



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

HOHP reference: HOHP/PF/15/0088

Re: Strategic areas of landscaping within the Hopefield (Bonnyrigg) Development, Midlothian, EH19 3DH

The Parties:-

Mr Yodi Sprott, residing at 11 Littlewood Grove, Bonnyrigg, Midlothian, EH19 3DH ("the Homeowner")

And

Scottish Woodlands Limited, having a place of business at 2 Roddinglaw Court, Roddinglaw Business Park, Roddinglaw Road, Edinburgh, EH12 9DB ("the Factor")

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

Committee Members:

Andrew Cowan (Chairperson)

David Hughes Hallet (Housing Member)

Decision of the Committee

The Factor has failed to comply with the Property Factor Code of Conduct in terms of section 14(5) of the Act. The Committee accordingly proposes to make a Property Factor Enforcement Order.

Findings in Fact

1. The Homeowner is the owner of the property situated at 11 Littlewood Grove, Bonnyrigg, Midlothian, EH19 3DH ("the Property").
2. The Factor have been appointed by the original developers of housing at this site as a Land Management Company with responsibility for the maintenance of certain open space landscaped areas of the housing development in which the property is situated.
3. The Homeowner has an obligation to share in the costs of maintenance of the open space landscaped areas, along with other owners of housing located in the same housing development.
4. The Factor is registered as a Factor in terms of the Act, having been so registered on 1 November 2012 under registration number PF000121
5. The Factor has issued a Statement of Services in accordance with the requirements of the Act. The Factor's Statement of Services has been issued to the Homeowner.

6. By letter of 6 February 2015, the Factor wrote to the Homeowner to advise that they had been appointed as Factor with responsibility for the maintenance of the strategic areas of common landscaping at the development within which the property is situated.
7. By email of 30 March 2015, the Homeowner emailed the Factor and requested further information in relation to the Factor's appointment together with a further analysis of charges claimed by the Factor for the period ending 31 March 2015.
8. On 1st April 2015, the Factor issued to the Homeowner an invoice for the Homeowner's share of the maintenance of the common areas of the estate for the period 1 April 2015 to 31 March 2016.
9. By email dated 10 April 2015, the Factor acknowledged receipt of the Homeowner's email of 30 March 2015.
10. On 5 May 2015, the Factor issued a reminder in relation to their outstanding invoice dated 1 April 2015.
11. On 11 May 2015, the Homeowner wrote to the Factor and asked them for a response to the issues which he had raised in his email of 30 March 2015.
12. By letter dated 5 June 2015, the Homeowner wrote to the Factor and made reference to his email of 30 March 2015 and his letter of 11 May 2015. The Homeowner again highlighted that he wished further information from the Factor in relation to the accounts which had been issued. He further alerted the Factor to the fact that he considered that the Factor had failed to carry out their Property Factor's duties for the reasons given in his letter, and further that the Factor had failed to comply with the Factor's Code of Conduct for the reasons given in his said letter.
13. By letter dated 15 June 2015, the Factor acknowledged "recent letters" from the Homeowner and indicated that they would revert to him within a period of two weeks.
14. By letter of 15 July 2015, the Homeowner again wrote to the Factor making reference to his earlier email of 30 March 2015 and his letters dated 11 May 2015 and 5th June 2015. The Homeowner advised that he considered that the Factor had not adhered to their own timescales for dealing with communication and further restated his complaints and concerns by direct reference to the Act and the Code of Conduct.
15. By letter dated 20 July 2015, the Factor acknowledged receipt of the Homeowner's letter of 15 July 2015 and apologised for their delay in responding to the issues raised by the Homeowner.
16. By letter dated 15 September 2015, the Factor wrote to the Homeowner and sought to respond to the issues which the Homeowner had raised in relation to their management of the common areas.
17. By letter dated 10 October 2015, the Homeowner acknowledged receipt of the letter from the Factor of 15 September 2015 and sought further clarification.
18. The Factor has failed to respond to the Homeowner's reasonable enquiries and complaint within prompt time scales. The Factor is accordingly in breach of paragraph 2.5 of the Code of Conduct for Property Factors in this respect.
19. The Factor has failed to give a detailed financial breakdown of charges made, and a description of the activities and works carried out which are charged for, in relation to the period from 1 April 2014 to 31 March 2015. The Factor has accordingly failed to comply with paragraph 3.3 of the Code of Conduct for Property Factors.

Background

20. By an application dated 5th June 2015, the Homeowner applied to the Homeowner Housing Panel ("the Panel"), to determine whether the Factor had failed to (a) carry out the Property Factor's Duties and (b) ensure compliance with the Property Factor Code of Conduct as required by section 14(5) of the Act.
21. In his application, the Homeowner alleged that the Factor had failed to comply with the following sections of the Code of Conduct:-
 - 1(D) of the Code of Conduct – this section of the code of conduct relates to information which the Factor must set out in their written statement of services. In particular, paragraph 1(d) of the Code of Conduct relates to information which the Factor must provide relative to communications arrangements;
 - 2.4 – Factor's duty to consult with Homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to core services;

- 2.5 – Factor's duty to respond to enquiries and complaints received by letter or email within prompt timescales;
- 3.3 – Factor's duty to provide the Homeowners, in writing at least once a year (whether as part of the billing arrangements or otherwise), with a detailed financial breakdown of charges made, and a description of activities for works carried out which are charged for;

The Homeowner further alleged that the Factor had failed to carry out the Property Factors duties as (a) the Factor has failed to respond to communications from the Homeowner which requested additional information relating to charges made to the Homeowner by the Factor, (b) the Factor had failed to resolve the Homeowner's concerns and (c) the Factor had failed to escalate the Homeowners complaint to a senior manager as required by the Factor's own policy.

22. By letter dated 27 August 2015, the President of the Panel sent a notice of referral to both parties intimating her decision to refer the application to a Homeowner Housing Panel Committee ("the Committee") for determination. Both parties were also notified in the said letter that a hearing was to be held on the issues raised in the Homeowner's application on 5 November 2015.
23. Prior to the hearing date, the Committee were able to consider all correspondence which had been lodged by the Homeowner together with further written submissions which had been prepared by the Homeowner and dated 5 September 2015 and 13 October 2015. The Committee were also able to consider the correspondence which had been passed between the Factor and the Homeowner after the date of the application to the Homeowner Housing Panel. In particular, the Committee were able to consider a letter dated 15 September 2015 in which the Factor sought to address the issues raised by the Homeowner.

The Hearing

24. A hearing took place before the Committee at George House, 126 George Street, Edinburgh, EH2 4AH on 5 November 2015. The Homeowner was present and represented himself. The Factor was represented by Mr Geoffrey Craythorn, Finance Director of the Property Factor and Mr Duncan Gilchrist, Senior Estates Manager of the Property Factor.

Complaint by reference to Section 1 (D) of the Code of Conduct

25. Section 1 of the Code of Conduct requires the Factor to provide each Homeowner with a written statement setting out the terms and service delivery standards of the arrangements in place between the Factor and the Homeowner. Section 1 (D) of the Code of Conduct specifically requires the Factor to include within their Statement of Services communication arrangements including an in-house complaints handling procedure together with details of timescales by which the Factor would respond to enquiries and complaints received by letter or email.
26. Having heard evidence, the Committee are satisfied that the Factor has complied with Section 1 (D) of the Code of Conduct.
27. The Factor has issued a Statement of Services to the Homeowner. The Statement of Services includes a customer care complaints procedure which sets out communication arrangements as required by the Code of Conduct.
28. The Homeowner's complaint was that the Factor had failed to follow the Procedures specified in their own Statement of Services. This complaint is further determined by the Committee under Paragraphs 38 to 42 below (Complaint by reference to Paragraph 2.5 of the Code of Conduct – Factor's duty to communicate with Homeowners within prompt timescales). The Homeowner accepted that the Factor has issued a Statement of Service which is compliant with the Code of Conduct.
29. The Committee accordingly determined that there has been no failure of the Factor to comply with Section 1 (D) of the Code of Conduct.

Complaint by reference to Paragraph 2.4 of the Code of Conduct – Factor's duty to consult with Homeowners

30. The Code of Conduct requires the Factor to consult with Homeowners, and to seek their written approval, before providing work or services which will incur charges or fees in addition to those relating to core services.
31. At the hearing parties accepted that the Factor had detailed their core services under the heading of "maintenance schedule" as detailed in their Statement of Service.
32. The Homeowner gave evidence that it was unclear as to which parts of the Factor's charge for the period from 1st April 2014 to 31st March 2015 related to core services and which part of the Factor's charges related to other services.
33. In his evidence to the Committee, the Homeowner made specific reference to the Factor's letter of 15 September and, in particular, paragraph 4(iv) thereof. In that letter the Factor had confirmed that they had used this "initial sum" to organise the running of the site in accordance with an Adoption Agreement and the Deed of Conditions to the site. This covered items of expenditure "which includes site maintenance, legal fees, production of site information and contribution to the accumulative maintenance fund". In the Homeowner's submission, this statement by the Factor suggested that part of the charges rendered related to services which were not core services, as defined in the Factor's Statement of Services. Accordingly, the Homeowner submitted that the Factor was required to consult with the Homeowners before incurring these costs, as required by paragraph 2.4 of the Code of Conduct.
34. The Factor explained in their evidence that in relation to the period from 1 April 2014 to 31 March 2015, each owner of a property at the development had made an initial payment of £154 to the developer of the site. These sums had now been paid (or were in the course of being paid) to the Factor. The Factor had used these figures to cover the maintenance charges at the site for the period from 1 April 2014 to 31 March 2015. In terms of the title deeds to the property the Factor was entitled to charge an annual maintenance fee in addition to those initial costs which they had recovered from the original property developer. For the first year of the maintenance of the development they had chosen not to make an additional maintenance charge. As a gesture of goodwill they had decided to roll up all of the first year costs within the total charge which they had recovered from the property developers. In doing so the Factor accepted that there was potentially an element of works within their charges for the period from 1 April 2014 to 31 March 2015 which did not relate to core services.
35. The Committee were not able to determine, as at the date of the hearing, the breakdown of charges for the period from 1 April 2014 to 31 March 2015 and accordingly could not determine whether any charges related to works carried out by the Factor which did not relate to their core services. (The Factor's alleged failure to provide a breakdown of the charges for the period from 1 April 2014 to 31 March 2015 was considered further by the Committee in terms of the Homeowners complaint under paragraphs 43 to 46, below.)
36. Whilst the Factor accepted in their evidence that it was appropriate that they should be required to provide detail of the total expenditure and costs incurred by the Factor for the period from 1 April 2014 to 31 March 2015 there was no evidence at the time of the hearing that they had failed to comply with paragraph 2.4 of the Code of Conduct.
37. The Committee accordingly determined that, as at the date of the hearing, the Factor had not failed to comply with paragraph 2.4 of the Code of Conduct.

Complaint by reference to Paragraph 2.5 of the Code of Conduct – Factor's duty to communicate with Homeowners within prompt timescales

38. The Homeowner complained that the Factor had failed to respond to his enquiries and complaints intimated by letter or email within prompt timescales. The Homeowner made reference to the Factor's own complaints procedure as detailed in their Statement of Services. He referred to the period of time which had elapsed between his original complaints as detailed in his email of 30 March 2015 (and subsequently restated in his letters of 11 May, 5 June and 15 July 2015). Throughout this period the Homeowner maintained that the Factor had failed to clearly acknowledge the nature and extent of his complaint and to respond to his complaint in accordance with the Factor's own stated customer care complaints procedure.
39. At the hearing and in their evidence, the Factor candidly accepted that they had not responded timeously to the issues first raised by the Homeowner in his email (and subsequent letters) dated 30 March 2015. They further accepted that they had failed to follow or comply with their own stated customer care complaints procedures.

40. The Factor explained that there had been a delay in obtaining details of all Homeowners at the development from the original property developers. They further explained that the Homeowner's complaint had been "lost" amidst a number of other complaints which had been received from Homeowners at the time the Factor had sent out their initial invoices.
41. The Factor also recognised that they had not dealt with the Homeowner's complaints in the various stages which they had set out in their own customer complaints procedures. In particular, they accepted that the Homeowner's complaint had not been specifically dealt with and responded to by a Director as would be required under stage 3 of their own complaints procedure.
42. The Committee accordingly determined that the Factor has failed to comply with Section 2.5 of the Code of Conduct in that they have failed to respond to enquiries received by letter or email within prompt timescales.

Complaint by reference to Paragraph 3.3 of the Code of Conduct – Factor's duty to provide a detailed financial breakdown of works charged for.

43. The Factor are required by the Code of Conduct to provide to the Homeowners, in writing at least once a year, a detailed financial breakdown of the charges made and a description of the activities and works carried out which are charged for.
44. The Factor accepted in their evidence that they have not provided a detailed financial breakdown of charges made for the period from 1 April 2014 to 31 March 2015.
45. The Factor further explained, and the Homeowner accepted, that a detailed financial breakdown of charges made for the period from 1 April 2015 to 31 March 2016 would fall to be delivered to the Homeowner at the end of that period. At that time, the Factor would account to the homeowner for the charges which have been made for that period and would thereafter credit (or debit) the Homeowner's account with any balancing figure at the end of that period.
46. Having accepted that the Factor has not provided a detailed financial breakdown of charges made for the period 1 April 2014 to 31 March 2015, the Committee have determined that the Factor has failed to comply with Section 3.3 of the Code of Conduct.

Complaint of Failure to carry out the Property Factors Duties

47. The Homeowner complains that the Factor has failed to carry out the Factor's duties as the Factor has failed to respond to communication and has failed to resolve the Homeowner's concerns. The Committee determined that the Homeowner's complaints in this respect were a restatement of the complaints which had been considered by the committee in relation to alleged failure to comply with certain parts of the Code of Conduct. The Committee accordingly determined that there was no evidence that the Factor had failed to carry out the Property Factor's duties.

Decision

48. The Factor has failed to ensure compliance with the Factor's Code of Conduct as required by Section 14(5) of the Act in that they have failed to comply with paragraph 2.5 and 3.3 of the Code of Conduct.
49. As the Committee is satisfied that the Factor has failed to ensure compliance with the Property Factors' Code of Conduct as specified, the Committee propose to make a Property Factor Enforcement Order. A copy of the Committee's proposed Property Factor Enforcement Order has been issued along with this decision.
50. In terms of Section 19(2) of the Act where the Committee proposes to make such an Order, it must before doing so, give notice of its proposal to the Factor and must allow the parties an opportunity to make representations to the Committee.
51. The service of this decision to the parties should be taken as notice for the purposes of Section 19(2)(a) of the Act 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) of the Act reach the Panel's office by not later than fourteen days after the date of service of this decision upon them. If no representations are received within that timescale, then the Committee may proceed to make a Property Factor enforcement Order without seeking

further representations from the parties. Failure to comply with a Property Factor Enforcement Order without reasonable excuse constitutes an offence under Section 24 of the Act.

Right of Appeal

52. The parties' attention is drawn to the terms of Section 22 of the Act regarding their right to appeal and the time limit for doing so. Section 22 provides:-
- (a) 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 Committee or a Homeowner Housing Committee; and
 - (b) 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..."

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Andrew Cowan, Chairperson

24/12/15
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Date