



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011

Hohp ref:HOHP/PF/15/0068

1/1, 75 Acre Road, Glasgow, G20 0TL ('the Property')

The Parties:

Malcolm McCallum residing at 4 East Mayfield, Edinburgh, EH9 1SD ('the Homeowner')

Your Place, Wheatley Group, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ('the Factor')

Committee members:

Jacqui Taylor (Chairperson) Robert Buchan (Surveyor Member) and Ahsan Khan (Housing Member).

Decision of the Committee

The Committee determines that the Factor has (1) failed to comply with Sections 1.1 D and 2.1 of the Code of Conduct, in breach of section 14 of the Property Factors (Scotland) Act 2011 and (2) has not failed to carry out its Property Factor's duties.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 1st November 2012.
2. The Homeowner is heritable proprietor of the flatted property 1/1, 75 Acre Road, Glasgow, G20 0TL being the subjects registered in the Land Register of Scotland under Title Number GLA 128383.

3. By application dated 14th May 2015 the Homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the Factor had failed to comply with:-

3. 1: The following sections of the Property Factor Code of Conduct ('The Code'):

- Section 1: Written Statement of Services.
Sections A,C and D.
- Section 2: Communications and Consultation.
Sections 2.1, 2.2 and 2.5.
- Section 6: Carrying Out Repairs and Maintenance.
Sections 6.1 and 6.2.

3.2: The Property Factor's duties.

4. The application had been notified to the Factor.

5. By Minute of Decision by Sarah O'Neill, Convener with delegated powers, dated 7th January 2016 she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 15th May 2015 to 29th December 2015) to a Homeowner Housing Committee ('The Committee').

6. A hearing took place in respect of the application on 5th April 2016 at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL.

The Homeowner appeared on his own behalf.

The Factor was represented by Alison McDermott, the Factoring Services Director of Your Place Property Management and Stephanie Brown, Assistant Director of Your Place Property Management.

Prior to the Hearing the Committee had issued a written Direction, dated 2nd March 2016, which required the Homeowner to produce a copy of the Land Certificate for the Property, specify the particular matters complained of in relation to the alleged breaches of the Code of Practice and also provide a clearly labeled copy of the documentation which he had provided clearly indicating which documentation comprises which appendix. The documentation had to be provided by 29th March 2016.

The documentation was not timeously provided.

The Homeowner advised the Committee that his solicitor had sent a copy of his title deeds to the HOHP office direct and he had sent the detail of his application, as requested by email. However the HOHP clerk advised that neither the title deeds nor the detail of the Homeowner's application had been received.

As preliminary matters:

(First) the Committee explained to the parties that they were minded to adjourn the hearing to another day to enable the required documentation to be produced. Both Alison McDermott and the Homeowner advised the Committee that they would prefer to continue with the

hearing. Alison McDermott advised that she had a copy of the Homeowner's title deeds in her office and could arrange to obtain a copy.

The Committee agreed to start the hearing and consider the breaches of Section 1.1a, 1.1c, 1.1d, 6.1 and 6.2 of the Code and then adjourn to enable the Factor to obtain a copy of the title deeds and the hearing would be reconvened to consider the breaches of Sections 2.1, 2.2 and 2.5 of the Code. The parties confirmed that they were happy to proceed on this basis.

(Second) The Committee asked the parties to explain how the communal heating system worked. They explained the factual details advising that there are eight flats in the building 75 Acre Road, Glasgow. The communal boiler is located in the roof. There is no individual metering and the Factor divides the total cost of fuel consumed between the eight properties. Alison McDermott explained that the Factor's objective is to keep the system running. They consider the individual radiators within the individual flats to be the property of the individual owners. However, if a radiator is defective and its operation will prejudice the running of the whole system the Factors would have the defective radiator repaired and it would be treated as a common repair. She explained that this was an ad hoc non contractual arrangement. If a radiator was in proper working order but an individual owner wanted to replace the radiator for aesthetic reasons the individual owner would have to meet the cost.

The details of the application, the parties' representations and the Committee's decisions are as follows:

Section 1: Written Statement of Services

Section 1 of The Code states that the Property Factor must provide a Written Statement of Service and specifies the details that should be included.

A. Authority to Act

(a) 'The written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.'

The Homeowner's Complaint: There is no documentation to explain the service provision of the group heating system.

The Factor's response: Alison McDermott explained that the authority to act is detailed in the Written Statement of Service which refers the homeowners to the terms of their title deeds and deed of conditions.

(c) 'The written statement should set out the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the care service).'

The Homeowner's complaint: Whilst he accepts that the written statement of service lists group heating under their Core Services it does not give sufficient detail as to how the repairs will be managed. He considers that this is important as the heating costs make up more than three quarters of his quarterly common charges.

The Factor's response: The reason the heating costs make up a high proportion of the quarterly charges is that the heating costs comprise the entire heating costs for the Property.

Also the written statement of services is not intended to be a comprehensive list of every service that they provide.

(d) The written statement should set out the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a menu of services) and how these fees and charges are calculated and notified.'

The Homeowner's complaint: The written statement of services does not comply with this section of the code as the share of charges is not listed and the method of charging for the group heating is not explicitly explained.

The Factor's response: The written statement of services is a general document and the homeowner would have been sent a separate letter specific to the homeowner's property which details the share of charges that apply and the additional services that are provided. Alison McDermott explained that she would be able to obtain a copy of the letter and have it available after lunch.

After the adjournment of the hearing the Factor produced a copy of the letter they sent to the Homeowner dated 31st October 2013. The Homeowner confirmed that he was happy for the Committee to consider the terms of the letter, even although it was produced late. The letter explains, inter alia, that the Homeowner will be responsible for a one eighth share of the common charges and that the additional services to the block of buildings insurance, stair lighting and group heating is provided.

SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

6.1 'You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job- specific progress reports are not required.'

The Homeowner's Complaint: The Homeowner acknowledged that the Factor has a system in place for notifying general repairs that are required but he explained that there is no such system in relation to the group heating. The service that he received from the Factor in relation to the group heating was not consistent. He was originally advised that the radiators were beyond repair and needed to be replaced and was subsequently advised that they were working properly and minor defects required were due to the age and condition of the radiators.

Factor's response: The procedures in the written statement of services are clear. The details of the repairs service and how to report repairs are set out in the written statement of services. Alison McDermott explained that when the engineer calls at a property to inspect the group heating installations following the report of a defect the engineer will determine if the repair will be done under the group heating scheme, in which case there would usually not be a charge, or alternatively if a charge would be made to the individual owner.

6.2 'If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies(including out- of hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.'

The Homeowner's Complaint: In December 2013 he was advised that the radiators were unfit for use and four months later he was advised that they were fit for use.

Factor's response: The procedures for intimating emergency repairs are set out in the written statement of services. There is a 24/7 phone number and an online system for advising the factor that emergency repairs are required. The statement also explains that contractors will come out within 4 hours of the repair being reported and will make safe within 24 hours.

The hearing then adjourned to enable the Factor to obtain a copy of the Homeowner's title deeds and for the Homeowner to locate a copy of his response to the Direction dated 2nd March 2016.

When the hearing reconvened the Factor provided the Committee and the Homeowner with a copy of his title deeds, Land Certificate GLA128383 and a copy of their letter to the Homeowner dated 31st October 2013. The Homeowner provided the Committee and the Factor with the clearly identified appendices referred to in his written representations and also the detailed summary of his complaint.

The parties acknowledged that they were happy for the Committee to consider these documents and they did not require additional time to consider them before continuing with the hearing.

The Committee examined the terms of the Land Certificate and noted that the common parts of the property were defined in the Deed of Conditions for the properties by Glasgow City Council recorded GRS (Glasgow) 16th June 1993 and noted that ventilation ducts and pipes were generally defined as common '*except as so far as situated within and serve any dwellinghouse.*'

The hearing then continued to consider the alleged breaches of sections 2.1, 2.2 and 2.3 of the Code and the alleged breach of property factor's duties. The Committee notes that the detailed summary of the complaint provided by the Homeowner contained additional matters in relation to sections 6.1 and 6.2 of the Code which had not been previously discussed, prior to the adjournment of the hearing. The Committee explained that these additional matters in relation to sections 6.1 and 6.2 would not be discussed further.

Section 2: Communications and Consultation.

2.1: 'The Factor must not provide information which is misleading or false.'

2.1 : The Homeowner's First complaint: 'On 2nd December 2013 I was wrongly told the radiators forming part of the central heating and hot water service provision were only 2 years old. The Factor then went on to confirm 4 years adding this is still young for a system. Thus enforcing my agreement they underwent some sort of malicious damage, which they infer I am accountable for. In fact they are likely to be much more than 25 years old with a 15 years life span so malicious claims could not be weighed as first thought. Either way if it was malicious damage it was to the system they supplied to a previous occupant and any cost

return under that caveat should have been targeted at them and not me. It is not my fault they do not inspect the outgoing occupants regarding use of their service assets.'

2.1 : The Homeowner's Second complaint: 'I was told radiators needed replaced, as beyond repair, and this was to be at my cost. There is no governance, management or any service level agreement documentation to reflect Factor can take this stance. In the absence of demarcation of responsibility details, even though requested many times, Appendix 5 (Stage 2 Complaint letter from the Factor to the Homeowner dated 5th March 2013) captures a paragraph (of an internal support document) and makes clear I should not be charged for radiators that need replaced.'

The Factor's response to the Homeowner's First and Second Complaint: Alison McDermott explained that the Factors had already apologized in their Stage 2 response letter dated 5th March 2013.

2.1 : The Homeowner's Third complaint: 'It is claimed that the radiators belong to me. If this is the case then why does the Factor inform me that radiator replacement could only be done by the Factor? Why also is there an internal policy to replace faulty radiators? The reality is they are part of an undocumented service provision which forms a significant component of Factor Common Charges.'

The Factor's response: Alison McDermott explained that the Factor's had already apologized in their Stage 2 response letter dated 5th March 2013.

2.1 : The Homeowner's Fourth complaint: 'Internal documentation identifies Factor should replace the radiators at their cost. Once I highlighted this it was then claimed, in an attempt to distance themselves from liability, that the report that condemned the radiators (email from Steven Lyon to the Homeowner dated 13th January 2014) was a mistake. This would need to be a mistake on two fronts i.e stating as beyond repair and secondly stating all need replaced. Additionally, why go to the lengths of assessing a full replacement quote of £1074. To strengthen their position at Stage 2 complaint handling they decided to re-inspect. The same person handling stage 1 completed the inspection at stage 2. The motivational need of the controlling authority pushes for only one outcome and there was a clear conflict of interest here. Having pointed this out they invited an 'independent' inspector to accompany the first stage author. When I attempted to determine this independence my communication with the inspector's company was blocked by the Factor. Hence the First stage officer oversaw the inspection regardless of my concern and then blocked any check of a so called independent party. The credibility of that activity was low and only served to lower confidence in the service provision/support. In essence, it is a marker over management credibility.'

The Factor's response: Alison McDermott explained that the Factor's had already apologized in their Stage 2 response letter dated 5th March 2013. She also explained that Ken Brown, the Factor's gas engineer, had arranged for a second opinion from a Corgi registered engineer. The Corgi engineer took two of the radiators away to be flushed and the Homeowner was never charged for this. She emphasized that there is no contract regarding this service as the Factor's are simply trying to keep the system running.

2.2 'You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that they may take legal action).'

2.2: The Homeowner's First complaint: 'Due to stage 2 credibility lack I decided to contact the management of the inspecting officer to determine what was going on. To maintain openness I then informed the Factor I was in contact with Corgi. Corgi then informed me they were instructed not to respond to me by the Factor. (*Appendix 14- top section- this is an email from Kevin Winship of Corgi Technical Services to the Homeowner dated 9th April 2014 and states: 'We have been advised by your landlord, who engaged us, that you should direct all your questions to them as we are not able to comment any further.'*)

This is clear unreasonable behavior and I believe constitutes fear I was to uncover a non 'independent' connection. The fact they had this control over the inspector chain meant I did. Ultimately the report and inspection approach lack credibility as do the claims my radiators were now miraculously Fit for Purpose.

The inspector report from Robert Malcolm of Corgi Technical Services is a set of notes, it is unsigned and the document footer details work activity is only viable in England and Wales. In fact this organization has nothing to do with Gas Safety in Scotland. In an attempt to maintain credibility it details 2 radiators to be extracted in order to be flushed. Hence, even with this approach method they were not miraculously Fit for Purpose as claimed so is a False Statement made by the Factor.'

The Factor's response: Alison McDermott explained that she does not consider the response from Kevin Winship to be intimidating. She expects the complainant, in this case the Homeowner to deal with the Factor and not the contractor.

2.2: The Homeowner's Second complaint: 'The Factor originally declared all radiators beyond repair and they clearly are- they are more than 10 years older than planned life use and offer no CE marking. They first tried to corner me into a legal retort, which would circumvent any complaints process make. (Email from Steven McMath to the Homeowner dated 25th November 2013). This is not how a Factor or service provider should operate. The advice should have steered away from a legal approach so that any Complaints procedure is allowed to work. Going the legal route without having exhausted a complaints process would have been a costly nugatory exercise. This was poor/wrong advice.'

The Factor's response: Alison McDermott explained that it is up to the Homeowner to take legal action. She explained that the email from Steven McMath to the Homeowner dated 25th November 2013 simply explains that the Homeowner is entitled to seek legal advice if he wishes. She does not consider the email to be intimidating or threatening.

2.5 'You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.'

The Homeowner's complaint: On 2 December 2013 he had reported a leak to a vertically laid rainwater pipe. He was working away from home at the beginning of 2014 and when he

returned to the Property in May the pipe was still leaking. He explained that this was not 'in keeping with any possible response timeframe feasible considered. The resistance to record original date meant handling error was understood and the final approach to declare no fault occurred is really just a poor approach to problem solving seen before with the central heating problem was heading for a similar mishandling case.'

The Factor's response: When the original defect with the internal drain pipe was reported in December 2013 the Factor's contractors inspected the pipe and did not find any defect. When the alleged defect was again reported in May 2014 the Factors responded appropriately at that time.

Failure To Carry Out Factor's Duties

The Homeowner explained that the Factor has a duty to be explicit in their repairs and maintenance policy in relation to the group heating system and they failed to do this as already explained. The Factors have only apologised. He does not consider this to be sufficient.

Alison McDermott explained that the duty of the factor is to act as property factor on behalf of the homeowners. The Factor does their best to keep the group heating system running. The homeowners have not asked for a contract in relation to the group heating system. Until the Factors are required by legislation to introduce individual metering they do not consider there is any need for a contract. The heating costs are very reasonable for the individual homeowners and the other homeowners rate the system highly.

7. Decision

Section 1: Written Statement of Services

Section 1 of The Code states that the Property Factor must provide a Written Statement of Service and specifies the details that should be included.

A. Authority to Act

(a) 'The written statement should set out a statement of the basis of any authority you have to act on behalf of all the homeowners in the group.'

Decision

This head of complaint is not upheld. The Committee found that the section of the Written Statement of Service under the heading 'Our authority to act as your factor' complies with Section 1.1a of the Code as it refers the homeowner to the title deeds and deed of conditions.

(c) The written statement should set out the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the care service).'

Decision

This head of complaint is not upheld. The written statement of services details the Core Services and also additional property-specific services, as required by the Code of Practice.

(d) The written statement should set out the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a menu of services) and how these fees and charges are calculated and notified.'

Decision

This head of complaint is upheld. The Committee accepted the Factor's evidence to the effect that they sent the Homeowner the letter dated 31st October 2013. However, the letter and the written statement of services together fall short of the requirements of section 1.1d of the Code. The letter simply says 'Additional Services' 'Group heating', 'Insurance'. There is no explanation of what group heating refers to, it could mean for example, the heating of common parts. No explanation has been provided of the basis of charges that relate to the group heating system and how these are calculated. The individual homeowners do not know what they will be charged for in relation to the maintenance and repair of the group heating system or what parts are to be considered as common and what are the responsibility of the homeowners. The code of conduct is perfectly clear in what is required and the two words "group heating" are completely insufficient.

Although not a part of the complaint, the Committee would observe that the additional matters listed in the letter referred to above are similarly insufficient in meeting the Factors obligations.

Section 2: Communications and Consultation.

2.1: 'The Factor must not provide information which is misleading or false.'

2.1 : The Homeowner's First, Second, Third and Fourth complaints:

Decision

This head of complaint is upheld. The Committee acknowledged that the Factor had accepted that wrong information had been provided regarding the age of the radiators and that they needed to be replaced as they were beyond repair. However they noted that the Factor had apologised in their letter dated 3rd March 2014. .

2.2 'You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that they may take legal action).'

2.2: The Homeowner's First complaint:

Decision

This head of complaint is not upheld. The Committee do not consider the Factor's requirement for the Homeowner to correspond with them and not Corgi to be abusive, intimidating or threatening. The Factor had instructed Corgi and not the Homeowner. It was not unreasonable for the Factor to require the Homeowner to put any questions he may have about the report from the Corgi engineer to the Factor for them to clarify the points with the Corgi Engineer.

2.2: The Homeowner's Second complaint:

Decision

This head of complaint is not upheld. The Committee do not consider the email from Steven McMath to the Homeowner dated 25th November 2013 to be abusive, intimidating or threatening.

The Committee reflected that the dispute between the parties largely stems from the basic lack of information provided by the Factor on what their service covered and the contradictory advice subsequently given. The Committee considered that the Factor appeared to be trying to be helpful rather than intimidating.

2.5 'You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.'

Decision

This head of complaint is not upheld. The Committee accepted the evidence of Alison McDermott to the effect that the leak to the vertical pipe had been inspected in December 2013 and accordingly they do not find there to have been a delay in dealing with the matter of the leak to the pipe.

SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

6.1 'You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job- specific progress reports are not required.'

Decision

This head of complaint is not upheld. The Committee accepted that the written statement of services provided sufficient details of their repair service. It detailed the emergency repair telephone number and online system and explained the timescales for attending to the different categories of repairs.

6.2 'If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies(including out- of hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.'

Decision

This head of complaint is not upheld. The detail of the emergency repair service in the written statement of services complies with the Code of Practice.

Alleged Failure to Comply with Property Factor's Duties.

This head of complaint is not upheld.

The Committee accepts that the Factor is doing their best to keep the group heating system running. They also accept that the Factor is under an obligation to be transparent in the service that they provide. However the Committee finds that this obligation stems from the Code of Practice and is not a general Property Factor's duty.

8. Property Factor Enforcement Notice

In all of the circumstances narrated above, the Committee finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act to comply with the requirements of the Code of Conduct in respect of sections 1.1 D and 2.1 of the Code of Conduct.

The Committee therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Committee to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Committee.

The Committee proposes to make the following Order:

'The Factor must:

1. Provide the Homeowner with an amended written Statement of Service clearly explaining the details of the group heating system and the common and individual parts of the system; how the fuel charges are calculated and apportioned; who is responsible for repairs to radiators and common parts of the group heating system and the circumstances in which the Homeowner can instruct his own contractors to repair or replace radiators within his own properties.

2. Pay the homeowner £75 for the inconvenience he had suffered from their own funds and at no cost to the owners.

The said sum to be paid within 3 months of the communication to the factor of the Property Factor Enforcement Order.'

9. Appeals

The parties' attention is drawn to the terms of section 21 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 homeowner housing committee.

(2) An appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.'

Signed Jacqueline Taylor , Date 27th April 2016

Chairperson