



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decision) (Scotland) Regulations 2012 declining to make a Property Factor Enforcement Order

Hohp ref: HOHP/LF/14/0124

Re: The Birches, Wishaw ML27QS (the property)

The Parties:

Mr Raymond Rafferty, 3 Swallow Road, The Birches, Wishaw ML27QS (the homeowner)

Ross and Liddell, 60 St. Enoch Square, Glasgow G1 4AW (the factor)

Committee members: Sarah O'Neill (Chairperson), Jean Thomson (Housing member)

1. On 12 March 2015, the committee issued its decision on the merits of the homeowner's application. In terms of that decision, the committee found in favour of the homeowner in respect of a failure by the factor to comply with its duties under section 14 of the Property Factors (Scotland) Act 2011 in respect of section 7.1 of the code of conduct for property factors ('the code').
2. As a result, the committee issued on the same date a Notice of Proposal to make a Property Factor Enforcement Order ("PFEO"). This stated:

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

 1. *Issue a formal written apology to the homeowner in respect of its failure to comply with its duties under section 7.1 of the code of conduct for property factors.*
 2. *Amend its written complaints resolution procedure, as set out in its 'service level agreement', in order to set out clearly the timescale within which it will deal with complaints at the second (Service Director) and third (Managing Director) stages of its complaints procedure.*
 3. *Provide documentary evidence to the committee of its compliance with this Property Factor Enforcement Order by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.*

3. The Notice of Proposal gave notice to both parties that any written representations they wished to make on the terms of the proposed PFEO should be made within 14 days of the date of the decision. No written representations were received from the homeowner.
4. Following upon the issue of the Notice of Proposal, Mr Brian Fulton, the factor's Director, wrote to the committee by recorded delivery post on 20 March. He enclosed with his letter: 1) a letter from Mr Fulton dated 17 March 2015 and addressed to the homeowner, apologising for the factor's failure to comply with section 7.1 of the code and 2) a copy of the factor's updated 'service level agreement' which had been amended to include timescales for responses at the second and third stages of its complaints procedure. He stated that, on confirmation from the committee that the factor had correctly interpreted its requirements, the service level agreement would be updated on the factor's website. He stated that he hoped the information provided was satisfactory, and would prevent the issue of a PFEO.
5. The committee has reviewed the letter and enclosures submitted to it by the factor. The factor has also confirmed to the committee that the updated service level agreement is now on its website. Further to this, and in the absence of any written representations from the homeowner, the committee has decided that no further steps require to be taken to ensure the performance of the actions required in the proposed PFEO.
6. Section 19(3) of the Property Factors (Scotland) Act 2011 appears, on the face of it, to require that when a PFEO has been proposed, it is obligatory that a PFEO should be made after representations under section 19 (2) have been considered by the committee. In the present case, the committee is satisfied that the actions required by the proposed PFEO have been carried out.
7. The committee concluded that section 19(3) should be read subject to the qualification that if the need for the order has passed by the time the committee comes to decide whether to grant it or not, then it is not obliged to do so, notwithstanding the issue of a proposed PFEO at an earlier stage. Therefore in the circumstances outlined above, the committee declined to make a PFEO, as the homeowner's complaint had been resolved and no further remedy was appropriate or necessary under the 2011 Act.

Right of appeal

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. It provides:

- (1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or homeowner housing committee.
- (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Chairperson Signature .

Date.....30/09/15.....