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

HOHP reference: HOHP/PF/15/0044

Re: 22 Tabard Place, Knightswood, Glasgow G13 3XF ('the property')

The Parties:

Sam Macartney, 22 Tabard Place, Knightswood, Glasgow G13 4XF ('the homeowner'); and

GHA (Management) Limited, registered in Scotland under the Companies Act 1985, Registered No. SC245072, trading as YourPlace Property Management and having its Registered Office at Granite House, 177 Trongate, Glasgow G1 5HF ("the property 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:

George Clark (chair), and Brenda Higgins (housing member)

Decision

The Committee has jurisdiction to deal with the Application.

The property factor has failed to comply with its duties under section 14 of the 2011 Act.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as "the 2012 Regulations". The Homeowner Housing Panel is referred to as "HOHP".

The property factor became a Registered Property Factor on 22 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the application by the homeowner received on 16 April 2015, with supporting paperwork, namely copies of letters from the property factor, addressed to the homeowner and bearing the dates 6 October, 29 October, 10 November, 18 November, 10 December, 22 December 2014, an undated letter from the property factor to the homeowner in terms identical to the letter of 10 November, a further undated letter and copies of e-mails from the property factor to the homeowner dated 26 and 27 November 2014; a copy of the property factor's written statement of service, provided by the homeowner; and copies of e-mail exchanges between the homeowner and the property factor, dated 21, 22, 23 and 29 January 2015. The Committee confirmed that it did not require any further documentation prior to considering the application at a hearing.

Summary of Written Representations

The Committee had received, in advance of the hearing, written representations made by the homeowner and these are summarised as follows:- The property factor had failed to manage a request for repairs to be carried out to the roof of the block of which the property forms part, had failed to supply information requested by the homeowner in relation to the proposed repair and had failed to comply with its own complaints procedure. The homeowner contended that the property factor had failed to comply with Sections 2.1, 2.4, 2.5, 5.3, 5.4, 6.1, 6.3, 6.7, 7.1, 7.2 and 7.4 of the Code

The Committee had received, in advance of the hearing, a written representation from the property factor. This comprised an e-mail dated 17 August 2015, in which the property factor stated that the homeowner had not exhausted the property factor's internal complaints process. A Stage 1 response had been issued, however Stage 2 complaints were

handled by a Group Central team who report directly to the CEO. The property factor therefore requested the opportunity of exhausting its internal complaints procedure in the first instance. The Committee had, however, by Direction dated 12 September 2015, determined that it did not accept the contention that the internal complaints procedure had not been exhausted and had continued the application to a hearing.

Susequent to the hearing, the property factor sent a further written submission to the Committee, attached to an e-mail of 13 November 2015. The Committee determined, however, that it was not prepared to accept a written submission received at such a late stage, as the property factor had had ample time to make submissions in advance of the hearing and the homeowner had not had an opportunity to see and respond to the submission.

THE HEARING

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow G2 2XL on 12 November 2015. The homeowner was present at the hearing. The property factor was neither present nor represented at the hearing. The homeowner was accompanied by Robert and Mrs Cindy McLean, 26 Tabard Place, Knightswood, Glasgow and Ian and Mrs Kathy Semple, 20 Tabard Place, Knightswood, Glasgow.

Summary of Oral Evidence

The chairman told the homeowner that he could assume that the Committee members had read and were completely familiar with all of the written representations and the documents which accompanied them. The Commitee then asked the homeowner to provide a chronological account of the correspondence with the property factor which had accompanied his application.

The homeowner advised the Committee that the property was a ground flor flat in a block of four. One of the flats remained in the ownership of Glasgow Housing Association (GHA) following the transfer of local authority housing to GHA, and the others were privately owned, Number 22 by him, Number 20 by Mr and Mrs McLean and Number 26 by Mr and Mrs Semple. Mr and Mrs McLean had contacted the property factor, as water was coming into their flat because of a problem with the roof at the rear of the building. The homeowner had been away on holiday in October 2014 and had returned on 18 October.

The homeowner told the Committee that the letters from the property factor dated 29 October, 10 November and 18 November 2014 had all arrived at the same time. The first letter seen by the Committee, dated 6 October 2014, related to general repairs and was not part of the homeowner's complaint. The letter of 29 October advised that, at the request of one of the residents, the propery factor had arranged an appointment for its repairs and maintenance team in relation to a roof tile that was broken or missing at the front of the building. The letter dated 10 November enclosed a Common Repair Consent form to be signed by the homeowner if he accepted the estimate for repairs to the roof. The heading on that letter was, again "Roof tile broken/missing-front". The letter dated 18 October advised that the repair would not proceed, as the property factor had been unable to gain sufficient consent from all neighbours. As all three letters had arrived at the same time, shortly after 18 November 2014, the homeowner had not seen the estimate or the Common Repair Consent form before he had been advised that the repair would not be going ahead, due to lack of owners' consent. About a week later, a further letter had arrived. This one was undated, but was identical to the letter of 10 November.

On 24 November the homeowner had had a telephone conversation with the property factor and in e-mails of 26 and 27 November, the property factor had stated that the original letter would be re-issued, with the owners having 10 days within which to return the Common Repair Consent form. These e-mails had not, however, been sent to the correct e-mail address, so had not been seen by the homeowner until copies were attached to another undated letter from the property factor, acknowledging a complaint that the property factor had received from the homeowner on 15 December. The property factor upheld the element of the complaint that related to e-mails having been sent to the wrong address and stated that the Consent forms had been reissued on 3 December, giving residents until 17 December to return them, but added that this work had been rejected as majority consent had not been received. The letter advised the homeowner that this concluded Stage 1 of its complaints process and gave details as to how it could be escalated to Stage 2, if the homeowner was dissatisfied with the way the complaint had been handled or with the outcome.

The homeowner told the Committee that he had never received the letter of 3 December and that he was unsure as to what elements of his complaint had been upheld at Stage 1, so he had proceeded to Stage 2 of the complaints process. He had had a meeting with Michelle Rush of the property factor on 23 December, following which the letter of 3 December was re-sent to him. On 21 January 2015, the homeowner e-mailed the property factor to say that the complaints system was not working. The property factor replied on the following day, asking the homeowner to telephone Michelle Rush to discusss reviewing the homeowner's recent charges in light of the difficulties he had been experiencing. The homeowner had not telephoned that day, but had e-mailed on 23 January, apologising for not having done so and stating that he wished to raise a Stage 3 complaint (to HOHP). Michelle Rush had replied later that day, acknowledging that the homeowner might choose

to contact HOHP, but asking him to await the response to his Stage 2 complaint , which he would receive the following week. Having had no further correspondence, the homeowner had e-mailed the property factor on 29 January to say that he did not intend waiting any longer and on 15 April 2015, he had sent his application to HOHP.

The homeowner told the Committee that he and the other owners in the block had lost all confidence in the property factor. Mr and Mrs McLean had also lodged a Stage 2 complaint, which had been acknowledged by the property factor on 11 December 2014, with a response promised within 20 days and they had heard nothing further. The headings in all the common repair descriptions in communications from the property factor referred to roof repairs at the front of the building, but the homeowner had repeatedly told the property factor that the problem was with the roof at the rear and this had been noted at a meeting the homeowner had had with the property factor's housing officer, Mr Steven Bennett, in November 2014.

The homeowner was of the view that persistently referring to the wrong part of the building was miscommunication and breached Section 2.1 of the Code. Section 2.4 required the property factor to have a procedure to consult with homeowners and to seek their written approval for works such as were required in this case. The homeowner contended that the property factors had such a procedure in place, but that it did not work and was not worth the paper it was written on. Section 2.5 dealt with complaints handling and responses to enquiries and complaints and the application had been all about the property factor's failings in that regard.

The homeowner then referred to Section 5 of the Code, which deals with insurance. He told the Committee that, despite requests from the owners within the block, the property factor had not disclosed whether it was receiving any commission for arranging the block insurance (Section 5.3) and had not checked whether a claim might be made to cover any aspect of the damage caused by the problems with the roof (Section 5.4). The homeowner was also of the view that, whilst the property factor had in place a procedure (as required by Section 6.1) for homeowners to notify matters requiring repair, the problems related to what happened after such notification was made and he gave as an example, an instance where a repair was required to drainage and he had not been told whether the work had been done or not on a particular day. Consequently, he had had to flush his toilet to check whether the blockage had in fact been cleared. He had also asked the property factor whether it was receiving any commission from the contractors that it appointed, but had not received a reply. This, he said, was a breach of Section 6.7 of the Code. Again, the property factor had in place a complaints resolution procedure, as required by Section 7.1, but it did not work. The failure to intimate the outcome of the Stage 2 complaint breached section 7.2, and Section 7.4 had also been breached, in that the owners had been asking continuously for information, but had received nothing.

The homeowner concluded his evidence to the Committee by stressing that the important thing was to have the matter resolved for Mr and Mrs McLean by having the repair works done to the roof above their flat. The owners were willing to meet with the property factor at any time to sort things out.

The Committee make the following findings of fact:

1. The homeowner is the owner of the property 22 Tabard Place, Knightswood, Glasgow G13 3XG, a self-contained ground floor flat within a block of 4 flatted dwellinghouses. The property factor manages and maintains the common parts, which are owned by two or more persons, of the block of which the property forms part and the property factor, therefore, falls within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act")
2. The property factor's duties arise from a written Statement of Services, a copy of which has been provided by the homeowner.
3. The date from which the property factor's duties arose is unknown, but it is not disputed that it was prior to the date of the homeowner's application.
4. The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
5. The date of Registration of the property factor was 22 November 2012.
6. The homeowner has notified the property factor in writing as to why he considers that the property factor has failed to carry out its duties arising under section 14 of the Act. He did this by letter on 13 May 2015 .
7. The homeowner made an application to The Homeowner Housing Panel ("HOHP") dated 15 April 2015 and received by HOHP on 16 April 2015 under Section 17(1) of the Act. The application was subsequently amended by letter received by HOHP pn 24 June 2015.
8. The following is a summary of the content of the homeowner's application to HOHP:- The property factor has failed to manage and provide information regarding a proposed common repair, has failed to comply with its own complaints procedure and has failed to respond to numerous contacts from the homeowner and other owners in the block regarding the proposed common repair.
9. The homeowner's concerns have not been addressed to his satisfaction.
10. On 3 August 2015, the President of HOHP referred the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter dated 3 August 2015.
11. A copy of the property factor's written Statement of Services was included amongst the supporting paperwork for the homeowner's application to HOHP.

12. The property factor conceded in an e-mail to the homeowner dated 27 November 2014, that the Consent form in respect of the repairs to the roof did not reach the homeowner until after the expiry of the consent period for agreeing to the repair being carried out. The Committee accordingly makes a finding of fact that the letters from the property factor dated 29 October, 10 November and 18 November 2014 all arrived at the same time.
13. The e-mails sent by the property factor to the homeowner on 26 and 27 November 2014 were sent to the wrong e-mail address.
14. The homeowner told the property factor that he was not satisfied with the outcome of Stage 1 of the complaints process.
15. The property factor advised the homeowner by e-mail dated 23 January 2015 that he would receive the outcome of the Stage 2 complaint process during the following week.
16. The property factor has not intimated to the homeowner the outcome of Stage 2 of its complaints process.

Reasons for the Decision

The Committee considered the application, with its supporting papers, the written representations of the homeowner and the property factor and the evidence given by the homeowner at the hearing.

The Committee was not of the view that referring to the front of the building rather than the rear constituted a breach of Section 2.1 of the Code of Conduct, That Section states that property factors must not provide information that is misleading or false. The view of the Committee was that, whilst the reference was contained in the job description and the mistake was repeated on a number of pieces of correspondence, the detailed description of work envisaged repairs which were not confined to the front of the roof. The Committee fully understood the frustration that the incorrect wording caused to the homeowner, particularly after it was pointed out to the property factor, but was not prepared to hold that it amounted to a breach of Section 2.1.

The Committee was unable to uphold the complaint that the property factor had failed to comply with Section 2.4 of the Code. That Section requires property factors to "have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur fees in addition to those relating to the core service". The Committee found that the property factor had such a procedure in place. The homeowner's complaint was that the procedure was not working, but the Code itself merely requires a procedure to be in place. The Committee was, however, satisfied that the procedure had not been followed, as the letter requesting consent had not arrived until after the expiry of the period for returning the Consent Form.

The Committee was of the view that the property factor had failed to comply with Section 2.5 of the Code, which requires property factors to "respond to enquiries and complaints received by letter or email within prompt timescales" and that overall, the aim of property factors "should be to deal with enquiries and complaints as quickly and as fully as possible". The Section also adds that response times should be confirmed in the written statement. The property factor's written statement of services states that the property factor will keep the homeowner informed and will clearly communicate how it will resolve a complaint. The Committee finds that the letter to the homeowner advising of the outcome of Stage 1 of its complaints process is undated and does not specify whether the complaint has been upheld in whole or in part and, if in part, which element has not been upheld. The Committee is also of the view that the property factor has failed to advise the homeowner of the outcome of Stage 2 of the complaints process. The Committee does not accept the contention of the property factor that its internal complaints procedure has not been exhausted. It was for the property factor to intimate the outcome, as promised in its e-mail of 23 January 2015 and the failing in that respect is entirely the fault of the property factor.

The Committee did not uphold the complaint by the homeowner that the property factor had failed to comply with Sections 5.3 and 6.7 of the Code. These Sections require property factors to disclose any commissions they are receiving from property insurers or from contractors appointed to carry out work to the property. No evidence had been put to the Committee that the property factor is receiving any such commission payments and the failure to respond to a request from the homeowner does not of itself constitute a breach of the duties to disclose any such commission payments. Further, the written statement of services states that the property factor does not receive any additional benefit or commission from contractors carrying out works which form part of the property factor's core services. That said, the Committee is of the view that it would be common courtesy for property factors to respond to any enquiries from homeowners asking whether any such commission payments are being made.

The Committee did not uphold the complaint by the homeowner that the property factor had failed to comply with Section 5.4 of the Code. That Section requires property factors to "have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to to check that claims are made promptly and correctly". The Committee is satisfied that there is a procedure in place. The Section goes on to deal with circumstances where owners are responsible for their own insurance, which does not apply in this case. The property factor informed the homeowner in an e-mail of 27 November 2014 that the works might be covered under the common insurance policy, but that it was the responsibility of the owners to log a claim with the insurers, Direct Line Group and the property factor provided the telephone number that the owners should call in order to do this.

The Committee was unable to uphold the complaint by the homeowner that the property factor had failed to comply with Section 6.1 of the Code, which requires property factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. It also requires property factors to inform homeowners of the progress of the work, including estimated timescales for completion. The Committee understood the frustration of the homeowner at the manner in which the request for consent to common repairs had been handled by the property factor, but held that there is a procedure in place and that, as no works had been instructed, the property factor could not have breached the requirement to inform homeowners of the progress of the work.

The Committee did not uphold the complaint that the property factor had failed to comply with Section 6.3 of the Code, which provides that, on request, property factors must be able to show how and why they appointed contractors, including cases where they decide not to carry out a competitive tendering exercise or use in-house staff. The property factor stated, in the e-mail to the homeowner dated 27 November 2014 that it was "not required to obtain multiple quotations for reactive repairs, these are sent through our repairs and management contractor City Building Glasgow".

Section 7.1 of the Code requires property factors to have a clear written complaints procedure. The homeowner accepted at the hearing that the property factor has such a written procedure and the Committee therefor finds that the property factor has not failed to comply with Section 7.1. The honmeowner's complaint is that the procedure does not work.

The Committee upheld the complaint by the homeowner that the property factor had failed to comply with Section 7.2 of the Code. This states that when the in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. The property factor, in its written submission, stated that the procedure had not been exhausted, but the Committee is not prepared to accept that the fact that the property factor has, through no fault of the homeowner, failed since January 2015 to intimate the final decision to the homeowner means that the in-house complaints system has not been exhausted.

The Committee did not uphold the complaint that the property factor had failed to comply with Section 7.4 of the Code. This Section requires property factors to retain (either in electronic or paper form) all correspondence relating to a homeowner's complaint for three years as this information may be required by the Homeowner Housing Panel. No evidence was provided to the Committee that the property factor had failed in that duty, the homeowner's complaint being that he and his neighbours had repeatedly asked for information which had not been forthcoming.

The view of the Committee was that the property factor had failed to deal properly with the process of obtaining owners' consent to the proposed repair to the roof, in that it did not send out the Common Repair Consent Form until after the deadline for acceptance set out in their covering letter had expired. The property factor should, therefore, now re-issue the documentation in the correct order and should take the opportunity to correct the error which indicated the repair was required to the roof at the front of the building, rather than to the rear. The property factor should also advise the homeowner as to which elements of his complaint were upheld at Stage 1 of the complaints process and which (if any) were not upheld and should also advise the homeowner of the outcome of Stage 2 of the complaints process. A letter of apology for the failure to intimate the outcome within a week of 23 January 2015 should also be sent to the homeowner.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

The Committee proposes to make a Property Factor Enforcement Order, as detailed in the accompanying Section 19(2) Notice.

Appeals

The parties' attention is drawn to the terms of section 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 ... "

George Clark

Chairperson Signature .... Date 14 November 2015