



**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/13/0067

Re: 177 Ledard Road, Glasgow, G42 9RE ('the Property')

The Parties:

Jim Gilmour residing at 177 Ledard Road, Glasgow ('the homeowner')

**Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow, G3
7PL ('the factor')**

Committee members:

**Jacqui Taylor (Chairperson) Carol Jones (Surveyor Member) and Ann
MacDonald (Housing 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 the property factor's duties from 1st October 2012 and has not complied with the Code of Conduct between 1st October 2012 and 22nd April 2013 .

Factual Background

1. The factor manages common repairs to the property 177 Ledard Road, Glasgow. The factor's date of registration as a property factor is 1st November 2012.
2. The homeowner is joint heritable proprietor of the west most ground floor flat 177 Ledard Road, Glasgow in terms of Land Certificate GLA179741.
3. By application dated 26th April 2013 the homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the factor had failed to:-
 - Comply with the sections of the Property factor Code of Conduct pertaining to written Statement of Services; Communication and Consultation and Carrying out Repairs and maintenance.
 - Carry out Property factor's Duties namely Investigating Complaints of Inadequate work from contractors and pursuing them to remedy these and checking contractors invoices when rendered and apportioning the cost due by each homeowner.

The application concerned two matters instructed by the factors and detailed in their May 2012 account. Firstly a plumbing repair carried out by J H Horn Plumbers Ltd in terms of their invoice dated 29th February 2012 (hereinafter referred to as the 'Plumbing Repair') and secondly a tiling repair carried out by Fourply in terms of their invoice dated 30th March 2012 (hereinafter referred to as 'The Tiling Repair').

4. The homeowner provided copies of two letters of notification he had sent to the factor, dated 14th June 2013, detailing the sections of the Code and the duties he believed the factor had failed to comply with. He advised as follows:
 - The factor has failed to comply with the factor's duties set out in sections 4 and 5 of their Terms of Service and Delivery Standards:
 - Section 4 of your Terms of Service
Investigating claims of inadequate work from contractors and pursuing them to remedy these.
 - Section 5 of your Terms of Service
Checking contractors invoices and apportioning the cost due by each homeowner.

The reasons for believing this are:

- Section 4 of your Terms of Service.

The fact that you are happy for the homeowners to pay over £500 to have 16 tiles replaced in the common close when the repair is sub standard and appallingly finished.

- Section 5 of your Terms of Service.

You billed the homeowners for a common repair stating a shared water tank was leaking when it was actually a leaking pipe, serving one flat, which had been turned off.'

- The factor has failed to comply with the following sections of the Code:
Section 1.1 A(b) of the Code: Authority to Act.
Sections 2.1 & 2.4 of the Code: Communication and Consultation.
Sections 6.1 & 6.9 of the Code: Carrying out Repairs and Maintenance.

The reasons for believing this are:

Section 1.1A(b) of the Code: Instructing repairs without consultation with no thought for the financial burden on homeowners.

Section 2.1 of the Code: Making misleading statements regarding work that has been carried out i.e. the need to replace a water tank in your letter of 15th January 2013.

Section 2.4 of the Code: Sanctioning repairs without seeking homeowners approval when you have no authority to do so.

Section 6.1 of the Code: Failure to notify homeowners of the progress of works.

Section 6.9 of the Code: Failure to pursue a contractor to remedy inadequate work as per your letter of 15th January 2013.'

5. By Notice of Referral dated 3rd July 2013 the President of the panel intimated that she had decided to refer the application to a Homeowner Housing Committee ('The Committee').
6. The factor returned the completed HOHP response form indicating that they did not want the application to be considered at an oral hearing.
They provided written representations with their letter dated 11th July 2013. Their written representations responded to each point contained in the application.
In summary, they stated that they had not contravened the Code of Conduct for property factors from 1st November 2012, the date they became a registered property factor and they had not failed to carry out the property factor duties since 1st October 2012.

They included an inventory of productions which included their Terms of Service and Delivery Standards addressed to the homeowner and Ms Gibson dated 22nd October 2012.

7. The homeowner also returned the completed HOHP response form dated 5th July 2013 and indicated that he did not want the application to be considered at an oral hearing.
8. **Preliminary Direction.**

The Committee issued a Preliminary Direction requiring the Homeowner to provide a copy of the relevant deeds referred to for burdens in the titles and asking the parties to provide reasons as to why it was competent for the Committee to consider the application as it related to historic repairs detailed in the May 2012 account.

The Preliminary Direction explained that the Committee can only consider any failures to comply with the property factor's Code between the date of the factor's registration in the register of property factors which was 1st November 2012 and 26th April 2013, which was the date of the Homeowner's application. In respect of allegations of failure to carry out the property factor's duties it could only consider matters after 1st October 2012, subject to the terms of the transitional arrangements contained in Regulation 28 of the Homeowner Housing panel (applications and decisions) (Scotland) Regulations 2012, which provide:

'28(1) subject to paragraph (2), no application may be made for determination of whether there was failure before 1st October 2012 to carry out the property factor's duties.

(2) The President and any committee may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date.'

In response to the Preliminary Direction the homeowner provided a copy of his Land Certificate for the property and letter dated 27th August 2013. In the letter he advised:

'As you state that no application can be made for failures that occurred before 1st October 2012 I have reviewed this and can make no further complaint in relation to points 2.4 and 6.1.

In relation to a continuing failure to act after 1st October 2012 I present the following information:

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

Re: Plumbing Repair

Hacking and Paterson's letter of 15th January 2013 states that J Horn Plumbers have identified the problem as 'continued leaks from the cold water storage tank' and quote a previous report from GSM Home Improvements relating to the same problem. They then go on to state that this tank requires renewed and this would be at 'greater community liability' to homeowners.

The February 2012 invoice from J Horn actually states that the problem was that the 'feed to the bathroom was switched off due to leaks' and 'advised the factor that pipe work needs altered'. There is no mention of a leaking tank.

The report from GSM also clearly states that the problem is due to pin holes in a lead pipe and that the supply to that pipe has been turned off at the tank on the opposite side of the building.

The tank in question had previously been renewed and is in perfect condition. It is available for inspection and is currently full of water and causing no problems.

6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

Re Tiling Repair

The factor's letter of 15th January 2013 states that they 'appreciate we remain unhappy', that they are 'satisfied with the response' of Fourply of 27th July 2013.

The factor wrote to Fourply on 3rd July to express their findings and the owners concerns. They were waiting for a response from them and their proposals on how to resolve the issue. The response from Fourply is as follows and is extracted from their letter:

7 March- receive email to fit 2 tiles.

13 March- attend property to look at tiles, spoke to resident re tile match ... £47.90 + vat

20 March- Two builders (two?) re- attend property and this time remove a broken tile (why was this not done at first visit?), source a replacement and return to fit 2 tiles at a cost of £120 + vat.

22 March- Two builders (two?) re- attend due to a further request from factor. This time to repair a separate area of approximately 12 loose tiles. These two builders spent nearly 5 hours each removing and re-fitting these tiles at a cost of nearly £230 + vat.

The standard of repair and matching of tiles is very poor. Fourply, in their response of 27 July, state that the wall they were trying to fix the tiles was in poor condition and they should have 'stopped work and raised our concerns but they did neither. They simply carried on regardless, leaving us with a botched tiling repair at a cost of over £500. As stated in their letter of 15th January, the factor is satisfied with the whole outcome of their investigations.

It should also be noted that when Fourply submitted their invoice on 22nd March 2013 that they made no reference to any difficulties they encountered whilst on site. These were only raised later when my complaint was made.'

No response was received from the factor to the Preliminary Direction or to the homeowner's response to the Preliminary Direction.

9. Decision

The Committee met to consider the parties' written representations on 5th September 2013 at The Europa Building, 450 Argyle Street, Glasgow, G2 8LH. The parties did not attend.

The Committee considered the documents provided.

They acknowledged that the application concerned the Plumbing Repair and the Tiling Repair both instructed by the factor and invoiced in the factor's invoice dated May 2012.

The Committee considered these two matters separately.

The Plumbing Repair.

The Committee considered the narrative of the invoice from J H Horn Plumbers Limited dated 29th February 2012 which states:

'Property: 177 Ledard Road

Reports of no cold water to bathroom, traced out plumbing and found feed switched off due to leaks. Traced that top floor flat only property off feed. Advised factor that pipework to mains needs altered. Returned to properties and blanked off cold feeds to bathroom appliances. Re-routed main from shower through wall to feed bath, wash hand basin and W C tested same. Reinstate all woodwork, panels and shelving.'

The Committee acknowledged that the description of the works carried out in the said invoice from J H Horn Plumbers Limited differed from the factor's description contained in their letter dated 15th January. The factor stated that the works related to 'continued leaks from a cold water storage tank situated in the attic'. The factor had not indicated that they had inspected the plumbing works. They referred to a report from GSM. Neither the factor nor the homeowner had produced a copy of the said report from GSM. The description of the works carried out supported the homeowner's account and therefore the Committee preferred the description of the works contained in the said invoice from J H Horn Plumbers Limited.

The Committee acknowledged that the work carried out by the contractor was to change the cold water supply from the existing tank to the mains connection and this affected only the top floor flat. The repair was not to a common pipe.

The Committee then considered whether the factor's handling of the Plumbing Repair was a breach of the Code of Conduct as detailed in the homeowner's application. They were aware that the factor was only required to comply with the Code of Conduct after the date they became a registered property factor (1st November 2012).

Section 1.1 A(b) of the Code: Instructing Repairs without consultation with no thought for the financial burden on homeowners.

The Committee determined that as the repair had been instructed in February 2012 the factor had not failed to comply with this section of the code after 1st November 2012 in relation to the plumbing Repair.

Sections 2.1 & 2.4 of the Code: Communication and Consultation.

The Committee acknowledged that the homeowner had confirmed in his letter of 27th August 2013 that he could make no further complaint in connection with section 2.4 of the Code.

Section 2.1 of the Code states that you must not provide information that is misleading or false.

The homeowner, in his intimation to the factor dated 14th June 2013 stated that the factor had made misleading statements regarding work that had been carried out ie the need to replace a water tank in their letter dated 15th January 2013.

The Committee considered the terms of paragraph numbered 2 of that letter, which states:

'...the works relative to the costs incurred through J H Horn Plumbers relate to one of the top flats having no cold water supply due to continued leaks from the cold water storage tank situated in the attic. From the previous emergency call out works carried out by GSM Home Improvements, it was identified that due to the introduction of combination boilers, only 1 flat still utilised this service. Whilst this would leave you to believe the matter would be the responsibility of this owner alone, as the attic tanks are common to the building, they are the responsibility of all owners, irrespective of whether being used by all. Naturally, any owner is entitled to have running cold water to their flat and in this respect, the most cost effective solution was sought, which was to alter the existing piping to this flat to allow for water to be fed from the main common feed. This was an alternative to renewing the attic tank, which would have lead to a greater communal liability.....'

The Committee acknowledged that the invoice from J H Horn Plumbers Ltd did not refer to leaks from the cold water storage tank situated in the attic. However the invoice referred to '*traced out plumbing and found feed switched off due to leaks'*

The Committee determined that paragraph 2 of the factors letter of 15th January 2013 was misleading and therefore the factor had failed to comply with this section of the Code.

Sections 6.1 & 6.9 of the Code: Carrying out Repairs and Maintenance.

The Committee acknowledged that the homeowner had confirmed in his letter of 27th August 2013 that he could make no further complaint in connection with section 6.1 of the Code.

Section 6.9 of the Code: This section of the Code referred to in the homeowner's application relates to the Tiling Repair.

The Committee then considered whether the factors handling of the Plumbing Repair was a breach of the factors duties namely Sections 4 and 5 of the factor's Terms of Service and Delivery Standards, as detailed in the homeowner's application.

Section 4 of the Terms of Service: This section of the factor's Terms of Service and Delivery Standards referred to in the homeowner's application relates to the Tiling Repair.

Section 5 of the Terms of Service: Checking contractor's and service suppliers' invoices when rendered and apportioning the cost due by each homeowner.

The Committee acknowledged that Regulation 28(2) already referred to provides that: '*The Committee may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date.*'

The Committee accepted that this matter was continuing as the homeowner had not paid the portion of the May 2012 factor's account pertaining to this matter.

They reflected that the invoice from J H Horn Plumbers Limited dated 29th February 2013 advises that the repair carried out was to the pipe work in the top floor flat, which was re-connected to the mains feed. They concluded that this repair was not carried out to communal pipes. Section A of the homeowner's Land Certificate described the common property of the tenement as including the common pipes etc. Therefore the Committee determined that the plumbing repair should not have been billed as a common repair.

They determined that the factor had failed to comply with section 5 of their Terms of Service and Delivery Standards as they had not properly determined that this repair was not a common repair.

The Tiling Repair

The Committee considered the narrative of the letter from Fourply dated 27th July 2012 referred to above.

They acknowledged that the tiling works were carried out in March 2012. The homeowner's complaint relates to the quality of the work and the cost.

The Committee considered the following correspondence:

- Letter from the homeowner's co- proprietor to the factor dated 22nd May 2012, which states:
'As mentioned yesterday, I will NOT be paying for that monstrous tiling job in the Close. Please let me know when you've inspected this?'
- Letter from the factor to the homeowner dated 24th May 2012 which states:
'We are clearly disappointed with your comments regarding the work carried out by Fourply and have arranged for a member of our staff to meet with the senior representative from their firm with a view to fully resolving this item.'
- Letter from the factor to the homeowner dated 3rd July 2012, which states:
'We have written to Fourply expressing both the owners concerns and our findings following our own visit to your property and currently await their response. Once we have received a response from them and their proposals on how to resolve this item to our clients, the coproprietors satisfaction, we will of course furnish you with a copy of same.'
- Letter from Fourply dated 27th July 2012 which states *inter alia*:
*'Summary
With the benefit of hindsight we should have stopped work at point 5C and raised our concerns but in an effort to keep costs to a minimum we tried to adhere tiles to an uneven wall surface due to firmly stuck adhesive. If we had tried removing adhesive this would have in our opinion resulted in major tile replacement. It is for this unfortunate reason we have left a slightly uneven surface as highlighted by co-proprietors.'*
- Letter from the homeowner to the factor dated 26th November 2012:
'A ridiculously over priced, botched tiling job, amounting to the replacement of 16 tiles. You have had the work inspected, as stated in your letter of july 3rd, and you have provided us with a copy of the company's response to our complaint. You offered us the chance to meet them to 'discuss' this matter? I am sorry David but this is your job according to your 'Terms of service and delivery Standards'.

- Letter from the factor to the homeowner dated 12th December 2012:

'We take this opportunity in enclosing a copy of the invoice submitted by Fourply Limited along with a copy of the invoices submitted by J H Horn Plumbing ...

We do hope the foregoing is sufficient for your purpose and look forward to assisting you further with any enquiries you may have in relation to these repair items.'
- Letter from the factor to the homeowner dated 15th January 2013 which states inter alia:

'Whilst we appreciate you remain unhappy with the works undertaken and the associated costs, further to receiving concerns over the same, a formal process commenced wherein we approached the contractor to discuss the works undertaken and the associated costs, culminating in a comprehensive response being received from Fourply Ltd on 27th July 2012. Satisfied with the response from Fourply Ltd, we issued a letter to the owners on 31st July 2012 enclosing the same and asking for owners remaining concerned to contact our office to arrange a further meeting with the contractor. As the collective group did not return to us with further objections, the matter is now considered closed with the sums properly due to be settled.'
- Letter from the homeowner to the factor dated 21st January 2013 which states inter alia:

'It is irrelevant that my fellow residents did not take up your offer of 'meeting with the contractor' in your letter of 31st July 2012. Your terms of Service clearly state at point 4 of your Core factoring Services that you will 'investigate complaints of inadequate work from contractors.. and pursue them to remedy this.' You have met with the contractor and your letter of 3rd July 2012 states that you have inspected the work you are awaiting 'their proposal on how to resolve this item' Nothing has been resolved and I now request that you attend the property to meet with me. I will take a moment to remind you that we were charged over £500 for the replacement of 16 tiles and you believe this to be acceptable.'

The Committee then considered whether the factor's handling of the tiling repair was a breach of the Code of Conduct as detailed in the homeowner's application. They were aware that the factor was only required to comply with the Code of Conduct after the date they became a registered property factor (1st November 2012).

Section 1.1 A(b) of the Code of Conduct: Instructing Repairs without consultation with no thought for the financial burden on homeowners.

The Committee determined that as the repair had been instructed in March 2012 the factor had not failed to comply with this section of the code after 1st November 2012 in relation to the Tiling Repair.

2.1 & 2.4 of the Code of Conduct: Communication and Consultation.

The Committee acknowledged that the homeowner had confirmed in his letter of 27th August 2013 that he could make no further complaint in connection with section 2.4 of the Code.

Section 2.1 of the Code states that you must not provide information that is misleading or false.

This section of the Code referred to in the homeowner's application relates to the Plumbing Repair.

6.1 & 6.9 of the Code of Conduct: Carrying out Repairs and Maintenance.

The Committee acknowledged that the homeowner had confirmed in his letter of 27th August 2013 that he could make no further complaint in connection with section 6.1 of the Code of Conduct.

Section 6.9 of the Code of Conduct: You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain collateral warranty from the contractor.

The Committee accepted that the factor had pursued the contractor and they received a letter from Fourply dated 27th July 2012.

The Committee determined that the factor had not breached the Code in relation to this matter after 1st November 2012.

The Committee then considered whether the factor's handling of the tiling repair was a breach of the factor's duties namely Sections 4 and 5 of the factor's Terms of Service and Delivery Standards, as detailed in the homeowner's application.

Section 4 of the Terms of Service: Investigating complaints of inadequate work or service from contractors and service suppliers and pursuing them to remedy these.

The Committee acknowledged that Regulation 28(2) already referred to provides that: '*The Committee may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date.*'

The Committee accepted that this matter was continuing as the homeowner had not paid the portion of the May 2012 factor's account pertaining to this

matter and therefore they could take into account matters occurring before 1st October 2012.

The Committee acknowledged the factor's letter of 15th January 2013 which explained:-

- (1) That they had pursued the contractor in respect of the works and they were satisfied with Fourply's response dated 27th July 2012.
- (2) The co proprietors as a collective group did not contact the factor and arrange a meeting with the contractor as suggested by the factor in their letter of 31st July 2012.
- (3) The collective group did not return to the factor with further objections they considered the matter closed with the sums properly due to be settled.

However, the Committee were aware that Fourply, by their own admission, in their letter of 27th July 2012 refer to the completed job having a 'slightly uneven surface and they also concede that '*with the benefit of hindsight they should have stopped at point 5C (when their operatives tried to remove adhesive from the wall but found it to be very difficult) and raised their concerns but in an effort to keep costs to a minimum they tried to adhere tiles to an uneven wall surface due to firmly stuck adhesive.*'

The Committee also noted that no where had the factor advised that he was happy with the quality of work.

The Chairperson and surveyor member of the Committee carried out a site inspection on 19th September and examined the tiles that had been replaced. The homeowner attended the inspection. The factor did not attend. The Chairperson and the surveyor member of the Committee found that the replacement tiles are a different style and colour, they are unglazed and have a textured non smooth finish in contrast to the neighbouring tiles. Some of the replacement tiles sit proud. The grouting was not finished properly and does not blend with the existing grouting. In summary the tiling job is clearly sub standard.

The Committee were mindful that Section 17(4) of the Act provides that references to carry out a property factors duties include references to a failure to carry them out to a reasonable standard.

Applying this standard the Committee considered that the question to be answered is whether the tiling job is such a poor job that it was unreasonable for the factor to be satisfied that it had been completed satisfactorily.

The Committee acknowledged that the factor had investigated the complaints of inadequate work from the contractors. However given the sub standard tiling

job described the Committee considered that it was unreasonable for the factor to have been satisfied with Fourply's response dated 27th July 2012.

The Committee determined that the factor had failed in the factor's duty to pursue the contractors to remedy the substandard works.

Section 5 of The Terms of Service: This section of the factor's Terms of Service and Delivery Standards referred to in the homeowner's application relates to the Plumbing Repair.

The Committee reflected that the difficulties encountered by the homeowner could have been avoided if there had been a more transparent system of instructing common repairs and they acknowledged that the factor's written representations included, at Paragraph 4, the following:

'What would help resolve the problems?

'While we remain convinced that we have provided a professional property factoring service to the homeowners in 177 Ledard Road and have done nothing that requires an apology from our firm, we would be delighted to meet with the group of homeowners, for the majority to consider and review our procedures for instructing common repairs to the property and going forward, to agree a cost ceiling for such repairs.

Likewise, we would be pleased to take formal instructions from the majority of owners if they require any modification to the way in which common repair costs are to be apportioned and act on these instructions.

We do not believe it is for one homeowner to engage with the property factor separately from their fellow homeowners and joint title owners, who make up the decision making body in regard to changes to the communal factoring service.'

Property Factor Enforcement Order

We propose to make the following property factor enforcement order:

Within 28 days of the communication to the factor of the Property Factor Enforcement Order:

- (1) The factor is required to repay the homeowner the sum of £104.68 (being a one eighth share of the J H Horn Plumber Limited's account) as the account does not relate to a common repair. The said sum of £104.68 to be paid from the factor's own funds at no cost to the owners.

- (2) The factor must issue an apology to the homeowner and call the meeting referred to in Paragraph 4 of their written representations, being a meeting for the majority to consider and review the factors' procedures for instructing common repairs to the property and going forward, to agree a cost ceiling for such repairs.
- (3) The factor is required to reimburse the homeowner his share of Fourply's account for the tiling works from their own funds and at no cost to the owners.
- (4) The factor must pay the homeowner £50 for the inconvenience he had suffered from their own funds and at no cost to the owners.

Section 19 of the 2011 Act provides:

- '....(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 proposal 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 section 14 duty, the committee must make a property factor enforcement order.'

The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2)(a) and 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 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

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.'

J Taylor

Signed Date 8th October 2013

Chairperson