



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

Hohp Ref: HOHP/PF/15/0022

Re:

**Property at Flat 3/2, 22 Sword Street, Dennistoun, Glasgow G31 1TD ("the
Property")**

The Parties:-

Miss Nancy O'Neill, residing at the Property ("the Homeowner")

and

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the
Factors")**

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)
David Godfrey (Surveyor Member)
Helen Barclay (Housing Member)

Decision of the Committee

The Factors have failed to comply with their duties under s 14(5) of the 2011 Act in terms of Sections 2.5 and 6.1 of the Code of Conduct for Property Factors.

The decision is unanimous.

Background

1. By application dated 26 February 2015, the Homeowner applied to the Homeowner Housing Panel ("HOHP") for a determination of whether the Factors had failed to comply with the duties set out in sections 1, 2, 3, 4, 5, 6 and 7 of the Code of Conduct imposed by section 14(5) of the 2011 Act. She also requested a determination as to whether the Factors had failed to comply with their general duties in terms of section 17(5) of the Act ("the Application").

2. The Homeowner appointed Mr Christopher Lord as her representative and her Application was progressed by him. Mr Lord had previously submitted an application to the HOHP under reference HOHP/PF/15/0011 in relation to three properties in the same development as the Homeowner, managed by the same Factors. A determination was issued in relation to that application on 27 July 2015. Mr Lord had made an application to conjoin the present Application with his own prior to the hearing in that case being held on 30 June 2015. However, due to time constraints, it was not possible to accede to that request. The present Application therefore stands alone and was considered on its own merits.
3. On 18 March 2015, Mr Lord on behalf of the Homeowner sent formal notifications to the Factors in terms of section 17(3) of the Act on *pro forma* letters supplied by HOHP for that purpose. The formal notifications incorporated the terms of the Application by reference and enclosed the application forms sent to HOHP on 26 February 2015. No further specification of the alleged breaches of the Factors' duties beyond what was contained within the Application was provided.
4. Notices of referral to the Committee were sent to the parties on or about 22 May 2015. This followed a Minute of Decision to refer the Application to a Homeowner Housing Committee made by the President of the HOHP on 21 May 2015.
5. An oral hearing in relation to the application was held on 31 July 2015 within the offices of the Homeowner Housing Panel, Europa Building 450 Argyle Street, Glasgow. The Homeowner was not present but was represented by Mr Lord who gave evidence to the Committee on her behalf. The Factors were present at the hearing and were represented by two of their employees, namely Stephanie Haig, senior property manager and Christopher Vallance, property manager, who also gave evidence to the Committee.
6. At the outset of the hearing, the Committee clarified the extent to which the Application was being insisted in, especially in view of the limited nature of the prior notification given in terms of section 17(3) of the Act. After discussion, Mr Lord on behalf of the Homeowner withdrew the following parts of the application: Sections 1, 3, 4 and 5 (entirely), Sections 6.3 and 6.4 and Sections 7.3, 7.4 and 7.5. It was also agreed that there would be no separate application in relation to the Factor's duties generally in terms of section 17(5) of the Act, since the matters listed in the application form and supported by the documents lodged were already covered by the relevant parts of the Code.
7. A further procedural matter arose: Mr Lord sought to amend reference to Section 2.4 of the Code in the Application to refer instead to Section 2.5. This was because the terms of the Application more relevantly fell within that particular paragraph, rather than the one listed. That request was not opposed and was allowed. Therefore a possible breach of Section 2.5 of the Code was considered by the Committee.

Committee findings - general

The Committee made the following findings in fact pursuant to Regulation 26(2)(b)(i) of the 2012 Regulations:

8. The Homeowner, is the heritable proprietor of the Property. The Property forms part of a six block development in Dennistoun, Glasgow, known as Eastern Court which was constructed in or around 2007 ("the Development").
9. The blocks in the Development are of varying sizes: Three of them contain six flats, one contains eight flats and two contain twelve flats, making fifty in total. Accordingly, the common charges in relation to maintenance of the common grounds are apportioned in 1/50 shares for each property while other common charges applicable to each close are apportioned in 1/6, 1/8 or 1/12 as appropriate. These are set out in the Written Statement of Services ("WSoS") applicable to the Development effective January 2014. The annual management fee was at that time stated to be £91.30 plus VAT.
10. A deed of conditions in respect of the Development dated 17 August 2005 was recorded in the Land Register by the developers, Carvill (Scotland) Limited ("the Deed of Conditions").
11. The Factors were the property factor responsible for the repair, maintenance and insurance of the common parts of the Development. They were first appointed to act by the developer on 20 April 2005. They ceased to act as factors with effect from 31 May 2015 following a majority vote by the residents' association to remove them and replace them with new factors.
12. The Factors were registered in terms of the Act on 7 December 2012. Their duties under the Act to comply with the Code arose from that date.

Findings in relation to the alleged breaches of duty

Section 2.5 of the Code

13. Section 2.5 of the Code requires the Factors to respond to enquiries and complaints received by letter or email within prompt timescales. Overall the Factors aim should be to deal with enquiries as quickly and as fully as possible, and to keep homeowners informed if additional time is necessary to respond. This is covered by section 4 of the WSoS headed "Communication Arrangements." It is provided that the Factors will endeavour to work within the following timescales:
 - (i) to return telephone messages within one working day,
 - (ii) to acknowledge both electronic and paper correspondence within forty-eight hours, and
 - (iii) to respond to both electronic and paper correspondence within five working days.

14. The Homeowner provided a copy of an email chain of correspondence which spanned the dates 27 November 2014 to 26 February 2015 in relation to a roof leak at the head of the stairwell in the common close at the Property. In the original email sent on 27 November 2014, the Homeowner noted that the leak had been an issue some months previously and had been the subject of repair, following which redecoration works had been carried out. This was therefore a recurrence of a previous issue.
15. Initially, the query was dealt with quickly. On the same day as the initial report was made, an assistant property manager with the Factors replied to the Homeowner to state that a job order had been put through for a contractor to come to the Property and to look at the problem. However, matters became less satisfactory for the Homeowner thereafter.
16. On 28 November, a request for an update was not responded to, prompting a further request on 2 December 2014. A brief response was issued to the effect that the Factors were still awaiting to hear from the contractor. Further requests for updates were then sent by email by the Homeowner on 3, 10 and 17 December 2014 and into the following year, 5 and 14 January 2015. Following these five separate reminders, a response was finally received on 14 January 2015 saying that a quote from the original contractor had not been received so that a new contractor had been instructed. At the end of that email, it was stated that the matter would be attended to within the next five working days.
17. There was evidently no such outcome within five working days as promised because on 30 January 2015, the Homeowner sent another reminder requesting an update on progress. When that was not responded to, another reminder dated 4 February 2015 was sent and yet another on 11 February 2015. Another week passed without response resulting in yet another email being sent by the Homeowner on 18 February 2015. So, three further emails had been sent following 14 January 2015, each more than five days apart and each receiving an automated reply stating that a response would be issued within five working days and each not actually being attended to.
18. Following the fourth reminder email of 18 February, the Homeowner was contacted by Mr Vallance on that date to say that the contractor would now be attending to the repair on 23 February 2015. Evidently, that again did not happen as the Homeowner sent another email to Mr Vallance on 26 February 2015 pointing out that the repair had not in fact been carried out and requesting an explanation. It was at this point that the Homeowner lodged her Application.
19. Mr Vallance referred in evidence to an undated letter received by HOHP on 15 June 2015 which provided an explanation for the above unfortunate events. It appeared that the original contractors who had previously carried out a repair to the roof at the common stairwell to the Property had been contacted immediately following the Homeowner's report on 27 November 2014. Unfortunately, they

had not responded despite various follow-up telephone calls and the ongoing issue of the leak was noted during a regular six-weekly inspection which took place. As a result, another contractor was engaged on 14 January 2015 to address the issue but they were unable to ascertain the source of the leak. The regrettable and unsatisfactory part of this chapter of evidence is that these difficulties and the steps taken by the Factors to resolve them in relation to each of these two roof contractors were at no point communicated to the Homeowner.

20. A meeting was held on 26 February 2015 with the residents' association and it was then agreed that a full roof survey would be carried out and the necessary repairs effected by a third contractor. The chronology provided in the letter of 15 June 2015 thereafter shows the timeline in which the repairs required were ascertained and the authority obtained to proceed with them. Mr Vallance gave evidence, which was unchallenged, that the repairs were finally effected on 27 May 2015.
21. The Committee concluded that while the Factors were taking reasonable steps to resolve the roof leak issue at the Property, they did not properly communicate the steps that they were taking to the Homeowner. The failure of the first contractor to respond to their work order and the failure of the second contractor to be able to locate the source of the leak were not matters within the control of the Factors. However, the section of the Code concerned provides "and to keep homeowners informed if you require additional time to respond." The Factors did indeed require further time to respond, but this was not indicated to the Homeowner. She was left in ignorance of their difficulties and the source of the delay. She was left to send repeated reminders which went unanswered, receiving only brief responses after four and five follow-up emails each time. The frustration which this caused to the Homeowner is clearly evident in the terms of the emails which she sent.
22. The Committee was of the view that if the Factors had responded in a timely fashion to the Homeowner instead of simply ignoring her, indicating the reason for the delay in resolving the issue and requesting extra time, the misunderstanding and frustration on the part of the Homeowner could easily have been avoided. Accordingly, the Committee found the Factors to have breached Section 2.5 of the Code.

Section 6 of the Code

23. Section 6.1 of the Code requires Factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. That section also requires factors to inform homeowners of the progress of works, including estimated timescales for completion.
24. As noted above, in relation to the findings under Section 2.5 of the Code, the Factors did actually undertake works notified to them in relation to the roof leak at the Property. However, they did not keep the Homeowner informed of the

progress of works or provide her with estimated timescales for completion. Such information as was provided was purely reactive, incomplete and only after repeated reminders, as discussed above. Accordingly, and based upon the same chapter of evidence in relation to the failure in communication narrated above, the Committee found the Factors to have breached Section 6.1 of the Code.

25. Section 6.9 requires the Factor to pursue contractors to remedy defects in any inadequate work or services provided. Again, as noted above, the Committee found that in relation to the roof issue in the common stairwell, the Factors did in fact pursue the original contractor who completed the works some months previously in order to have the defect remedied. Although the attempt was unsuccessful, the Factors' actions did not constitute a breach of this section of the Code.

Section 7 of the Code

26. Section 7.1 of the Code requires factors to have a clear written complaints procedure which sets out a series of steps, with reasonable timescales, which they will follow. At section 4 of the WSoS the Factors' internal complaints procedure is set out under the general heading of Communication Arrangements. In terms of that procedure, homeowners are invited to place their concerns in writing to the property manager responsible. In terms of the WSoS, the property manager will (a) acknowledge that correspondence within 48 hours and (b) seek to correct any problems to the homeowner's satisfaction within 28 business days. The Factors therefore had a written complaints procedure in place as required by the Code. There was accordingly, no breach of Section 7.1 of the Code.
27. In terms of Section 7.2 of the Code, where a complaint has not been resolved despite the complaints procedure having been exhausted, the final decision in relation to that should be confirmed by a senior member of management before the homeowner is informed in writing. In this instance, although the terms of the Homeowner's correspondence made it clear that she was complaining, matters were not in fact escalated through the formal complaints procedure by her. Accordingly, any breach under Section 7.2 of the Code did not arise.

Decision

37. In all of the circumstances narrated above, the Committee finds that the Factors have failed to comply with their property factor's duties in terms of s 14(5) of the Act in respect of sections 2.5 and 6.1 of the Code to the extent narrated above.

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

The Committee would also like to note, however, that Mr Vallance on behalf of the Factors, apologised for the failures in communication which occurred in relation to the roof repair issue as narrated above.

38. 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..."

Signed: M O'Carroll
Chairperson

Date: 4 August 2015