



**Decision of the Homeowner Housing Committee issued under Section 17 of
the Property Factors (Scotland) Act 2011 ("the Act") and the Homeowner
Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

hohp Ref: HOHP PF/13/0046

The Property: 6 Haggs Gate, Glasgow, G41 4BB

The Parties: –

**MRS BEVERLEY JUNE MCCRACKEN, 6 Haggs Gate, Glasgow, G41 4BB ("the
Homeowner")**

**SPEIRS GUMLEY PROPERTY MANAGEMENT, 194 Bath Street, Glasgow. G2
4LE ("the Factor")**

Committee Members:

David Preston (Chairman); Ian Murning (Surveyor Member) and Carolyn Hirst (Housing Member) ("the Committee").

Decision:

**The Committee found that the Factor had failed to carry out the property
factor's duties.**

Background:

1. By application dated 9 March 2013 the Homeowner applied to the Homeowner Housing Panel ("the Panel") to determine whether the Factor had failed to comply with the duties imposed by the Act. While Section 7B of the application

form completed by the Homeowner was not ticked, the accompanying Papers Apart headed Complaint 1 and Complaint 2 clearly alleged such a failure.

2. The Homeowner complained that the Factor had imposed charges upon her for: £68 in respect of an emergency call-out which she had made relative to noise coming from a water pump serving the block in which the property is situated; and £174 in respect of an issue arising from cooking smells permeating her flat from the flat below.
3. The application also made reference to a failure on the part of the Factor to comply with the Code of Conduct for Property Factors ("the code") in respect of sections 2, 3 and 6 and subsequently, by letter of 18 April 2013 made reference to various paragraphs of Section 1 and section 2.4 of the code.
4. By letter dated 8 May 2013 the President of the Panel intimated her decision to refer the application to the Committee.

Hearing:

5. A hearing took place at the offices of the Panel, Europa Building, 450 Argyle Street, Glasgow on 3 July 2013.
6. Present at the hearing were: the Homeowner, who represented herself but was supported by a friend, Carol Moyer who took no part in the proceedings; Mr John Neil, Mr David Pratt and Ms Lorraine McDonald were present to represent the Factor.
7. The Committee had been provided with copy correspondence between the parties comprising various letters dating from 13 July 2012 to 22 June 2013 as well as a report by the Factor which took the form of a summary of the correspondence between 13 July 2012 and 18 April 2013, and a copy of the Factor's Written Statement issued in terms of the Act.

8. At the outset, the Homeowner confirmed that the issue relating to cooking smells appeared to have been resolved after the fitting of non-return valves, which had been suggested by the Environmental Health Officer and which had been implemented by the Factor. She advised that the problem with the noise from the water pump had also been resolved and accepted that the issue relating to the vibration of pipes was in the course of being addressed. Nonetheless she continued to complain about: the length of time it had taken the Factor to resolve the problems; that she had been charged £68 for an emergency call-out which had been in relation to the noise coming from the water supply and also that she was being charged £174 for work which had been carried out by Paramount Electrics and in respect of which she had been told there would be no charge in view of the poor quality of work.
9. Mr Neil, on behalf of the Factor expressed surprise that matters had reached this stage and felt that the Homeowner had not exhausted the Factor's complaints procedure. He did not provide any basis for his contention that the Homeowner was precluded from making an application to the Panel without having gone through the Factor's formal complaints process. The correspondence lodged with the Panel clearly demonstrated that there were ongoing concerns by the Homeowner which had not been resolved by the Factor. The Committee was accordingly satisfied that the requirements of Section 17(3) of the Act had been satisfied.
10. Mr Neil advised that he had been involved on behalf of the Factor since the time of the appointment by the Developer (who had gone into administration prior to the transfer of the common parts) and at the time of re-appointment of the Factor. He had subsequently passed matters to Mr Pratt who had dealt with the Homeowner on a day-to-day basis. Both Mr Neil and Mr Pratt provided oral evidence to the committee.
11. The Committee was satisfied that the Factor had responded to the Homeowner's correspondence timeously throughout but the fact remained that the issues raised by the Homeowner in her application relating to the accounts

were unresolved notwithstanding that it now appeared that the causes of her concerns had been resolved.

Findings in Fact:

12. From about July 2012 until a date shortly before the hearing the Homeowner raised a number of concerns with regard to cooking smells permeating the property and noises coming from the water supply and or pipes.
13. As a result of the Developer having gone out of business the Factor encountered difficulties in obtaining detailed information about the construction of the property and engaged a number of specialist contractors to investigate the problems. The Factor had been able to identify the Architect who had been responsible for the development and had obtained limited information.
14. The Homeowner had difficulty in determining which works fell into the category of common repairs and which related to private matters.
15. The Factor involved themselves directly in the repairs regardless of whether they amounted, in the Factor's view, to common repairs or not which, although helpful to the homeowner in getting repairs done, did not assist the Homeowner to make the distinction.
16. Both parties confirmed that the problem relating to the cooking odours from the flat below has been successfully resolved by the installation of non-return valves in the extractor vent pipes.
17. The Homeowner was satisfied that the problems relating to the water pump/vibrating pipes was under active consideration with further work to be carried out in the near future.
18. The account in respect of the emergency call-out in the sum of £68 was in respect of a common repair and as such should not have been charged to the

Homeowner individually. Accordingly the Committee found that the Factor had failed to comply with the property factor's duties.

19. The account in respect of the work carried out by Paramount Electrics is the responsibility of the Homeowner. However it is unfortunate that neither she nor the Factor followed up on the Homeowner's contention that the contractor had agreed to waive the charge for the work.
20. A Written Statement was issued by the Factor but the Committee was unable to determine from the evidence led when the Homeowner received a copy. The Factor was unable to satisfy the Committee as to whether it had definitely been sent to the Homeowner before she received a copy of it from the Panel with the Factor's response to the application on 29 May 2013
21. The Written Statement generally covers the requirements laid down in the code but the extent of the Factors responsibility is not clear. The third paragraph of the Statement reads "We act as Property Factor (Agent) on your behalf to organise and administer the maintenance and repair of your property." Accordingly the Committee observed that the Written Statement does not clearly identify the core services to be provided by the Factor. However the Committee does not find the Factors to be in breach of the code.

Reasons:

22. The Committee accepted the evidence contained in the copy correspondence produced to it and the evidence of the parties that the problems encountered by the Homeowner had been attended to by the Factor, notwithstanding that the Factor maintained that its responsibility related only to the common parts of the development.
23. It was clear from the large volume of copy correspondence lodged in evidence that the Factor, on numerous occasions, tried to address the concerns of the Homeowner and solve the problems complained of. The Homeowner in evidence complimented Mr Pratt in particular for his efforts to find solutions.

However she considered that the efforts of the Factor had taken what, on the face of it had been an unreasonable length of time and the Committee considered whether the Factor was in breach of their duties as a result.

24. In relation to the charge of £68, the Committee accepted the Homeowner's version of events surrounding the switching off of the pump. She explained in detail in a letter of 10 January 2013 and also in her oral evidence that she had been aware of the noise from the pump when she returned home at approximately 1600 hrs in the afternoon of 13 December and that at 0130 hrs in the morning of 14 December she was still aware of the noise and was concerned that the pump may be damaged if it continued to run in view of the noise. She explained that she checked and found that the other flats in the block were in darkness and it was likely that the other occupants were in bed and that she considered there would be sufficient water for them the following morning. She telephoned City Centre Maintenance and discussed the options with them and did agree, in good faith, that the pump should be switched off which was the only action available to that particular contractor. She telephoned Mr Pratt the following day to tell him of the events which had occurred during the night. On a balance of probabilities, the Committee preferred the evidence of the Homeowner that the contractor had not spoken to her or attempted to contact her when they attended the property. The Committee was satisfied that she had acted reasonably in taking the action that she had and that the emergency call-out had been directly related to a problem with the water system which the Factor specifically acknowledged in evidence was a common part.
25. The Committee did not accept the contention of the Factor that the emergency call-out would be the responsibility of the Homeowner in the circumstances described, particularly where there was a known problem with the water system as was acknowledged by the Factor in evidence. Both Mr Pratt and Mr Neil accepted that the noise experienced by the Homeowner could have affected her flat and not others. The fact that no others complained is therefore considered by the Committee as immaterial.

26. On a balance of probabilities the Committee accepted that the Homeowner had good reason to call out City Centre Maintenance and that the work related to the water supply, which the Factor accepted was a common part.
27. With regard to the charge of £174 incurred in relation to the problem with the cooking smells, the Homeowner stated that she had been told by the operative that she should not be charged for the work which had been badly undertaken, albeit that it had been rectified after the second visit. The Committee accepted that she had spoken also to Eddie (who was stated to be the owner of Paramount Electrics) who she had expected to revert to her having checked the position at his office. In the knowledge of the Homeowner's position the Factor took no steps to challenge the account when it was rendered and did not advise the Homeowner until her quarterly statement in February. It is unfortunate that the Homeowner did not take the matter up directly with the contractor at that point, but it would still be open to her to do so.
28. In a letter of 15 June 2013 and at the hearing the Homeowner attempted to raise an additional question in respect of a sum of £126 paid by her to Acorn Pumps for investigation. The Committee considered that insufficient notice of this issue had been given and it did not consider this matter in its deliberations.
29. It is unfortunate that throughout this case the Factor has had a view as to what amounted to common charges and what were private charges, but this view is not set out clearly in the Written Statement. The Factor had an opportunity in terms of the Written Statement to clarify this for their clients but the Written Statement produced does not do so. The Written Statement undertakes that the Factor will "... *organise and administer the maintenance and repair of your property...*" The Factor maintained that the paragraph should be read in conjunction with the reference in the previous paragraph to the Deed of Conditions. However that paragraph refers to three possibilities as the basis for the Factor's appointment, namely: the Deed of Conditions; homeowners who have delegated authority; or through established custom and practice. The basis upon which a distinction is made between common parts and private arrangements is not clarified from that. The Factor argued that their

responsibility does not extend to the contents of the flat such as the cooker. The Committee accepted that argument insofar as the Written Statement cannot be read as referring to personal possessions of a homeowner. However in the context of, for want of a better expression, a person's real estate, an individual's "property" includes both exclusive as well as shared or common parts. In addition, on further reference to page 3 of the Written Statement under the heading "Major Repairs" it is stated that "*all Homeowners have an obligation to ensure that the property is maintained*". The Committee did not accept that problems with the water supply could be regarded as maintenance of an individual property.

30. Despite close questioning, the Factor was unable to satisfy the Committee as to the basis upon which they made the decision to charge the account incurred in connection with the emergency call-out to the Homeowner's individual account.

Property Factor Enforcement Order:

31. 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 remove the charge of £68 from the Homeowner's account.

32. Section 19 of the Act 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 decision to the parties should be taken as notice for the purposes of section 19 (2) and the parties 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 received within that timescale, then the Committee is likely to 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.

Appeals:

33. 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..."

Signed David Preston
Chairperson

Date 30/7/2013..