



**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/14/0133**

**Re:**

**21 Homeshaw House, Broomhill Gardens, Newton Mearns, G77 5HP ('the Property')**

**The Parties:**

**Miss Elizabeth Patterson residing at 21 Homeshaw House, Broomhill Gardens, Newton Mearns, G77 5HP ('the homeowner')**

**Bield Housing and Care, Craighall Business Park, 7 Eagle Street, Glasgow, G4 9XA ('the factor')**

**Committee members:**

**Jacqui Taylor (Chairperson), Andrew Taylor (Surveyor Member).**

**Decision of the Committee**

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has:

- (a) Complied with the property factor's duties in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') and
- (b) Complied with the Code of Conduct for property factors, as required by section 14 of the 2011 Act

Determined that, in relation to the Homeowner's application, the factor has not complied with property factor's duties and has not complied with sections 1.1a, 2.1, and 2.2 of the Code of Conduct.

The decision is unanimous.

## Background

1. The factor is a registered property factor. Their property factor ID number is PF000146.
2. By application dated 2<sup>nd</sup> September 2014 the homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the factor had failed to comply with:-

The following sections of the Property Factor Code of Conduct:

- Section 1.1a (Written Statement of Services).
- Sections 2.1 and 2.2 (Communications and Consultation).
- Section 6.1 (Carrying Out Repairs and Maintenance).
- Section 7.1 (Complaints Resolution).

And also there had been a failure to carry out Property Factors duties with reference to a failure to follow their own complaints procedure.

The homeowner provided further details:

*'For many years residents in this building have been denied the right to open windows in the common areas by the two factors involved (Peverel 1988-2011) and Bield (October 2011-present). Neither accepted the premise that ventilation is an essential requirement in any building. Over the years I have opened the windows surreptitiously but occasionally got caught. I believe the window louvre mechanisms have not been maintained properly by either factor. The windows are louvre type and can be manually opened by a lever on a side panel. Two of the windows, if opened slightly, close back as their mechanism appears to be faulty. I placed half a plastic peg between the frame and the window to enable it to prevent this.'*

*I should explain that the windows are linked to the fire alarm system and would open automatically in the event of a fire. The property factor's argument is that the sole purpose of windows is to allow smoke to escape should such an event occur.*

*There is no air conditioning system in the hallways and, as far as I am aware, Bield has no plans to install one. This option totally ignores the fact that ventilation is one of the most important factors for maintaining an acceptable healthy air quality in buildings.*

*Homeshaw House is part of an owner occupied sheltered housing complex, the vast majority of residents are in the 80 years or older category. Over the years there have been flats which have been lying empty and there have also been flats which are not maintained properly by the owner resulting in bad odours in the corridors. I feel stagnant air and air borne bacteria including dust and vapours from cooking or unhygienic living standards present serious health issues. Surely factors must owe a duty of care towards residents to ensure the communal areas are well ventilated and free from odours. This is*

*the background to the events which occurred in September 2013 which involved the current Scheme manager, Mrs Robertson.*

*Bield has a two stage complaint procedure. I felt from the start that my complaint could not be resolved at Stage 1 and merited a full, objective and proportionate response. My complaint was complex and Mr Dow accepted this in his letter dated 5<sup>th</sup> June 2014, nonetheless it was treated as a Stage 1 which consisted of a discussion with his management team and staff mentioned in my complaint. I feel that Bield have not addressed this issue properly. In Mr Dow's letter of 19<sup>th</sup> March 2014 he states that 'we have highlighted to Miss Patterson and other residents of the importance of not restricting the windows movement in any way, as this is a potential fire hazard. There is no signage to this affect near the windows and I have never had any written information from anyone regarding this matter. The contention that by placing a piece of plastic behind reinforced glass could cause a fire hazard beggars belief.*

*I assumed that the Stage 2 process would deal with several areas that Mr Dow mentioned in his letter of 19<sup>th</sup> March 2014 but failed to address it in any meaningful way eg:*

- 1. I wrote to Mrs Gray on two occasions, 22<sup>nd</sup> September 2013 and 16<sup>th</sup> October 2013 but did not receive a reply to either letter.*
- 2. The critical comments I made in my letter of complaint regarding Mr McInnes' involvement in this saga clearly merited some response yet nothing was forthcoming and I still have serious concerns regarding the confidentiality issue which I raised initially.*

*I never pursued Mr Dow's offer of a meeting- in part it was for health reasons but mainly of Mr Dow's inadequate response to many of the issues involved in my complaint including those relating to the conduct of their Scheme Manager and the lack of ventilation in the building.*

*I am in my early 80's and this experience in my life made me realise how very vulnerable and isolated this age group can be when subjected to a period of sustained pressure. I felt I was bullied by the Scheme Manager. When looked at from a purely health point of view the consequences could be dire for the victim. Further, it is essential that anyone responsible for recruiting staff who work with elderly people must use sound judgement in both the recruitment process and also in staff development to avoid this type of situation recurring. I made a self referral to the Advocacy Project as I felt that I needed some support with this issue. The assistance and support I subsequently received from my Advocate was of immense benefit to me.'*

*The homeowner lodged with her application copies of correspondence with the factor which included the following letters:-*

- A copy of her letter to Brian Logan, Chief Executive of Bield Housing dated 26<sup>th</sup> February 2014. The letter was a complaint about Mrs Robertson, The Scheme manager, regarding incidents in September and October 2013.*

- A copy of the letter from Stuart Dow dated 19<sup>th</sup> March 2014 in response to Miss Patterson's complaint letter. The letter set out the factor's position and explained that the complaint had been handled as a Stage 1 complaint.
- Letter from Anne Marie McGregor to Stuart Dow dated 8<sup>th</sup> April 2014 requesting that the complaint be dealt with as a Stage 2 complaint.
- Letter from Stuart Dow to Annemarie McGregor dated 5<sup>th</sup> June 2014 advising that they had completed the stage 2 investigation and no further evidence was encountered to alter the outcome of the stage 1 response.

3. The application had been notified to the factor.

By Minute of Decision by the President dated 9<sup>th</sup> March 2015 the President of the Panel intimated that she had decided to refer the application to a Homeowner Housing Committee ('The Committee').

#### **4. Hearing**

A hearing took place in respect of the application on 12<sup>th</sup> May 2015 at Europa Building, 450 Argyle Street, Glasgow, G2 8LH.

The Homeowner appeared with her advocate Mrs Annemarie McGregor of The Advocacy Project, Cumbrae House, 15 Carlton Court, Glasgow.

The factor was represented by Stuart Dow, the Director of Asset Management, and David McInnes, the Owner Services Manager.

#### **Findings of Fact**

1. The homeowner is the proprietor of the property, which forms part of the development 'Homeshaw House' and Broomhill Gardens, Newton Mearns.
2. Bield Housing and Care became factors of the development in October 2011.

#### **Oral Representations from the parties at the hearing.**

##### **Section 1.1A: Written Statement of Services.**

'A written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.'

Miss Patterson explained that the written Statement of Service does not state the basis of the factor's authority to act.

David McInnes explained that the Statement was drafted with the consultation of the owners. However he accepted that the basis of the authority to act was not stated.

##### **Section 2.1: You must not provide information which is misleading or false.**

Miss Patterson explained that Stuart Dow's letters dated 1<sup>st</sup> October 2013 and 5<sup>th</sup> June 2014 contained false statements in relation to the windows.

In his letter dated 1<sup>st</sup> October 2013 he had stated:

*'Some of the corridor windows had been manually opened with wedges (of various descriptions) being used to stop the louvres closing. This will cause damage to the window and potentially put at risk the safe operation of them should there be a fire.'*

In his letter dated 5<sup>th</sup> June 2014 he had stated:

*'Their sole use is for the automatic release in the event of a fire/smoke.'*

*Also his letter dated 1<sup>st</sup> October 2013'*

Stuart Dow explained that at the time he wrote the letters he thought the windows were one unit but subsequently found that the top section opens automatically and the bottom section is manually opened. He had wanted to explain that no adjustment should be made.

He accepted that these sections of the letters were incorrect.

**Section 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).**

Miss Patterson explained that there had been two instances when she felt she had been intimidated by Mrs Robertson, the Scheme Manager of Homeshaw House.

On the first occasion on 17<sup>th</sup> September 2013.

Miss Patterson had been talking to a friend on the ground floor and was approached by Mrs Robertson who was holding a bag with pegs in it. She said to Miss Patterson 'recognise this'. She was referring to a peg Miss Patterson had used to keep the window open.

Mrs Robertson stated that she wasn't allowed to put pegs in the windows. She was loud and intimidating. Her manner was not pleasant. This conversation had a shattering effect on Miss Patterson.

On the second occasion in December 2014 Miss Patterson went into the residents lounge. She was early and opened the window for ten minutes to allow fresh air in. Mrs Robertson blamed her for the drop in temperature in the lounge. She spoke to Miss Patterson as if it was a heinous crime. Miss Patterson took exception to this and made a formal complaint.

David McInnes explained that the factors had apologised for the way Mrs Robertson spoke to Miss Patterson but not for the content of what was said. He explained that one person's idea of what may be a comfortable temperature may be at odds with the view of another person.

Miss Patterson advised that she had never received a direct apology from Mrs Robertson.

**Section 6.1: You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention...**

Miss Patterson advised that there was no method of recording repairs. The incident/repair book was no longer available to residents. In her view there is no clear procedure.

David McInnes explained that a card was given to each owner explaining how to report repairs.

Miss Patterson stated that she did not receive such a card.

**Section 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...**

Miss Patterson advised that she never received a copy of the complaints resolution procedure from the factor. Her Advocate had given her a copy that had been downloaded from the factor's website.

David McInnes explained that there is a summary of the complaints procedure in the Statement of Service. He also advised that the details are contained in Bield's magazine that is published every four months.

Stuart Dow clarified that there had not been a breach of this section of the Code as there was a complaints procedure in place.

**There had been a failure to carry out Property Factors duties as the factor had failed to follow their own complaints procedure.**

Miss Patterson explained that she had expected her complaint to be treated as a stage 2 complaint. Also, she was surprised that she did not receive any direct feedback from the complaint.

Stuart Dow explained that he felt that the complaints procedure had been followed. He was disappointed that Miss Patterson refused to meet with him to discuss the complaint.

Mr Taylor, the surveyor member of the Committee referred Stuart Dow to page 11 of the complaints procedure and suggested that the criteria of this complaint met the criteria of a stage 2 complaint.

Stuart Dow explained that the Stage 1 procedure and Stage 2 procedure had been co joined. On reflection he acknowledged that it would have been better to go straight to stage 2. In terms of how he managed the investigation he explained that he had met with David McInnes who in turn had met with Mrs Robertson. He had not interviewed Mrs Robertson direct.

In terms of the matter of confidentiality he confirmed that all the Bield staff had undergone data security and confidentiality training.

Miss Paterson explained that she felt let down by the complaints procedure. She was expecting more from it. She stays away from Mrs Robertson. She feels that she is at risk. She expects a better relationship from someone in the position of Mrs Robertson.

David McInnes and Stuart Dow were concerned to hear that Miss Patterson felt unsafe. They reminded her that she can always speak to Deborah who is Miss Robertson's line manager.

They were disappointed that Miss Patterson would not speak to them before the matter came to the Panel.

Miss Patterson explained that she had had some health problems which prevented her from attending a meeting. Also she wanted the decision of the Panel before she would agree to speak to them.

**Decision.**

**Section 1.1A: Written Statement of Services.**

**'A written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.'**

This head of complaint is upheld.

David McInnes had accepted that the Statement of Service did not specify the basis of their authority to act.

**Section 2.1: You must not provide information which is misleading or false.**

This head of complaint is upheld.

Stuart Dow had accepted that the sections of his letters dated 1<sup>st</sup> October 2013 and 5<sup>th</sup> June 2014 referred to were incorrect.

**Section 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).**

This head of complaint is upheld.

The Committee accepted the evidence of Miss Patterson that the conversations she had had with Mrs Robertson (referred to in the application) were perceived by Miss Patterson to be intimidating. Indeed they noted that Stuart Dow (in his letter to Miss Patterson dated 19<sup>th</sup> March 2014) apologised to Miss Patterson for the fact that Miss Patterson had not been dealt with in a courteous manner.

However the Committee were concerned that Mrs Robertson had not apologised directly to Miss Patterson.

**Section 6.1: You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention...**

This head of complaint is not upheld.

The Committee accepted the evidence of Stuart Dow and David McInnes that the factor has a procedure in place to notify repairs etc.

However the Committee would recommend to the factor that they prominently place a notice in a common area advising owners of the procedure, to reinforce the procedure that is in place.

**Section 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 head of complaint is not upheld.

The Committee accepted the evidence of Stuart Dow and David McInnes that the factor has a complaints resolution procedure in place.

However the Committee would recommend to the factor that they ensure that the residents are aware of the complaints procedure.

**There had been a failure to carry out Property Factors duties as the factor had failed to follow their own complaints procedure.**

This head of complaint is upheld.

Bield's complaints handling procedure sets out clearly when a complaint should be escalated to a Stage 2 complaint. In particular if the complaint relates to serious, high risk or high profile issues. It also states that high risk or high profile cases may involve a particularly vulnerable person.

Miss Patterson's complaint was by an elderly and potentially vulnerably adult concerning allegations of intimidation, aggression and breach of confidentiality by the Scheme Manager.

The Committee considered that these matters were serious, high risk and high profile and the complaint should have been dealt with as a Stage 2 complaint.

The Factor's Complaints Procedure Document states that the purpose of the Stage 2 investigation is to 'establish all the facts relevant to the points made in the complaint and to give the customer a full, objective and proportionate response that represents their final position.'

The Committee were concerned that the investigation had been delegated by Stuart Dow and he had not interviewed Mrs Robertson personally and therefore they were doubtful if all the facts had been ascertained.

All of the matters set out in the letter of complaint of 26<sup>th</sup> February, including the alleged intimidation and aggression were not specifically addressed.

The Committee notes that the Complaints Procedure states that it is helpful to discuss the complaint with the customer at the outset. They acknowledged that Stuart Dow was prevented from doing this as Miss Patterson was not in a position to be involved at that time.

**Property Factor Enforcement Notice**

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 sections 1.1a, 2.1, 2.2, and the Property Factor's duties.

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:

- (1) The factor is required to amend the Statement of Service to include a statement of the basis of any authority they have to act as required by Section 1.1a of the Code of Practice.
- (2) The factor is required to revisit the complaint detailed in Miss Patterson's letter dated 26th February 2014, preferably with the input of the homeowner, and provide the Committee with a full report on the complaint, the procedure followed and the outcome by 31st July 2015.

Depending on the outcome of the complaint the Committee reserve the right to make an award of compensation by varying the PFEO.

#### 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.'

Signed .. .... Date 20<sup>th</sup> May 2015

Chairperson