



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/15/0125

Re: Flat 3/1 (T/L), 151 George Street, Paisley PA1 2UG ("the property")

The Parties:

Dr Subhash Prasad, residing at Western, Clyde Street, Dunoon PA23 7HT ('the homeowner');

and

Ross and Liddell Limited, a company Registered in Scotland (SC097770), having their Registered Office at 60 St Enoch Square, Glasgow G1 4AW ('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 Mike Links (surveyor member)

Decision

The Committee has jurisdiction to deal with the Application.

The property factor has not 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 13 August 2013 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 9 September 2015, with supporting paperwork; further letters from the homeowner received by HOHP dated 14 September, 12 October and 28 October 2015; e-mails from the homeowner to HOHP dated 1 November, 13 and 16 December 2015; letters from the property factor to HOHP, dated 13 and 20 November and 17 December 2015; and the written submissions from the property factor’s solicitors, Messrs Hardy Macphail, solicitors, Glasgow, dated 8 March 2016, with supporting documentation.

The application was refined in the Notification to the property factor dated 27 October 2015, to alleged failures to comply with Sections 2.1, 2.2, 5.3, 5.7, 6.3, 7.1 and 7.2 of the Code and failure to comply with the property factor’s duties and the evidence received at the hearing was confined to the issues in the Notification.

The following is a summary of the homeowner’s application to HOHP:- He had received, with no explanation, a bill from the property factor sent three days after he had taken entry to the property, for £2,704.84. The buildings insurance was 4 times higher than the homeowner thought it should be for a property valued at less than £40,000. The property factor was supposed to obtain 3 competitive quotes for insurance, with the lowest to be accepted. The homeowner had asked the property factor to send him the policy, showing clearly that his property was covered and details of what was covered and a copy of the paid invoice, but the property factor had failed to do this. The whole building was in a dreadful condition, with no locks on the front or rear entrance doors. There had been water penetration through the ceiling from the roof above and this had also affected the flat below the property. When it had been reported, the property factor had said that the homeowner would have to contact the roofer directly. The homeowner had completed the property factor’s internal complaints procedure, but the issues had not been resolved to his satisfaction.

In his later written submissions, the homeowner forwarded to HOHP copies of a request from Police Scotland to contact them following an incident at the property on 19 April 2015 and a card from Renfrewshire Council’s Environmental Services dated 29 May 2015, asking

the homeowner to contact them regarding water ingress; the property factor's written response of 8 October 2015 and his e-mailed reply dated 12 October; copies of factoring accounts and photographs of various parts of the building of which the property forms part.

Summary of Written Representations

The Committee received, in advance of the hearing, written submissions made on behalf of the property factor by Messrs Hardy Macphail, solicitors. These are summarised as follows:- the property factor did not accept that it had provided the homeowner with any information that was false or misleading (Section 2.1 of the Code) or that it had communicated with him in any way that was abusive or intimidating (Section 2.2 of the Code). The property factor had provided the homeowner with an insurance certificate, which clearly set out that the commission would not exceed 22.5% of gross premiums net of insurance premium tax (Section 5.3 of the Code). The property factor did not accept that there had been a breach of Section 5.7 of the Code and referred to e-mails from the property factor to the homeowner dated 28 August, 2 September and 3 September 2015. The homeowner had not specifically asked for information regarding any particular repair or asked why any particular contractor had been appointed. There had been no repairs instructed by the property factor which would have required them to carry out a tendering process, and repairs to the close following upon a fire had been instructed through the property insurers as part of a claim. Competitive quotes had been obtained for the decoration works to the common close and repairs to the door. (Section 6.3 of the Code). The property factor had a clear written complaints procedure (Section 7.1 of the Code) and the homeowner had lodged his complaint with HOHP before the internal complaints procedure had been exhausted (Section 7.2 of the Code). The homeowner had referred to the arrangement of the common insurance, but in terms of the Deed of Conditions, the proprietors of the tenement were obliged to have a common insurance policy and the factors had authority to put it in place and to collect payments from the homeowners. The property was not over-insured in terms of a report from Allied Scotland dated 15 February 2015, which assessed the current reinstatement cost of the tenement at £2,460,000. The property factor had registered a Notice of Potential Liability against the property in 2010, which had been renewed in 2013, prior to its being purchased by the homeowner and he, therefore, became liable for the outstanding bills when he bought the property. The property factor had advised the homeowner's solicitors on 18 May 2015 that a Notice of Potential Liability was in place and, after the homeowner had taken entry to the property, the property factor had sought payment of the outstanding sum. In addition, the homeowner had failed to pay his share of the costs of the elements of the fire damage work which was not covered by insurance, so the property factor had been unable to instruct the works to be carried out.

THE HEARING

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow G2 2XL on 18 March 2016. The homeowner was present at the hearing. The property factor was represented at the hearing by its Property Manager, Melissa Syme, one of its Directors, Brian Fulton, and by Michael Ritchie of Messrs Hardy Macphail, solicitors.

Summary of Oral Evidence

The chairman told the parties that they could assume that the Committee members had read and were completely familiar with all of the written submissions and the documents which accompanied them. He then invited the homeowner to address the Committee with reference to his complaints under each Section of the Code and in relation to the alleged failure to carry out the Property Factor's duties. When the homeowner concluded his evidence, the representatives of the property factor were invited to respond. For ease of reference, this Summary combines the homeowner's evidence and the response of the property factor under each head of complaint.

Section 2.1 of the Code states that property factors must not provide information which is misleading or false. The homeowner told the Committee that every time he received a letter from the property factor, it was from a different person within the company. Different people replied with different figures relating to accounts and this was very confusing. The invoice sent by the property factor dated 26 October 2015 was very confusing and misleading. It had been sent to the homeowner in response to his complaint, but it contained entries shown as amendments and corrections and nobody could understand it. The property factor responded to this by telling the Committee that the homeowner had not at any time asked for clarification of any account sent to him and that, in evidence, the homeowner had accepted that nothing in the account was misleading or false. Mr Ritchie also pointed out that there was no item in that account which would have required estimates as it was all within the authorised limit of £250 plus VAT.

Section 2.2 of the Code states that property factors must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that the property factor may take legal action). The homeowner, in evidence, stated again that different people wrote with different wording, but he accepted that there had been no direct threats made and that the property factor had not been abusive. The property factor asked the Committee to find that no evidence had been led to support the homeowner's complaint under Section 2.2.

Section 5.3 of the Code requires property factors to disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit they receive from the company providing insurance cover. The homeowner told the Committee that the first he knew of the insurance commission was when Mrs Devenny, the Managing Director of the property factor, wrote to him on 12 November 2015. This was after he had told the property factor that the premiums were very high and after he had lodged his complaint with HOHP. His view was that if the property factor was taking a commission, it should be working harder to obtain a better deal for the homeowners, rather than higher commission for itself. In response, the property factor referred the Committee to an e-mail sent to the homeowner on 28 August 2015, which set out fully the position regarding the block insurance. That e-mail set out the procedure by which the property factor arranges insurance cover, namely that it uses a broker who has the necessary experience of the marketplace to place the insurance for the portfolio managed by the property factor. The property factor was not an intermediary in arranging insurance cover, but acted instead as the property manager on behalf of the homeowners, not as the insurance broker. The e-mail went on to state that as part of its ongoing commitment to its clients, the property factor reviewed, at least once every three years, its choice of broker and that a significant amount of work had been done at renewal in 2014 to review the choice of broker and insurer. The outcome had been a change of broker and insurers and attached to the e-mail had been a copy of the newsletter issued to all homeowners at the time, showing that the exercise had involved 4 brokers. The newsletter had clearly stated that the property factor received a commission of 22.5% of the net premium, after deduction of Insurance Premium Tax. The recent revaluation by Allied Scotland had been instructed specifically for the present hearing and demonstrated that the property had not been overinsured.

Section 5.7 of the Code requires property factors to have available for inspection documentation relating to any tendering or selection process (excluding any commercially sensitive information). The homeowner told the Committee that, once again, the problem was different people dealing with matters. It would be better to have one point of contact for each topic. Ms Syme told the Committee that it was her job to deal with property management issues, Rita Glendinning dealt with insurance matters and complaints would escalate to Mr Fulton and from him to the Managing Director, Mrs Devenny. The property factor referred the Committee to Rita Glendinning's e-mail to the homeowner dated 28 August 2015. It refers to an e-mail from the homeowner which had been passed to Rita Glendinning by Melissa Syme and its content is summarised in the immediately preceding paragraph of this Decision.

Section 6.3 of the Code states that on request property factors must be able to show how and why they appointed contractors, including cases where they decided not to carry out a competitive tendering exercise or use in-house staff. The homeowner told the Committee

again that the property factor should be seeking 3 quotes for repair works. He cited to the Committee the repair to the roof. He had contacted the Property Manager at the property factor, but she had merely told him to contact the roofer directly. The property factor responded by telling the Committee that the owners in the block had decided to instruct roofing works themselves, rather than go through the factor and it was only when there were issues about the quality and effectiveness of the work that the homeowner had contacted the Property Manager. She had, therefore, told the homeowner that, as the owners had instructed the work themselves, they were the ones who had a contract with the roofing company and they would have to raise their complaints directly. The homeowner also referred to the works carried out following a fire in the tenement and said the property factor had done nothing about the outstanding work including redecoration of the common stair. Ms Syme replied that the main works had been carried out under the instructions of the insurance company, so the property factor had had no input and that, as regards the work which was not covered by insurance, the property factor had been unable to instruct it because the homeowner had failed to pay his share of the estimated costs. The insurance company had only been prepared to meet the costs of redecoration at ground and first floor levels, because the upper floor had suffered pre-existing water damage. Ms Syme told the Committee that she had referred the homeowner back to the contractors who had been instructed directly by the homeowners as she was concerned that, if she gave advice, she might be prejudicing whatever warranty the contractors had given. She had offered to meet with the homeowner and the contractors, but the request for access to the property had been declined.

Section 7.1 of the Code requires property factors to 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 the property factor will follow. The evidence led by the homeowner related to his previously stated confusion regarding the layout of the accounts. The property factor's response was that the complaints procedure was clearly set out in the written statement of services.

Section 7.2 of the Code provides 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 and the letter should also provide details of how the homeowner may apply to HOHP. At the hearing, the homeowner accepted that Mr Fulton's reply to his complaint told him that he should write to Mrs Devenny if he was not satisfied with the response and that if he was not content with her reply, he could go to HOHP. The property factor pointed out that the homeowner had already applied to HOHP before Mrs Devenny responded to his complaint, so there was no need for her to specifically direct him there.

The homeowner's application also alleged that there had been a failure to carry out the property factor's duties. The evidence that he led on this matter was that the property factor was not fulfilling any terms and conditions about anything. So many things were involved. The property factor told the Committee that the only parts of the complaint that could involve a failure to carry out the property factor's duties were the issue of arranging the block insurance and the outstanding repairs and redecoration not covered by the insurance claim, but that these matters had already been fully dealt with. The property factor asked the Committee to determine that there had been no failure to carry out the property factor's duties.

Having concluded giving oral evidence, the parties withdrew and the Committee gave careful consideration to all the evidence before it.

The Committee makes the following findings of fact:

- The homeowner is the owner of the property, which forms the westmost flat on the third floor of a tenement containing one shop and 7 flatted dwellinghouses 151 George Street, Paisley.
- The Deed of Declaration of Conditions recorded 21 May 1973 defines the common parts of the tenement of which the property forms part. The property factor, in the course of its business, manages the common parts of the tenement. 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").
- The Deed of Declaration of Conditions, by Clause (EIGHTH), requires that the tenement shall be kept insured against, fire, public liability and storm damage, by a common policy to be taken out in the joint names of the several proprietors of the tenement for an amount to be determined by the proprietors of the tenement by a majority vote or by the common factor.
- The property factor's duties arise from a written Statement of Services, a copy of which has been provided to the Committee.
- 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.
- 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.
- The date of Registration of the property factor was 13 August 2013.
- 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.

- The homeowner made an application to The Homeowner Housing Panel (“HOHP”) received by HOHP 9 September 2015 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner’s satisfaction.
- On 24 December 2015, the President of HOHP referred the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter dated 24 December 2015.

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 parties at the hearing. The Committee makes the following findings:

1. No evidence has been provided to the Committee that the property factor has provided information that is misleading or false. The Committee accepts that the homeowner was confused by some of the information he received and by the fact that a number of different people were involved in the communication process, but there is no evidence that there was any attempt to mislead the homeowner. Accordingly, the Committee does not uphold the complaint made under Section 2.1 of the Code.
2. The Committee has not been provided with any evidence that the property factor has communicated with the homeowner in any way which was abusive or intimidating, or which threatens the homeowner. Accordingly, the Committee does not uphold the complaint made under Section 2.2 of the Code.
3. The Committee has seen a copy of the Ross & Liddell Insurance Renewal 2015 Newsletter, which states that the commission from the insurers is 22.5%, calculated on the net premium, after deduction of the Insurance Premium Tax and that the commission has not exceeded that amount in past periods of insurance. The renewal date for the block insurance is 15th May and the Committee has determined that the Newsletter constituted disclosure in writing, as required by Section 5.3 of the Code, and that the date of that disclosure was on or about 15 May 2015. Accordingly, the Committee does not uphold the complaint made under Section 5.3 of the Code. The Committee has also seen a Reinstatement Cost Assessment carried out by Allied Scotland, Chartered Surveyors, dated 15 February 2015, recommending a declared value for insurance purposes, of £2,460,000. The Committee noted the documentation provided by the homeowner which was a printout of insurance quotations that he had obtained online, but was not satisfied that any of these quotations included cover for common parts of the tenement or that the level of cover offered represented reinstatement value. In any event, however, in terms of

the title deeds, the homeowner was bound by the requirement that the tenement be covered by a block insurance policy.

4. The Committee has seen a copy of a Newsletter sent to homeowners in 2014, setting out in detail the outcome of the tendering process that had been carried out and the review of brokers and insurers. This pre-dated the homeowner's purchase of the property (19 May 2015), but it was attached to the e-mail of 28 August 2015, sent by Rita Glendinning to the homeowner and the Committee is satisfied that this documentation fulfils the requirements set out in Section 5.7 of the Code. Accordingly, the Committee does not uphold the complaint in respect of Section 5.7 of the Code.
5. The Committee accepts the evidence given by the property factor that, prior to the homeowner's purchase of the property, the owners of the tenement instructed roofing work to be carried out and that the property factor had no involvement with the appointment of the contractors. When the homeowner discovered problems with the roof above his property and reported them, the property factor was not in a position to raise with the contractors issues relating to the work that they had carried out. The Committee also accepts that the property factor had no say in the appointment of the contractors who carried out the work related to the insurance claim following the fire at the tenement. The homeowner did not produce any evidence that the property factor had failed to comply with a request to show how and why it appointed contractors for any other work. Accordingly, the Committee does not uphold the complaint in respect of Section 6.3 of the Code.
6. The Committee has seen a copy of the property factor's Written Statement of Service, which is a Service Level Agreement dated April 2015 and of its External Complaints Procedure leaflet dated October 2013 and is satisfied that the property factor has in place a clear written complaints resolution procedure as stipulated in Section 7.1 of the Code. Accordingly, the Committee does not uphold the complaint in respect of Section 7.1 of the Code.
7. The Committee agrees with the view of the property factor that the homeowner applied to HOHP before he had exhausted the property factor's in-house complaints procedure. The Managing Director, Mrs Devenny wrote to the homeowner on 8 October 2015, responding in detail to the e-mail that the homeowner had sent on 3 September. The homeowner's application to HOHP is dated 8 September and submitted with it is a copy of the homeowner's letter to Mrs Devenny intimating that he is not satisfied with the reply to his complaints by Mr Brian Fulton and others and that he is writing to her for final decision. The copy letter is undated, but the homeowner e-mailed Mrs Devenny on 3 September 2015 in identical terms. The letter is, therefore, dated sometime between 3 September and 8 September, the date of the application. The reply from Mrs Devenny does not provide details of how the homeowner may apply to HOHP, but the Committee accepts that in the

particular circumstances of this case, that omission is excusable, as it is clear from the evidence that the homeowner was aware of the option of applying to HOHP as he had in fact already done so before Mrs Devenny wrote to him on 8 October. Accordingly, whilst the Committee would suggest that the property factor considers whether any amendment is necessary to its letter of final response to a complaint in order to ensure full compliance with the Code, it does not uphold the complaint made under Section 7.2 of the Code.

8. The complaint made by the homeowner that the property factor has failed to carry out the property factor's duties is non-specific and the homeowner did not provide any evidence at the hearing which would have enabled the Committee to understand the precise nature of any such failure by the property factor. Much of the written and oral evidence given by the homeowner relates to the property factor's performance in relation to arranging block insurance and the Committee is satisfied from its findings in relation to alleged breaches of the Code, that there has been no failure to carry out the property factor's duties in respect of the common insurance arrangements. The remainder of the homeowner's evidence relates to the condition of the tenement and in particular the failure to complete the repairs required following a fire, but the Committee is satisfied from the evidence that the bulk of the work has been carried out by contractors instructed by the insurers and that the remaining work cannot be instructed by the property factor unless and until the homeowner pays his share of the anticipated cost of the work. Accordingly, the Committee does not uphold the complaint in respect of failure to carry out the property factor's duties.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

The Committee does not propose to make a Property Factor Enforcement Order.

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 ... "

Chairperson Signature?

...

Date 18 March 2016