

Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act") and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP PF/13/0289

The Property: Flat 1, 66 Cow Wynd, Falkirk, FK1 5EA

The Parties: –

MR STUART REID, residing at Newforth Cottage, Wallacestone Brae, Wallacestone, Falkirk, FK2 0DH ("the Homeowner")

and

PROPERTY 2, 2a North Kirklands, Eaglesham Road, Glasgow, G76 0NT ("the Factor")

Committee Members:

David Preston (Chairman); Sara Hesp (Surveyor Member)

Decision:

The Committee upheld the Homeowner's complaint that the Factor had failed to comply with Sections 2.5 and 7.2 of the Code of Conduct for Property Factors ("the Code").

Background:

1. By application dated 22 September 2013 the Homeowner applied to the Homeowner Housing Panel ("the Panel") to determine whether the Factor had failed to comply with Sections 2.5, 6.1, 6.9, 7.1 and 7.2 of the Code. The application indicated that he also

considered that the Factor had failed to carry out the property Factor's duties in that they: failed to take prompt action to resolve the flood in his flat; were almost non-existent in their communication; failed to liaise between all parties effectively; failed to respond to his complaint; and failed to follow their internal complaints procedure. In addition he sought recovery of out of pocket expenses and losses incurred by him as a result of the Factor's alleged failures. These expenses and losses totalled £1771 and comprised: mortgage, council tax and household bills; damaged floor coverings and flooring.

2. By letter dated 23 December 2013 the President of the Panel intimated her decision to refer the application to the Committee.
3. On 21 February 2014, the Committee issued a Direction to the parties in the which required the Factor to lodge with HOHP by 12.00 on Friday 14 March 2014: a full copy of the Land Certificate for title pertaining to the property, or, if the title to the property is not registered, the Deed of Conditions pertaining to the common repairs and obligations relative to the property; and the factor's written statement of services issued in accordance with the code.

Hearing:

4. A hearing took place at the offices of the Panel, Europa Building, 450 Argyle Street, Glasgow on 17 March 2014.
5. Present at the hearing were: the Homeowner, who represented himself; and Mr Graham McEwan, Director of the Factor along with Lisa Pieper, Portfolio Management Team were present to represent the Factor. Evidence was provided by all of those present.
6. The Committee had been provided with: timeline of events prepared by the Homeowner; copy correspondence between the parties comprising various emails between him, the Factor and One Risk, the insurance brokers appointed by the Factor in respect of the common insurance policy; emails between the Homeowner and ChemDry; extracts from the Factor's website in respect of their Statement of Services. All of these had been provided by the Homeowner. In addition the Factor had responded to the application by letter dated 7 February 2014 to which they attached a summary of the communications between them and: ChemDry; One Risk; Mr Heggie, the proprietor of the upstairs flat; and the Homeowner.
7. At the start of the hearing, the HOHP office had not received the documents called for in the Direction. The Factor advised that copies had been sent by email, but they could not be traced. Copies were provided to the Committee which adjourned to allow the members to consider them.
8. The Committee noted that the copy Deed of Conditions produced was not a final, signed version and would have preferred to have seen either the Land Certificate pertaining to the Property or at least a copy of a finalised and signed document. Mr McEwan explained that this was what he had received from the developers' solicitors. He explained that the original developers (MCA Homes (Alloa) Ltd) had gone into

administration and the development had been completed by Ribbon Homes (Alloa) Ltd who were the grantors of the deed produced. The Committee noted that the Factor should provide themselves in these circumstances with a copy of the finalised and signed deed. In respect of the Written Statement of Service, the Committee noted that this had been revised in December 2013, which post-dated the situation giving rise to the application. Mr McEwan advised that the Factor had depended upon a Statement of Service which had formed part of their website, but after a previous hearing before HOHP, they had prepared the revised Statement a copy of which had been produced. The Factor advised that this had been issued to all homeowners in late 2013. No complaint had been made to this Committee in terms of the present application about the adequacy of the Statement of Services and accordingly this Committee could make no findings in that regard, but did observe that the situation was unsatisfactory.

Findings in Fact and Reasons:

9. The Homeowner is the proprietor of the Property which is a ground floor flat in a four storey block. The Homeowner does not live in the property which he rents out. At the time of the circumstances giving rise to the complaint and application, the property had been unoccupied for some time. He advised that although empty, it was regularly checked for problems.
10. On 22 March 2013 the Homeowner discovered flooding in the Property, which appeared to be coming from the first floor flat. He contacted a contractor (ChemDry) for assistance and to carry out a trace and assessment, which they did on 26 March 2013. ChemDry advised the Homeowner to refer the matter to the Factor, which he did on 28 March 2013.
11. On 2 April 2013 on receipt of the track and assess report from ChemDry, the Factor referred the matter to their insurance broker, One Risk. The Factor advised that they would make contact with the upstairs owner. At that point it was not clear whether the cause of the leak was a private issue between the proprietors or a common repair, for the management of which the Factor would be responsible. In any event the matter would involve a claim on the common insurance policy through the brokers. On 4 April the Factor advised the Homeowner that Mr Heggie, the upstairs owner was denying access to his flat for repairs.
12. The Homeowner, the Factor and ChemDry all had problems making contact with or obtaining cooperation from Mr Heggie in having the source of the leak repaired. It was established by ChemDry that the leak was coming from Mr Heggie's bathroom and the repair appeared to have been carried out sometime between 22 and 29 April 2013 and was believed to have been carried out by Mr Heggie himself. The Homeowner was told that the insurers required verification from ChemDry that the leak had been repaired properly before they would authorise the repairs to the Property. ChemDry were eventually authorised to carry out the repairs on 13 May, but due to other commitments they were unable to start work until 29 May, which they did, completing the work on 3 June. There was undoubtedly a delay in obtaining the necessary confirmation that the source of the leak had been fixed, but this was due to the lack of cooperation from Mr Heggie for which the Factor cannot be held responsible.

13. The Homeowner complained that further delay had been caused by the fault of the Factor in sending the wrong quotation to One Risk on 8 May, which was not remedied until 13 May. The Factor acknowledged that this had been an error on their part, but the Committee did not consider that this amounted to a significant delay as it was the result of administrative error. In any event as ChemDry had been unable to commence work until 29 May, any such delay was immaterial.
14. The Committee accordingly did not find that the Factor had failed in their duty to effectively manage the progress of the repairs. The Committee was satisfied that they had done so satisfactorily in the circumstances and that any delays were caused by matters outwith their control. The Committee would, however observe that they could have been more effective in explaining the complexities of the difference between private repairs and common repairs to the Homeowner. To have done so would have possibly avoided much of the frustration caused to both parties throughout. However there was no specific complaint in the application relating to the level or quality of communication and accordingly the Committee can make no finding in that respect.
15. The Committee noted that the revised Statement of Services (December 2013) referred to the distinction between 'communal' claims as opposed to 'individual' claims and explained that communal claims would be managed by the Factor and that individual claims would be managed between the owner and the insurance broker with guidance from the Factor. However that Statement was not in place in April 2013. The Homeowner had produced an extract from the Factor's website dealing with Repairs and Maintenance Procedures in which the Factors undertook to prioritise repairs involving water ingress. The Committee was not provided with any other evidence in relation to the information available to homeowners at that time in respect of claims on the insurance policy. The Homeowner stated that he had not been made aware of the question of whether the claim was in respect of a communal repair as opposed to an individual repair. It is unfortunate that such a distinction had not been made clear to the Homeowner at the time of the claim. However the application did not include any complaint in respect of the information provided by the Factor in relation to the common insurance policy and claims thereunder and accordingly the Committee was unable to make any finding in that respect.
16. The Homeowner included in his application a claim for consequential loss incurred as a result of the delays by the Factor in managing the claim. The loss included loss of rent until the repairs had been carried out. However the Committee found that as the Property had been unoccupied prior to 22 March and that it had remained unoccupied until a new tenant had been found in January 2014, there was insufficient evidence of any causal link between the water damage and the loss of rent. The Committee took into account the fact that the Homeowner had been marketing the property and thereafter sought to re-let it. The Committee found no evidence that the water damage had resulted in the Homeowner's inability to sell.
17. On 20 May 2013, the Homeowner intimated a claim for consequential losses for out of pocket expenses. One Risk advised the Homeowner on 29 May 2013 that the policy did not cover consequential losses. The Committee noted that the Homeowner had an insurance policy in place for the Property which included Landlord insurance. The Committee was not provided with any details of that policy but the Homeowner may

have been covered by that for his loss of rent and for any other consequential losses. The Committee did not find that the Factor is responsible for any such losses.

18. On 15 July 2013 the Homeowner lodged a formal complaint about his concerns with the Factor by email of that date. The email was acknowledged by Mr McEwan within 20 minutes advising that he would revert within a few days. The Homeowner then sent further emails to the Factor on 20 August and 9 September but received no reply until the email from Ms Pieper on 9 September. In their letter of response to the application dated 7 February, the Factor confirmed that they accepted full responsibility for that failure. That was in clear contravention of Section 2.5 of the Code of Conduct, namely that the Factor failed to respond to the Homeowner within a prompt timescale and the Committee formally upholds that complaint by the Homeowner. Section 20(1)(b) of the Act empowers the Committee where appropriate to order the Factor to make such payment to the Homeowner as the Committee considers necessary. The Factor's failure to respond to the Homeowner in the terms as outlined in Section 7.2 of the Code was also a failure.
19. In relation to Section 6.1 of the Code referred to by the Homeowner, the Committee found no evidence to support the contention that the Factor failed to have a procedure in place to allow the Homeowner to notify the Factor of matters requiring repair, maintenance or attention. He did so. In relation to informing the homeowner of progress, the Committee found that the Homeowner took it upon himself to make regular contact with the Factor to the point that while certain calls may not have been returned during the progress of the work, there was nothing for the Factor to report.
20. In relation to Section 6.9, the Committee found no evidence that the Factor failed to pursue the contractor to remedy any defects. There were no defects reported in the work which had been carried out by ChemDry, which, when it was carried out was satisfactory.
21. In relation to Section 7.1 the Homeowner produced an extract of the Factor's website which contained a clear written complaints procedure which contains reasonable timescales.
22. The Committee determined that an appropriate sum to be paid to the Homeowner by the Factor is £100 by way of apology for failing to address the complaint satisfactorily which had resulted in the present application being necessary. In coming to this figure the Committee was mindful of all the circumstances of the case and the undoubted frustrations to the Homeowner, which were contributed to by the lack of response from the Factor in relation to the complaints process.

Property Factor Enforcement Order:

23. We propose to make the following Property Factor Enforcement Order:

Within 28 days of service on the Factor of the Property Factor Enforcement Order, to pay to the Homeowner the sum of £100 to reflect the inconvenience he has suffered as a result of the Factor's failure to comply with the Code of Conduct for Property

Factors. Said payment to be made to the Homeowner directly and without off set against any balance which may be due to the Factor by the Homeowner and to provide evidence to HOHP of the payment having been made.

Appeals:

24. The parties' attention is drawn to the terms of Section 22 of the Act regarding the right to appeal and the time limit for doing so.

It provides:

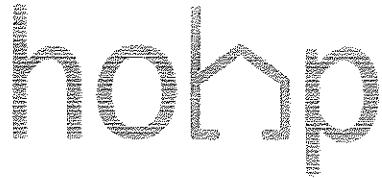
"...(1) an appeal on a point of law only may be made by summary application to the Sheriff against the decision of the President of the Homeowner Housing Panel or Homeowner Housing Committee.

(2) an appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

David Preston

Chairman

31/3/14.....date



**Proposed Property Factor Enforcement Order issued under Section 19(2) of
the Property Factors (Scotland) Act 2011 ("the Act") and the Homeowner
Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

hohp Ref: HOHP PF/13/0289
The Property: Flat 1, 66 Cow Wynd, Falkirk, FK1 5EA

The Parties: –

**MR STUART REID, residing at Newforth Cottage, Wallacestone Brae,
Wallacestone, Falkirk, FK2 0DH ("the Homeowner")**

and

**PROPERTY 2, 2a North Kirklands, Eaglesham Road, Glasgow, G76 0NT ("the
Factor")**

Committee Members:

David Preston (Chairman); Sara Hesp (Surveyor Member)

WHEREAS in its decision dated 31 March 2014 the Committee determined that the Factor had failed to comply with Sections 2.5 and 7.2 of the Code of Conduct for Property Factors ("the Code"), and it determined to issue a Property Factor Enforcement Order (PFEO) in the following terms:

Within 28 days of service on the Factor of the Property Factor Enforcement Order, to pay to the Homeowner the sum of £100 to reflect the inconvenience he has suffered as a result of the Factor's failure to comply with the Code of Conduct for Property Factors. Said payment to be made to the Homeowner directly and without offset against any balance which may be due to the Factor by the Homeowner and to provide evidence to HOHP of the payment having been made.

The parties' attention is drawn to section 19 of the Act which provides as follows:

- "(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so –
 - (a) give notice of the proposed order to the property factor, and
 - (b) allow the parties an opportunity to make representations to them.
- (3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the

property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make the property factor enforcement order."

The intimation of this proposal to the parties should be taken as notice for the purposes of section 19 (2) and the parties are HEREBY GIVEN NOTICE that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the Homeowner Housing Panel's office by no later than 14 days after the date that this decision is intimated to them.

If no representations are received within that timescale, then the Committee must proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence

.....Chairman

31-3-14.....date