



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

HOHP reference: HOHP/LM/14/0074

Re: Property at Moorefield Estate, Kilmarnock, Ayrshire (“the Property”)

The Parties:-

Ms Lynn Dunn, residing at 8 Dunnottar Drive, Kilmarnock, Ayrshire, KA1 2RZ (“the Homeowner”)

And

Meadfleet Limited, having a place of business at Suite 1, 3rd Floor, Southgate House, St. Georges Way, Stevenage, Herts, SG1 1HG (“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)

Mary Lyden (Housing Member)

Decision of the Committee

The Factor has failed to comply with the Property Factor Code of Conduct as required by Section 14(5) of the Act. The Committee accordingly proposes to make a property enforcement order.

Background

1. By an application dated 8 May 2014, the Homeowner applied to the Homeowner Housing Panel (“the Panel”), to determine whether the Factor had failed to comply with its duties under the Act. In her application, the Homeowner alleged that the Factor had failed to comply with the following sections of the Code of Conduct:-

- 1 – duty to provide a written statement of services;
- 2.1 – duty to provide information which is not misleading or false;
- 2.2 – duty not to communicate with homeowners in a way which is abusive or intimidating or which threatens them;
- 2.5 – duty to respond to enquiries and complaints within prompt timescales;
- 3.3 – duty to provide detailed financial breakdown of charges, and a description of activities for works carried out which are charged for;
- 4.1 – duty to provide a pre-written procedure for debt recovery;
- 4.5 – duty to have systems in place to ensure the regular monitoring of payments due from homeowners;
- 4.8 – duty not to take legal action against a homeowner without taking reasonable steps to resolve matters;
- 5.2 – duty to provide each homeowner with clear information on insurance, showing the basis upon which any share of insurance premium is calculated;
- 6.3 – duty to be able to show how, and why, contractors were appointed;
- 6.6 – duty, if applicable, to make available documentation in relation to any tendering process for inspection;
- 7.1 – duty to have a clear written complaints resolution procedure;
- 7.2 – duty within written complaints procedure that any final decision should be confirmed with senior management before the homeowner is notified in writing.

The Homeowner further alleged that the Factor had failed to carry out the Property Factors duties as the Factor has not maintained the common areas within the development and not followed accounting procedures.

2. By letter dated 20 November 2014, the President of the Panel sent a notice of referral to both parties intimating her decision to refer the application to a Panel Committee for determination. Both parties were thereafter notified by letter from the Panel that a hearing was to be held on the issues raised on the 3 February 2015;

3. Prior to the hearing date, the Committee were able to consider:-
 - (i) initial application from the Homeowner dated 8 May 2014, together with copy correspondence between the Factor and the Homeowner which was attached to that application;
 - (ii) a copy of correspondence and written representations lodged by the Factor under cover of their letter of 16th December 2014.

Hearing

4. A hearing took place before the Committee at Europa Building, 450 Argyle Street, Glasgow, G2 8LA, on 3 February 2015. The Homeowner was present and represented herself. She was accompanied at the hearing by her mother, and joint owner of the Property, Mrs Janice Dunn. Both the Homeowner and Mrs Dunn gave evidence. The Factor was represented by Mr Stephen Carter, their Technical Director. Mr Carter gave evidence on behalf of the Factor.

The complaints made by the Homeowner and the approach of the Committee

5. The Homeowner had raised a variety of complaints in relation to the conduct of the Factor. At the start of the hearing the Committee drew parties' attention to the Homeowner's email to the Factor dated 31st July 2014, in which she had outlined what she believed to be the outstanding issues as at that date. The Committee agreed at the start of the hearing that they would consider evidence in relation to each of the matters raised by the Homeowner in that email of 31 July 2014 as being the only outstanding issues identified by the Homeowner. For the avoidance of doubt the Committee did not consider any complaint under Sections 4.5, 6.6, or 7.1 of the Code of Conduct as these were not included in the Homeowner's list of outstanding issues as at the date of the hearing.

Complaint under Section 1 of the Property Factors' Code of Conduct

6. The Homeowner complained that the Factor had failed to comply with the terms of the Code of Conduct as they had failed to provide a written statement of services.
7. In terms of the Code of Conduct a Factor must provide a written statement of services within four weeks of the request of the Homeowner.

8. The Homeowner gave evidence that the first requested a written statement of services in terms of a letter which the Homeowner sent by recorded delivery to the Factor dated 11 September 2013. The Homeowner had produced a copy of her letter of 11 September 2013 which specifically requested that the Factor respond to her on a number of issues within four weeks of the date of that letter. In particular, the Homeowner had requested that the Factor provide the written statement of services as required by Section 1 of the Code.
9. In evidence the Homeowner explained that she did not receive any response to her letter of 11 September 2013 and accordingly sent a further email to the Factor in this respect on 23 November 2013.
10. The Homeowner gave evidence that she did finally receive a copy of the Factor's Code of Conduct under cover of a letter from the Factor dated 20 June 2014. That letter of 20 June from the Factor had included a copy of a letter of 15 October 2013 to the Homeowner which had included a copy of the Code of Conduct. The Homeowner gave evidence that she had never received the letter of 15 October 2013 and that is why she had followed up her request for a copy of the Code of Conduct on a number of occasions from that date.
11. The Factor's representative explained that all residents at the development had been sent a copy of the Factors Code of Conduct and that the Homeowner had been sent a copy of the letter on 15 October 2013 enclosing a copy of that Code of Conduct.
12. The Committee accept the evidence of the Factor that a copy of the Code of Conduct was issued under cover of their letter of 15 October 2013. That letter was, however, issued out with the required four week period and accordingly the Factor failed to provide the written statement of services within the period specified in the Code of Conduct.
13. In any case the Committee accept the evidence of the Homeowner that she never received the letter of 15 October 2013. The Committee further accept that she continued to request a copy of the Code of Conduct by her letters of 7 March 2014 and 7 April 2014 to the Factor. Despite these reminders the Factor did not issue a further copy of their letter of 15 October 2013 (with the accompanying statement of services) until 20 June 2014.
14. The Factor has a duty to provide the statement of services within four weeks of the date of request. The Factor failed to comply with this duty. The Factor further failed to acknowledge that their own correspondence dated 15 October 2013 (which did enclose a copy of the Code

of Conduct) was not received by the Homeowner and failed to acknowledge the Homeowner's further requests in this respect until the Factor finally responded on 20 June 2014.

15. The Committee accordingly determined that the Factor has failed to comply with Section 1 of the Code of Conduct.

Section 2.1 - The Homeowner complains that the Factor has failed to follow the Code of Conduct in that they have provided information which is misleading or false.

16. In this connection the Homeowner made specific reference to a previous decision of the Homeowner Housing Panel dated 24 April 2014. That decision of the HOHP had been made in relation to the same property and in relation to the same Factor. In that decision HOHP had determined that the Factor had not complied with Section 2.1 of the Code of Conduct.
17. The Homeowner did not lead any further evidence in relation to this particular part of her complaint.
18. The Committee did not consider that reference to a previous decision of the HOHP could, in itself, constitute a valid complaint. The earlier decision of the HOHP had dealt with a specific matter in the specific circumstances of that case. The Homeowner sought to rely upon the fact that earlier decision had found that the Factor's tendering and invoicing information had been misleading.
19. The decision of the HOHP in relation to that matter is a separate issue. The fact that it was determined in that case that the Factor had failed to comply with the Code of Conduct is not evidence which, in itself, can be founded upon as the basis of a breach of the Code of Conduct in the current case.
20. The Homeowner Housing Committee accordingly determined that there is no evidence of any failure, in the current case, in relation to this section of the Code of Conduct.

Section 2.2

21. The Homeowner alleged that the Factor had communicated with Homeowners in a manner which was abusive, intimidating and threatening. Both the Homeowner and Mrs Dunn gave evidence that they found correspondence from the Factor's solicitors, Messrs Shulmans, to be both threatening and intimidating. In particular they made reference to a letter which they

had received from the solicitors dated 29th April 2014 and which required immediate payment of the sum of £596.90 and which threatened court action in the event that the Homeowner failed to make this payment.

22. The Homeowner and her mother found this to be threatening and intimidating as the letter had been received despite their own requests for further information in relation to costs which had been invoiced. These repeated requests had been made by the Homeowner since the first invoice was issued in February 2012 and those requests for further information had further been repeated in a number of letters and emails to the Factor. The Homeowner's evidence was that, despite these repeated requests for further information and for a breakdown of the costs claimed, no material response was received by them at the time they received the solicitors' letter dated 29th April 2014. That letter from the solicitors made no reference to the Homeowner's repeated correspondence which had requested further information. The Homeowners made reference to the Code of Conduct at Section 49 which required that the Factor, or any third party acting on their behalf, when contacting debtors, must not act in an intimidating manner or threaten them (apart from a reasonable indication that they may take legal action).
23. In his evidence the Factor's representative explained that the Factors follow a debt recovery procedure and the final sanction is to pass the matter to solicitors.
24. The Factor's representative accepted in his evidence that there did appear to be a "disconnect" between the actions of the credit control department within his organisation, who were responsible for instructing the solicitors, and those who deal with the request for further information which had been made by the Homeowner.
25. In all the circumstances of this particular case the Committee accepted that, (given the repeated request by the Homeowner for further information), the solicitors' letter which had been issued in this matter was not a reasonable step for the Factors to have taken, given the fact that they had not replied to the repeated requests of the Homeowner for further information. The Committee accepted that the Homeowner and her mother had found the correspondence from the solicitors to be intimidating. Whilst the Factors can make a reasonable indication that they may take legal action to pursue a debt, the Committee determined that it was not reasonable to take such action in this particular case at a time

when they had failed to reply to numerous requests from the Homeowner for further information. The Committee accordingly determined that the Factor had failed to comply with the Code of Conduct in relation to this particular matter.

Breach of Section 2.5

26. The Homeowner complained that the Factor had failed to respond to enquiries and complaints made by the Homeowner by both letter and emails within prompt timescales. In particular the Homeowner highlighted the Code states that the Factors should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep Homeowners informed if additional time to respond is required.
27. In terms of the Factor's own statement of services they state that they aim to respond to all forms of communication within ten working days.
28. The Committee accepted the evidence of the Homeowner that they had communicated with the Factor by letter dated 11 September 2013. It was further accepted they did not receive a timeous response to that letter and that the Homeowner thereafter followed their original letter with further correspondence dated 7 March 2014, 7 April 2014 and an email dated 4 May 2014. The Factor failed to respond to the Homeowner during that period in any material way which dealt with the issues which had been raised by the Homeowner.
29. The Committee accordingly determined that the Factor failed to comply with section 2.5 of the Code of Conduct, in that they failed to respond to enquiries and complaints received from the Homeowner within prompt timescales.

Complaint under Section 3.3

30. The Homeowner complained that they have not received a detailed financial breakdown of charges made by the Factor together with a description and activities of the works which were carried out and which are charged for. The Homeowner made reference to the repeated correspondence to the Factor whereby they had requested specifically the detailed financial breakdown and description of activities of works carried out all of which the Factor is required to supply in terms of Section 3.3 of the Code of Conduct.
31. The Factor's representative explained to the Committee that the Factor operates a tender procedure for contractors to carry out works at the property. The Factor made reference to a

table which they had lodged with the Committee and which showed relevant sums paid to particular contractors over the period from August 2008 until February 2014. The Factor also exhibited correspondence which had been sent to the Homeowner under cover of their letter of 15 October 2013 (and copied out again to the Homeowner under their letter of 20 June 2014) which included a copy of the annual maintenance schedule for the property and programme site inspections for the property. The Factor's representative's evidence to the Committee was that this information, as supplied to the Homeowner, was sufficient to satisfy the obligations set out in the Code of Conduct at paragraph 3.3.

32. The Committee determined that the information supplied by the Factor fails to meet the requirement set by Section 3.3 of the Code of Conduct. The Factor is required to give a "detailed" financial breakdown of charges and a description of the activities and works carried out which were charged for. Further the Factor is required, in response to a reasonable request, to supply supporting documentation and invoices or other appropriate documentation for inspection or copying. The information supplied by the Factor gave no detailed breakdown to the Homeowner as to the charges which they have been asked to pay for. There is no information as to how charges are split between the various co-proprietors at the development nor is there an explanation of how insurance premiums are charged. The information which the Factor has made available to the Homeowner does not meet the requirements of Section 3.3 in that it does not provide a detailed financial breakdown or a clear description of activities and works which have been carried out and which were charged for. The Code of Conduct states that Homeowners should know what it is they are paying for, how the charges are calculated and that no improper payment requests are involved. The Committee determined that it would not be possible from the information supplied by the Factor to the Homeowner to know what it is they are paying for or how the charges have been calculated. In the circumstances the Committee have determined that the Factor has failed to comply with Section 3.3 of the Code of Conduct.

Complaint regarding Section 4.1

33. Section 4.1 of the Code of Conduct requires that the Factor must have a clear written procedure for debt recovery. The Homeowner gave evidence that no written statement of

service was issued to her until 20 June 2014 and that the Factor did not apply the statement of services, in so far as it applied to debt recovery, in a fair or consistent manner in accordance with that statement of service. The Committee noted that the Homeowner may still have issues as to how the Factor is administering their debt recovery processes in terms of their own statement of services. Any such complaints however have not been clearly specified by the Homeowner in terms of her application (except in so far as already dealt with herein) and the Committee accept that the statement of services does have a written procedure for debt recovery. The Committee did not accordingly determine that there has been any breach by the Factor in relation to this section of the Code of Conduct.

Code of Conduct Section 4.8

34. The Code of Conduct states that the Factor must not take legal action against the Homeowner without taking reasonable steps to resolve the matter and without giving notice of their intention to do so.
35. The Homeowner complained that the Factor authorised their solicitors to issue a letter demanding payment of sums due before they had taken all reasonable steps to resolve the matter, particularly given that the Factor had failed to respond to repeated correspondence and requests for further information from the Homeowner.
36. In relation to this matter it was agreed between the parties that, whilst a letter had been issued by the Factor's solicitor (referred to elsewhere in this decision), no actual legal action had been raised against the Homeowner. In the circumstances therefor the Committee were satisfied that the Factor had not breached Section 4.8 of the Code of Conduct.

Breach of Section 5.2

37. The Factor is required to provide each Homeowner with clear information showing the basis upon which the share of their insurance premium is calculated. The Homeowner complained that they had not received any information which showed the basis on which their share of the insurance premium was calculated. The Homeowner accepted, however, that there was no evidence that they had specifically asked the Factor for this information. In the circumstances

therefore the Committee were satisfied that there was no evidence that the factor had breached the Code of Conduct in this respect.

Section 6.3

38. The Code of Conduct requires the Factor to be able to show how and why they appointed contractors. The Homeowner accepted, however, that there was no evidence that they had specifically asked the Factor for this information. In the circumstances therefore the Committee were satisfied that there was no evidence that the factor had breached the Code of Conduct in this respect.

Section 7.2

39. The Homeowner complained that the Factor had failed to follow their own in-house complaints procedure as any final decision had not been confirmed with senior management. The Homeowner made reference to their repeated requests for further information and the repeated demand for payment of sums allegedly due to the Factor. The Homeowner has not been told that the Factors' complaints procedure has been exhausted nor have they been advised that any final decision has been confirmed with the Factor's senior management. The Factor's representative accepted that they had not notified the Homeowner that the complaints procedure had been exhausted or that any final decision had been confirmed by the Factor's senior management. In the circumstances, therefore, the Committee determined that the Factor had failed to comply with the Code of Conduct in this respect.

Complaints in relation to failure to comply with Factor's duties

40. The Homeowner complained that the Factor has not maintained the common areas within the development as per their published maintenance schedule. The Homeowner appears to be relying upon the information which was available to the Homeowner from the earlier decision of the Homeowner Housing Panel in relation to this property. The Committee determined that they were not in a position to make a decision that the Factor had failed to comply with the Factor's duties in this respect as no evidence of their failure was laid before the Committee in this respect.

Decision

41. The Factor had failed to ensure compliance with the Property Factors' Code of Conduct as required by Section 14(5) of the Act. There is no evidence that the Factor has failed to carry out the Property Factor's duties. The Factor has failed to comply with the duties under Section 14(5) of the Act in that they have failed to comply with paragraphs 1, 2.2, 2.5, 3.3 and 7.2 of the Code of Conduct.
42. 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 which will follow separately. In this matter the Committee have taken account of the extent of the failure of the Factor to comply with the Code of Conduct. The Committee have noted in particular that despite repeated requests by the Homeowner for a reasonable breakdown of the sums claimed by the Factor, the Factor has failed to make available to the Homeowner information which would allow the Homeowner to know what it is they are being asked to pay for.

Right of Appeal

43. 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

13 May 2015
Date

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Witness, Laura McManus, Secretary
7 West George Street, Glasgow, G2 1BA

