is a flat dwelling within a tenement at that address and, in common with seven other tenement proprietors, subject to common burdens regarding communal maintenance and insurance.
20. The Respondent was the property factor responsible for the repair, maintenance and insurance of the common parts of the common stairwell at the Property. Their appointment as factors subsisted from approximately April 2007 until April 2009, although there was a hiatus of approximately five months between June and October 2008 when they were dismissed as factors but subsequently re-engaged by a majority of proprietors in the tenement. The Committee had sight of a letter dated 23 February 2008 from the proprietors of the Property addressed to the Respondent purporting to terminate their services on 1 April 2008. That was replied to by letter dated 13 March 2008 wherein the Respondent indicated that in terms of the management contract, the three month notice period meant that their services would terminate on 15 May 2008. Mr McGonagle provided evidence that their contract was reinstated commencing October 2008 in order to ensure that essential services were maintained in respect of the block, which was accepted. The renewed contract was marked by a suffix "II" on the account number on invoices supplied after that date.
21. The Respondent was under a duty to comply with the Code of Conduct in terms of s 14(5) of the 2011 Act from the date of its registration as property factor which was 1 November 2012. Prior to that date, its duties were as summarised in the burdens section of the Disposition in favour of the Applicant as set out in Entry Number 2 of Title Sheet GLA83404 referred to above. In terms of those duties, the Respondent was appointed to fulfil the obligations on the common proprietors to repair, maintain and insure the common parts of the tenement block.
22. The Respondent's written statement of services was not provided to the Committee prior to the hearing. It was, however, agreed that their standard terms included a provision for the charging of 2.5% interest on all overdue invoices and

a three month period of notice was required prior to the termination of their factoring services.

23. Further to the Direction referred to above, the Respondent provided the invoices which it claimed vouched the £1482.09 was due to it by the Applicant at the time the factoring services ceased in April 2009. The invoices were sent monthly on the 15th of each month, with an additional one being sent at the end of each month by way of "gentle reminder" when sums were still outstanding.
24. The Committee heard evidence from Mr McGonagle regarding the factoring invoices over the Property. Unlike the invoices in relation to the Sanda Street property, the ones in relation to Montague Street were less easy to make sense of regarding ascertainment of when and how the dispute between the parties set in. A letter from the Applicant to the Respondent dated 20 September 2007 disputes payments in relation to water ingress, claiming that they ought to have been the subject of a claim on the communal insurance policy. Reference is also made in that letter to cheques having been sent to the Respondent but which were not acknowledged, repeating the pattern of events in relation to the Sanda Street application. There is also the controversy regarding the dismissal and reinstatement of the Respondent as factors referred to above which has potentially caused confusion over the correctness or otherwise of the invoices rendered.
25. With that said, the earliest of the invoices provided by the Respondent was for May 2007, which was in fact handed over on the morning of the hearing itself. Even that was not the earliest point of reference as a balance of £131.28 was carried forward from a previous invoice. Moreover, that amount was shown in the top right hand corner as having been cleared leaving a nil balance and yet the remainder of that same invoice includes two late payment charges of £15 being made. More confusion was introduced by the fact that while cheque payments from the Applicant were refused by the Respondent (on the basis that they did not settle the whole amount stated to be due), they nonetheless had no option but to accept part payments made by way of bank giro as they simply appeared in their bank account. Moreover, while the Applicant did not pay late payment and interest charges considering them not to be due, she also did not pay certain uncontroversial charges connected with communal expenses. Bank giro payments for approximately £35 were paid by the Applicant on several occasions which did not tie up with certain uncontroversial amounts charged.
26. Adding up all of the late payment charges, interest, legal expenses and charges under the Late Payment of Commercial Debts Act 1998 plus VAT, the total amount charged to the Applicant was £1,285.08 over the period of the invoices. That sum was added to the final invoice under the new reference in April 2009 giving the total of £1,482.09 claimed. The difference between the two amounts representing what the Committee has considered to be uncontroversial amounts due is £197.01.

27. While the Committee had greater sympathy with the Respondent in this case than it did in the Sanda Street application (which is reflected in the Property Factor Enforcement Order proposed in each case), it nonetheless considered that such charges were unreasonable and excessive. They should not have been allowed to increase over a period of two years without some form of intervention such as a meeting taking place whereby the disputed invoices could have been resolved, notwithstanding the non-payment of the uncontroversial communal charges. It further considered that it was unjustified and disproportionate in the circumstances for the Respondent to have registered a NPL against the property and separately, to have raised legal proceedings as discussed below.
28. As noted in the related Sanda Street application, on 23 August 2007, the Respondent raised three small claims court actions at Glasgow Sheriff Court against the Applicant. The subject-matter of those claims was factoring debts in respect of flat 1/2 Sanda Street, flat 2/1 Sanda Street and 18 Montague Street. The statement of claim provided to the Committee related to Flat 2/1 with which this complaint is not concerned. However, it is clear from the Sheriff's Note following a hearing on 7 February 2008 that he considered all three claims together, including the one relating to the Property. The result of that claim was a decree of absolvitor with expenses of £70 being made against the Respondent in each case. Despite decree of absolvitor having been granted of consent, the Respondent sought to appeal the Sheriff's decision to the Sheriff Principal. On 15 July 2008, the Sheriff Principal granted leave for the appeal to be withdrawn by the Respondent and granted a further award of expenses of £136.16 in favour of the Applicant. The Committee accepted that neither award of expenses has been obtempered by the Respondent in either case. More importantly, the abortive Sheriff Court action and appeal in relation to the Property demonstrate in the view of the Committee an entirely inappropriate and disproportionate response to a relatively small underlying debt of approximately £200 in the present case.
29. In relation to the invoices lodged in both cases, Mr McGonagle explained in his evidence that the £15 charges had been applied to the Applicant's account every time a reminder letter (for sums overdue) had been sent out. He also considered that the 1998 Act permitted a £40 fixed sum in terms of section 5A to be levied for every outstanding invoice issued. However, he fairly conceded that the Respondent did not adopt such a process any more and that they do not now apply charges "with anything like that frequency." It was therefore accepted by the Respondent that the number of late payment charges and fixed sums applied could be limited in the exercise of its own management discretion.

Discussion of findings against alleged breaches of the Code

30. The relevant elements of the Code relied upon by the Applicant are outlined below:

- "2.1 You must not provide information which is misleading or false.
- 2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).
- 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 and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.
- 3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).
- 3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.
- 4.1 You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.
- 4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive.
- 4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.
- 4.9 When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.
- 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.
- 7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel."

33. *Breach of section 2.1 of the Code*

The allegation from the Applicant was that the Respondent had made a misleading statement to the Keeper regarding its status as manager for the purposes of registering a NPL. From the title deeds it can be noted that the narration in respect of the NPL registered on 22 April 2009 refers to the Respondent as "property managers." The following entry in relation to the NPL

registered on 19 March 2012 designs the Respondent by name with no specific descriptor.

As noted above, it has been accepted by the Respondent that in registering the NPL, they represented to the Keeper that they were doing so as property managers of the Property. Given the determination made in relation to the preliminary objection, the Committee has accepted that to have been a truthful statement but with the consequence that it accords the Committee with the necessary jurisdiction to hear the application.

Another issue which arose was whether the NPL could be employed to secure all of the factoring debts stated to be due, including the late payment charges and fixed sums. The NPL itself narrates "costs relating to maintenance work, described therein [i.e. the title deeds] as common repair and maintenance work, common insurance premium, management and administration charges" without any further specification. The "relevant costs" in terms of s 11(9) of the Tenements (Scotland) Act 2004 includes a share of the costs by virtue of the management scheme, which would include management charges. Section 1(1) of the Late Payment of Commercial Debts (Interest) Act 1998 provides that it is an implied term that a qualifying debt under the Act includes simple interest on late payments. Section 5A(3) provides that the obligation to pay a fixed sum shall be treated as part of the implied term referred in s 1(1). It therefore appears legitimate in principle to register a NPL for payment of management charges, plus interest and fixed sums under the 1998 Act as well as for common repairs and insurance costs. Whether those charges are in fact justified is another matter.

In any event, in relation to this issue also, the Committee does not find that the Respondent provided information which was misleading or false. There was accordingly no breach of section 2.1 of the Code by the Respondent.

34. *Breach of section 2.2 of the Code*

The Committee is of the view that the Respondent's actions post the date of their registration (1 November 2012) amounts to a breach of section 2.2. It finds that the registration of the NPL in the circumstances to have been unjustified and amounted to a serious act of intimidation towards the Applicant over a lengthy period of time.

35. *Breach of section 2.5 of the Code*

The Committee is of the view that the Respondent's actions post the date of their registration do not amount to a breach of section 2.5. The only substantive correspondence between the Applicant and the Respondent after 1 November 2012 was notification of the complaint by pro forma letter dated 7 September 2013 further to the obligation contained within s 17(3) of the 2011 Act (in relation to the initial application). That notification resulted in a letter dated 7 October 2013 from the Respondent refuting the claim, stating that the 2011 Act did not

apply and pointing out that the Respondent had not acted as factor since February 2009.

While the content of that response was incorrect, it was sent within a prompt timescale and addressed itself to the complaint made. Accordingly, there was no breach of section 2.5 of the Code.

36. *Breach of section 3.1 of the Code*

As the factoring arrangement was terminated in April 2009, the duty to provide financial information upon termination under the Code does not apply. Accordingly, there has been no breach of section 3.1 of the Code.

37. *Breach of section 3.2 of the Code*

As noted in respect of the preliminary determination, certain consequences of the original factoring arrangement subsisted beyond 1 November 2012 by reason of that contract. These are in respect of the sheriff court expenses which were incurred as a result of the abortive attempts by the Respondent to enforce a debt which it alleged was due under the factoring contract between the parties.

The Committee was therefore of the view that there is a breach of section 3.2 of the Code with the result that the Applicant is entitled to a payment of the £70 of expenses in respect of the Sheriff Court action and the expenses of £136.16 awarded by the Sheriff Principal. From that should be deducted the outstanding debts in respect of what has been termed above as uncontroversial charges amounting to £197.01, providing an overall total due to the Applicant of £9.15. This will form part of the Property Factor Enforcement Order to follow this decision.

38. *Breach of section 4.1 of the Code*

As the factoring arrangement was terminated in April 2009, the duty to provide a written debt recovery procedure under the Code does not apply. Accordingly, there has been no breach of section 4.1 of the Code.

39. *Breach of sections 4.3, 4.8 and 4.9 of the Code*

As noted above in paragraphs 26 and 27, the charges applied to the late payments in this case were clearly unreasonable and excessive. Further, as noted in paragraph 28, legal action was taken inappropriately without taking reasonable steps to resolve matters, such as by having a face to face meeting with the Applicant. This resulted in the Applicant suffering substantial inconvenience and distress in resisting an action and subsequent appeal which ought never to have been raised in the first place.

As noted above in relation to the breach of section 2.2, the registering of a NPL amounted to intimidatory conduct. Moreover, the Committee considered that the registering of the NPL was an exorbitant means of enforcing what was at root a minor debt of approximately £200 and which has had a long term effect on the

Applicant's property. The Keeper of the Registers of Scotland has confirmed to the HOHP that there is no statutory basis for a discharge process to effect removal of a NPL from the register even where the underlying debt obligation has been satisfied.

In terms of s 13(3) of the Tenements (Scotland) Act 2004, a NPL expires after three years unless renewed. It is not the Keeper's policy to remove a NPL from the register until that period has expired. However, she will take account of a letter discharging the obligation or a non-statutory discharge. Where the terms of a letter or non-statutory discharge are sufficiently clear the Keeper may add a note to the relevant entry in the burdens section of the title sheet to indicate that there is no debt attaching to the NPL. This advice will be reflected in the Property Factor Enforcement Order to follow this decision.

All of the actions under this heading had consequences which subsisted beyond 1 November 2012 and until the date of the hearing. The committee therefore finds that the Respondent has breached sections 4.3, 4.8 and 4.9 of the Code.

40. *Breach of sections 7.1 and 7.2 of the Code*

As the factoring arrangement was terminated in April 2009, the duty to provide a clear written complaints procedure within the written statement under the Code does not apply. Accordingly, there has been no breach of section 7.1 of the Code.

However, in terms of section 7.2 of the Code, the Respondent could still yet have sought to resolve the dispute with the Applicant by way of its in-house complaints procedure after 1 November 2012 in an attempt to avoid the complaint being heard before the HOHP.

The Committee saw no evidence of any in-house complaints procedure being applied or of any final decision having been confirmed by senior management before the Applicant was notified of that in writing. Accordingly, it finds that the Respondent has breached section 7.2 of the Code.

Decision

41. In all of the circumstances narrated above, the Committee finds that the Respondent has failed in its duty under s 17(1)(b) of the 2011 Act to comply with the requirements of the Code in respect of sections 2.2, 3.2, 4.3, 4.8, 4.9 and 7.2.

It has therefore determined to issue a Property Factor Enforcement Notice which will follow separately.

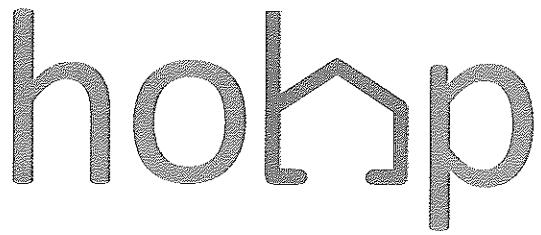
42. Appeals

The parties' attention is drawn to the terms of s 22 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 a Homeowner Housing Committee; (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made..."

Maurice O'Carroll

Signed
Chairperson

Date 31 March 2014



Notice of Property Factor Enforcement Order

hohp Ref: HOHP/PF/13/0300

Re: **Property at Flat 2/2, 18 Montague Street, Glasgow, G4 9HZ (collectively "the Property")**

The Parties:-

Mrs Urmila Malhotra, 251 Great Western Road, Kelvinbridge, Glasgow, G4 9EG ("the Applicant")

Walker Sandford, 5 St Vincent Place, Glasgow, Glasgow, G1 2DH ("the Respondent")

Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Maurice O'Carroll (Chairman) and Brenda Higgins (Housing Member)

This Notice should be read in conjunction with the Decision of even date under reference HOHP/PF/13/0300

1. By decision of even date with this notice, the Committee determined that the Respondent had breached its duties in terms of s 17(1)(b) of the 2011 Act in that it had failed to comply with sections 2.2, 3.2, 4.3, 4.8, 4.9 and 7.2 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the respondent has failed to carry out the property factor duties, the Committee must make a Property Factor Enforcement Notice. Before making an order, to comply with s 19(2) of the Act, the Committee before proposing an order must give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Committee.
3. The intimation of this decision to the parties should be taken as notice for the purposes of s 19(2)(a) and the parties are hereby given notice that they should ensure that any written representations which they wish to make under s 19(2)(b) must reach the Homeowner Housing Panel's office by no later than 14 days after the date the decision is intimated to them.

4. If no representations are received within that timescale, then the committee will proceed to make a Property Factor Enforcement Notice in the following terms without seeking further representations from the parties.
5. Therefore, the Committee propose to make the following Property Factor Enforcement Order:

Within 28 days of the communication to the respondent of the Property Factor Enforcement Order, the respondent must:

1. Issue an apology to the Applicant in respect of the Respondent's various failures which amounted to breaches of the Code, in particular addressing the levels of distress and inconvenience this has caused the Applicant and her husband.
2. Make a payment to the Applicant of the sum of £9.15 in respect of unpaid expenses due following proceedings in Glasgow Sheriff Court, under deduction of legitimate sums due for past factoring services.
3. Remove all charges on the Applicant's account and provide to her a final account showing a nil balance due by the Applicant.
4. At its own expense, carry out all steps necessary to draft and register with the Registers of Scotland a non-statutory discharge or letter in unambiguous terms discharging in full the alleged obligation underlying the extant Notice of Potential Liability registered against the Applicant's property.
5. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.

6. Appeals

The parties' attention is drawn to the terms of s 22 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 a Homeowner Housing Committee; (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made..."

Maurice O'Carroll

Signed
Chairperson

Date 31 March 2014