



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

Hohp ref:HOHP/PF/14/0106

**Re: Property at 84 Redburn, Bonhill, Alexandria, G83 9BS
("the property")**

The Parties:-

Mr. Ian McTaggart, 84 Redburn, Bonhill, Alexandria, G83 9BS ("the Applicant")

**Dunbritton Housing Association Limited, 32 High Street,
Dumbarton, G82 1LL ("the Respondent")**

Decision by a Committee of the Homeowner Housing Panel In an Application under Section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Patricia Anne Pryce (Chairperson); Scott Campbell (Housing Member)

DECISION

The committee unanimously determined that the Respondent has failed to comply with their Section 14 duty, in terms of the 2011 Act, to comply with the Code of Practice by failing to have a clear written complaints resolution procedure which includes how the Respondent will handle complaints against contractors.

By the time this matter came before the committee for a hearing, the circumstances which had given rise to the main complaint by the Applicant, namely, that the Applicant was paying for grass cutting by a contractor employed by the Respondent when West Dunbartonshire Council were cutting the same grass for free at the same time, had been resolved. In all the circumstances of the case, the committee did not find it necessary to make a Property Factor Enforcement Order.

We make the following findings in fact:

The Applicant is the owner of a three bedroomed (which now has four bedrooms after being extended) semi-detached house at 84 Redburn, Bonhill, Alexandria which is situated in a modern estate development which was built on or about 2005 and 2006.

The Applicant is due to pay a one twentieth share of the costs of maintaining the

communal landscaped lands within the housing development in terms of the Deed of Conditions registered on 27 November 2006 by the Respondent. These communal lands are referred to as "common amenity ground" within the said Deed of Conditions.

The Respondent is the property factor for this housing development, including the common amenity ground referred to above, in terms of the said Deed of Conditions.

The Respondent 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 (1st November 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents received in the period of 24th July 2014 to 20th October 2014, the President referred the application to committee on 29th October 2014.

Hearing

A hearing took place at the offices of the HOHP on 16th January 2015.

The Applicant attended on his own and gave evidence directly.

The Respondent was represented by Ms. Morven Short who is the Director of the Respondent, Mr. Allan Murphy who is employed as the Customer Services Manager by the Respondent, Mr. Calum Smith who is employed as the Asset Manager by the Respondent and Mr. Derek Hogg, Solicitor from Messrs. Harper Macleod, Solicitors.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 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 Committee had available to it and gave consideration to: the Application Form dated 12th July 2014 together with enclosure contained therein; undated letter by the Applicant to the HOHP and received by the HOHP on 19th August 2014 enclosing three copies of the map of the common amenity ground, letter by the Respondent to the Applicant dated 16th June 2014, eight invoices by the Respondent to the Applicant dated from 2011 onwards and two copies of the document entitled "Scheduled Work Area 6, Location = Redburn, Bonhill"; undated letter by the Applicant to the HOHP received by the HOHP on 26th September 2014 enclosing copy letters and notification by the Applicant to the Respondent in terms of Section 17(1) of the 2011 Act and copy letter by the Respondent to the Applicant dated 12th September 2014; email by the Applicant to the HOHP dated 20th October 2014; Minute of decision by the President made under Section 18(1) of the Property Factors (Scotland) Act 2011; letter by the Respondent to the HOHP dated 20th November 2014 containing written representations in answer to the Application and various enclosures consisting of a blank standard Factoring Agreement used by the Respondent, a blank standard letter

used by the Respondent which encloses a copy of the Respondent's Statement of Services together with a copy of the said Statement of Services, a document entitled "Scheduled Work Area 6, Location = Redburn, Bonhill" and a copy of the map of the common amenity ground pertaining to Redburn.

Procedural History

The committee issued a Direction on 24th December 2014 requiring the Respondent to produce a copy of the Deed of Conditions and the complaints protocol referred to within their Statement of Services which they complied with within the time limit specified by producing the documents requested.

Preliminary Issue

The hearing commenced and a preliminary issue was raised by the committee. The committee confirmed to the parties that it had not been advised until the morning of the hearing that the Respondent had a representative acting on its behalf, namely, Mr. Hogg. The committee confirmed to the parties that in terms of Regulation 7(2) of the 2012 Regulations, "Where a representative begins to act for a party, the representative must notify the committee and the other party of that fact as soon as practicable." No such notification had been received by the committee. The committee sought the views of the Applicant. The committee offered the Applicant the opportunity to seek to adjourn the hearing to consider his position and also to obtain his own legal representation should he so wish. However, the Applicant confirmed that he wished to proceed with the hearing and had no objection to the Respondent bringing a legal representative.

Given that the Applicant wished to proceed, the committee took the view that in terms of Regulation 7(5) of the 2012 Regulations, notification of a representative acting may be given orally at a hearing. The committee decided that this, while not ideal, was sufficient notification in all the circumstances and decided that the hearing could proceed.

The committee then continued with the hearing to deal with the substantive parts of the Application.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 6.4 and 7.1 of the Code and to a breach of the property factor's duties (as defined by Section 17 subsection 5 of the 2011 Act).

The Code

The elements of the Code relied upon in the application provide:-

- "6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

- 7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.”

The Factual Complaints

There are a variety of these and they will be addressed in order of the alleged breaches of the Code.

1. Breach of Section 6.4

The Applicant in his evidence went through in detail all of the documentation which he had included within his application form to the HOHP. The Applicant advised that he did not believe that the contractors employed by the Respondent had carried out the cutting of the grass on the common amenity ground. The Applicant explained that he had complained to the Respondent in April 2014 that West Dunbartonshire Council was cutting the grass on the common amenity ground and he could not understand why he was also being asked to pay for contractors employed by the Respondent to carry out these same duties, that is, the cutting of the grass on the same areas. In essence, the Applicant did not understand why he and the other owners were being asked by the Respondent to pay for a service which was already being provided by the local authority. The Applicant advised that his wife had first complained to the Respondent about this situation around three or four years ago. He could provide no evidence of this other than he advised that his wife had simply phoned the Respondent on more than one occasion. He stated that he is now of the opinion that everything now requires to be in writing when he is dealing with the Respondent.

The committee reminded the Applicant that he was of the opinion that the Respondent had breached Section 6.4 of the Code, that is, that the Respondent had not prepared a programme of works. The Applicant admitted that he had never requested a programme of works and that he had never received one.

Mr. Hogg on behalf of the Respondent advised that the Schedule of Works would have been attached to the Factoring Agreement which was sent out to all owners in the development. The owners were asked to sign and return this receipt to the Respondent. The Respondent had received signed receipts from other owners but not from the Applicant.

Later on in his evidence, the Applicant accepted that he had received a copy of the Schedule of Works prior to the date of his application to the HOHP. This was in the form of the document entitled “Scheduled Work Area 6, Location = Redburn, Bonhill”, a copy of which the Applicant had produced to the HOHP as part of his application.

In light of his acceptance of having received this document, the Applicant helpfully

confirmed that he was not insisting on the breach of Section 6.4 of the Code. The Applicant advised that he had misunderstood this and that he accepted that the Respondent had not breached this particular Section of the Code.

2. Breach of Section 7.1

The Applicant advised that he had initially dealt with Anne Marie McCann, the then Depute Director of the Respondent, in relation to this complaint. He stated that after Ms McCann left Dunbritton Housing Association he was advised that there was no one else within the Respondent's organisation that he could talk to as Morven Short was away for a month. He advised that he ended up having to speak to the receptionist who was as helpful as she could be in all of the circumstances but who could not progress his complaint. He stated that he was of the opinion that the written procedure for dealing with complaints provided by the Respondent was not clear in relation to how the Respondent would deal with complaints against contractors.

Mr. Hogg on behalf of the Respondent submitted that the Respondent's Complaints Handling Procedure is clear and is written in line with the Public Services Ombudsman. He advised that it sets out what can be complained about and refers to the HOHP. He did accept that there was no express reference to contractors within the procedure.

Ms. Short advised that the procedure was presently in the process of being updated and that it needed to be but that in Anne Marie McCann's letter of 16th June 2014, the Respondent had been advised of how to make an application to the HOHP.

Mr. Murphy advised that he did not think that it was explicit within the procedure regarding contractors.

Mr. Hogg submitted that he was of the view that the procedure did comply with the Code as complaints against contractors would be handled in the same way as other complaints. He did accept that it might be beneficial for this to be explicit within the procedure and advised that the present hearing and application process before the committee was viewed as a useful learning experience by the Respondent.

As a result of the evidence led before the committee, the committee is of the opinion that the Respondent's complaints resolution procedure is not sufficiently clear insofar as the handling of complaints against contractors and, to this end, the committee finds that the Respondent did breach Section 7.1 of the Code.

3. Failure to carry out the property factor's duties

The Applicant stated in his evidence that the Respondent had breached the property factor's duties as West Dunbartonshire Council had been cutting the grass in the common amenity ground for the last seven and a half years. The Applicant advised that there was a whole street of people who had been billed for work by the contractors employed by the Respondent when they should not have been.

Ms. Short advised that none of the other owners had complained.

The Applicant advised that other owners had complained. The Applicant initially stated that the contractors employed by the Respondent had never cut the grass in the last seven years. However, he accepted in evidence that he worked full time and sometimes he worked day shift and sometimes he worked night shift so he was not always present at home throughout the day. He advised that his wife stayed at home and that she had never seen the contractors cut the grass. He advised that he and his wife had only ever seen West Dunbartonshire Council cut the grass.

Mr. Smith advised that the Respondent carried out "formal" fortnightly inspections of the common amenity ground in terms of managing the work carried out by the contractors. In addition, he advised that often there would be informal visits by the maintenance officer, Jim Cannon, if he happened to be driving by. However, the areas in question were inspected fortnightly.

The Applicant advised that he felt that the Respondent had breached the property factor's duties as the Respondent had failed to manage the process. Even now, the Applicant is of the view that the contractors are still not carrying out the work properly in relation to the maintenance of some hard surface areas in the development.

Mr. Smith advised that as soon as the Applicant made the Respondent aware in April 2014 that West Dunbartonshire Council was also cutting the grass, the Respondent's staff ensured that this service was stopped immediately and that the contractors were told to stop cutting the grass. Mr. Smith confirmed that the owners have not been charged for grass cutting since that time. He further advised that an investigation took place immediately and that West Dunbartonshire Council confirmed that it was cutting the grass despite these areas of land not being adopted by the Council and would continue to do so at the moment but would not guarantee that this would continue indefinitely. Given that the Council was prepared to continue cutting the grass in these areas, the Respondent arranged for the grass cutting to be removed from the contract with the contractors.

Mr. Hogg submitted that the Respondent had complied with the property factor's duties insofar as the Respondent had arranged for this work to be done. He further submitted that the Respondent had no reason to believe and had no way of knowing that West Dunbartonshire Council was cutting the grass free of charge.

In relation to the management of the contractors, Mr. Hogg submitted that frequent periodic inspections were carried out and that there was nothing arising out of these that gave any reason to query that the contractors were not cutting the grass. Once the Applicant raised this as an issue last year, the Respondent immediately acted upon it. Prior to that, no other owners had raised this as an issue with the Respondent. Mr. Hogg submitted that unless and until this was raised as an issue with the Respondent, he failed to see what else could have been done by the Respondent.

Ms. Short reiterated that the Respondent had tried to resolve this whole matter prior to the hearing before the committee.

In the view of the committee, the Applicant was not entirely clear about how the breach of property factor's duties was established. However, he accepted that it was, in his opinion, due to the lack of management of the contractors by the Respondent.

The Applicant felt that the Respondent should have known that West Dunbartonshire Council was cutting the grass. While he stated in evidence that the contractors never cut the grass, he conceded that he had simply not seen them cut the grass. He conceded that it was possible that they had cut the grass.

In response, the Respondent was clear that it was satisfied that the contractors had carried out this work. The Respondent had no reason to believe otherwise until it was advised in writing by the Applicant in April 2014 that the Council was also cutting the grass. The Respondent acted upon this complaint immediately and stopped the contractors from carrying out any further grass cutting. The Respondent stopped charging owners for this service from April 2014 onwards.

It was submitted on behalf of the Respondent by Mr. Hogg that his clients could not have reasonably been expected to know that the Council was cutting the grass without due authority. He further submitted that as soon as his clients were made aware of this, they acted promptly and appropriately.

The Applicant also claimed that services were not currently being carried out in certain hard surface areas but did not provide specifics regarding his claim.

The Respondent's employees confirmed that they were happy to meet with the Applicant, the contractors and the other owners on site to identify the areas which the Applicant claimed were not being maintained.

In light of all of the foregoing, the committee is of the opinion that there has been no breach of the property factor's duties. There was no evidence to suggest that there had been a breach of these duties as fortnightly inspections of the areas concerned revealed and confirmed that the grass was being cut. The Respondent had no reason to believe that a third party (West Dunbartonshire Council) was entering onto the land and cutting the grass for free.

Observations

The committee appreciates that the Applicant asked to receive an apology from the Respondent together with having his factoring arrears extinguished. While the committee appreciates the sense of frustration felt by the Applicant in terms of, in his view, apparently paying for a service which was already being provided free of charge, the committee is of the view that no blame can be attributed to the Respondent in respect of the involvement of West Dunbartonshire Council in this matter.

The committee acknowledges that it appears to the committee from the written representations that a more thorough investigation of the Applicant's complaint only took place after the date of the Applicant's application to the HOHP which was unfortunate and which added to the apparent frustration experienced by the Applicant.

The employees of the Respondent accepted that they have learned from this experience and will ensure that this learning will inform the development of their future procedures including the re-development of their complaints handling procedure.

Reasons for Decisions

Section 19(1)(b) affords the committee discretion as to whether or not to make a Property Factor Enforcement Order. The committee concluded that there would be no purpose, justification or necessity to do so in this particular case. The Respondent submitted in evidence that it was presently reviewing its procedures including its complaints handling procedure and would use the learning from the hearing and the HOHP process to inform this review. The committee records that the Respondent did breach the code in relation to its complaints procedure (Section 7.1 of the Code).

Appeals

In terms of Section 22 of the 2011 Act, any appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any appeal must be made within 21 days beginning with the day on which the decision appealed against is made.

Signed....

Date 28 January 2015.....

Patricia Anne Pryce



Chairperson