



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

hohp Ref: HOHP/PF/13/0299

**Re: Property 32/11 East Fountainbridge, Earl Grey Court Edinburgh EH3 9BH
("the Property")**

The Parties:-

Gerrard Murray, 32/11 East Fountainbridge, Edinburgh EH3 9BH ("the Applicant")

Myreside Management Limited, Blackrock House, 2-8 Millar Crescent, Edinburgh EH10 5HW ("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:

George Clark (Chairman) and Ahsan Khan (Housing Member).

DECISION

**The Committee has jurisdiction to deal with the Application.
The Respondent has failed to comply with its duties under section 14 (5) of the 2011 Act.**

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner of the Property.**
- 2 The Property is a flat situated within a block of flats.**
- 3 The block is known as 28-32 East Fountainbridge, Earl Grey Court, Edinburgh EH3 9BH.**
- 4 The Respondent is the factor of the block.**

- 5 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (the “Code of Conduct”) from the date of its registration as a Property Factor.
- 6 The date of Registration of the Respondent was 1 November 2012.
- 7 The Applicant has notified the Respondent in writing as to why he considers that the Respondent has failed to comply with its duties arising under section 14(5) of the 2011 Act. He did this by e-mail of 18 September 2013.
- 8 The Applicant’s e-mail of 18 September 2013 raised specific concerns that, in his view, the document “Management Specification of Service”, which appeared on the Respondent’s website and to which he had been directed by the Respondent when he had asked for a copy of its Statement of Services consisted merely of bullet points and did not comply with Section 1 of the Code of Conduct. He asked the Respondent to expand the bullet points into a full “Specification of Services” in terms of the Code of Conduct.
- 9 The Applicant’s concerns have not been addressed to his satisfaction.

HEARING

A hearing took place at Thistle House, 91 Haymarket Terrace, Edinburgh on 13 December 2013. The Applicant was not present or represented at the hearing. The Respondent was present and was represented by its solicitor, Mr Iain Leslie. The Committee comprised George Clark (chairman) and Ahsan Khan (housing member).

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 of Conduct”; 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 Homeowner Housing Committee is referred to as “the Committee”. All date references are to 2013, unless otherwise stated.

The Respondent became a Registered Property Factor on 1 November 2012 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 dated 16 October 2013 and documents lodged with it; the Applicant’s letter to HOHP of 31 October (sent by e-mail only) containing written representations and its enclosures; written representations from the Respondent, with various enclosures, dated 6 November; an e-mail from the Respondent to HOHP dated 8 and 9 December, to the latter of which were attached copies of the documents which the Respondent’s solicitor was proposing to rely upon at the hearing. The Applicant had sent a further e-mail to HOHP on 12 December, but the chairman ruled, under Regulation 12 of the Regulations, that, as the Respondent had not had

a reasonable opportunity to consider its terms, it would not be fair in all the circumstances to allow it to be lodged late.

Summary of Written Representations

In his Application to HOHP, the Applicant stated that he considered that the Respondent had failed to provide a Statement of Services as required by Section 1 of the Code of Conduct and that in his opinion the document to which the Respondent referred as its Statement of Services was no more than a list of bullet points promoting the Respondent's factoring services. He stated that the Respondent had insisted that what it provided was satisfactory and that it had become impossible to obtain answers from the respondent since there were no clear standards against which it was willing to be held to account. He wanted the Respondent to be required to fully comply with Section 1 of the Code of Conduct in the delivery of a proper Statement of Services, to issue an apology for its conduct to date and to pay compensation for a sum the HOHP considered appropriate.

On 30 October 2013, the President of HOHP referred the application to a Homeowner Housing Panel Committee for determination.

The Respondent's written representations of 6 November stated that the Respondent had resigned as factor of the block on 30 September, due to "the continued harassment and interference from Mr Murray" (the Applicant). The committee of proprietors ("the committee") had not at any time questioned or lodged any form of complaint about the Respondent's Statement of Services. The Applicant had been part of the committee at the time of its presentation regarding the factoring and its Statement of Service was presented to the committee at that time. Never once during its management did the Applicant raise with the Respondent a complaint relating to its service and it was abundantly clear that the other owners not only disagreed with the Applicant's stance, but on the contrary they commended the Respondent's service. If anyone's time had been wasted it was that of the Respondent in having to deal with this unilateral complaint and some 300 e-mails from the Applicant in just over 12 months. The Respondent asked the HOHP to reject the complaint.

In its e-mail of 8 November, the Respondent advised the Committee that it had on that day agreed a contract with a group of proprietors of another block of properties and the legal department of City of Edinburgh Council, who had an interest in three of the properties, had approved the contract, which incorporated the Statement of Services, unchanged from that which was now the subject of the Applicant's complaint.

Summary of Oral Representations

As the Applicant was not present or represented at the hearing, the Committee was not presented with any further evidence on his behalf. Nor was he able to cross-examine the evidence provided at the hearing on behalf of the Respondent.

On behalf of the Respondent, Mr Leslie stated that the Applicant had, in effect, been the factor for a period prior to the Respondent's appointment as factor. He appeared to resent the appointment of the Respondent and Mr Leslie had hoped to be able to question the Applicant on this point. The Respondent had negotiated the contract with the residents' committee, but the Applicant had subsequently sent some 300 e-mails to the Respondent and had had numerous meetings and telephone conversations with the Respondent about every aspect of the agreement. He had also himself instructed works which were the responsibility of the Respondent to organise and, eventually, the Respondent had concluded that it was not able to continue on this basis and resigned as factor with effect from 30 September. The Respondent had had no major issue with any other owner in the block and had communicated with the committee.

The Respondent had produced a written Statement of Service as soon as required by law to do so. At that time, nobody knew exactly how the shape and content of such statements would evolve, but the Respondent was of the view that it was sufficient and that there was no duty to provide any other documentation.

Mr Peter Goddard, the managing Director of the Respondent, referred the Committee to the two pamphlets which had been lodged with the Respondent's written submissions. These were always issued together. The one entitled "Specification of Services Statement & Code of Practice" was designed to meet the requirements of the Code of Practice to provide a written statement setting out, in a simple and transparent way, the terms and delivery standards of the arrangement and he argued that the pamphlet, which listed the services in bullet-point form, did just that. The Applicant had complained that it did not contain details of the costs, but Mr Goddard contended that costs were part of the actual contract, and would vary from one development to the other, so could not be included in a generic leaflet. He commented that he would have expected the Code of Conduct to include a model Statement of Services, as without one, it was probably possible to pick holes in any such document. He considered that his company had followed closely the requirement of Section 1 of the Code of Conduct that the Statement of Service should be simple and transparent. The other pamphlet explained how the float system worked, but again it was not possible to put concrete prices in it as the arrangement will vary widely from development to development. The Respondent now had a more formal contract with its clients, but in the case of the East Fountainbridge, there had not been a formal contract signed by both parties, as the factoring arrangement had been entered into before the Act came into force. The costs had all been agreed at a meeting and the Respondent had sent these to the committee after the meeting. The committee had then e-mailed these costs to all the residents in the development.

Mr Goddard also stated that the Applicant was the only person who had ever queried the Respondent's Statement of Services and that the very lengthy versions provided by some property factors could not be said to be simple and transparent. The Respondent company regarded its Statement of Services as sufficient to meet

the legal requirements and none of the other 800 homeowners whose properties the respondent factors had raised any concerns about its content.

In his concluding remarks, Mr Leslie told the Committee that, whilst the Committee might decide that the contents of the Statement of Services were not sufficient, there was no doubting the fact that a Statement of Services had been issued. He also stated that the Respondent would object to any award of compensation, as the Applicant had not been put to inconvenience as a consequence of any failing on the part of the Respondent. The Applicant had chosen to pursue a matter which had caused no concern whatever to any of the other owners within the block. He asked the Committee not to uphold the complaint.

REASONS FOR DECISION

The Applicant's complaint to HOHP is that the Respondent has failed to comply with Section 14 (5) of the Act of the 2011 Act which requires a registered property factor to ensure compliance with the Code of Conduct, in that the Respondent has failed to provide, as set out in Section 1 of the Code of Conduct, a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between the factor and the homeowner.

The view of the Committee is that the essence of the complaint is the adequacy or otherwise of the Specification of Services Statement & Code of Practice issued by the Respondent and whether, therefore, its content is sufficient to meet the standard required by the Code of Conduct.

The Code of Conduct is divided into 7 sections and Section 1 deals with the "Written Statement of Services". It states that "If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code." Section 1 provides that the written statement should set out six matters, listed as A-F inclusive and the Committee looked at each of these matters in turn, comparing the Specification of Services Statement & Code of Practice" pamphlet ("the pamphlet") issued by the Respondent with the requirements set out in sub-sections A to F.

Sub-section A provides that the written statement should set out a statement of the basis of any authority a factor has to act on behalf of all the homeowners in the group and, where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which the factor may act without further consultation. The Committee determined that neither of these matters was covered in the pamphlet.

Sub-section B requires the factor to set out the core services that the factor will provide and that 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 core service). The Committee found that, whilst the pamphlet set out the core services, it did not make any mention of target times for responses to requests for repairs.

Sub-section C deals with Financial and Charging Arrangements and should set out the management fee charged, including any fee structure and any processes for reviewing this fee and what proportion, expressed as a percentage or fraction, of the management fees and expenses and charges for common works and services each owner in the group is responsible for. It should also contain confirmation that the factor has a debt recovery procedure, should set out any arrangements relating to payment towards a floating fund, any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, state how often the factor will bill homeowners and by what method they will receive their bills and how the factors will collect payments, including timescales and methods. The Committee accepted the evidence given by the Respondent that the details of the charging arrangements could not be included in a generic pamphlet designed to apply to all developments factored by the Respondent, but was of the view that the pamphlet should at least contain a reference to a further document, such as a contract, or source which would enable homeowners to find the necessary information.

Sub-section D deals with Communication arrangements and the Committee found the pamphlet to be satisfactory in this regard, apart from the absence of reference to the timescales within which the factor would respond to enquiries and complaints received by letter or e-mail.

Sub-section E requires the factor to declare any financial or other interests in the land to be managed or maintained and does not apply in the present case.

Sub-section F requires the factor to give clear information on how to change or terminate the service arrangement including signposting to the applicable legislation. The Committee found no reference in the pamphlet to these matters. The Committee understood from the evidence led at the hearing that there was no written factoring agreement in the present case, with the consequence that the arrangement could be terminated by either party at any time, but nevertheless felt that the pamphlet should have contained appropriate information on termination provisions.

The Committee determined that, for these reasons, the Respondent has failed to ensure compliance with the Code as required by section 14(5) of the 2011 Act, in that the contents of the pamphlet fall significantly below the standards required by Section 1 of the Code. The view of the Committee is that the Respondent's pamphlet does not set out the terms and service delivery standards in a transparent way, particularly as regards target and response times, delegated authority and the financial elements of the factoring arrangements.

PROPERTY FACTOR ENFORCEMENT ORDER

At the hearing, the Respondent confirmed the representations in its written submissions to the effect that the Respondent resigned as the factor of the Property with effect from 30 September 2013. This was confirmed in the documents which accompanied the Application. The view of the Committee was, therefore, that, whilst it would have made a Property Factor Enforcement Order if the factoring arrangement was still ongoing, or if the application had related to the failure of the Respondent to carry out the property factor's duties, in the present case the terms of the Order would have been to require the Respondent to issue a new or revised Statement of Services which ensured compliance with the Code of Conduct, in respect of a Property which they no longer factor. As there would be no practical benefit to the Applicant or the other homeowners within the block of which the Property forms part in issuing an Order in such terms, the Committee determined that it would not make a Property Factor Enforcement Order. The Committee was, however, of the view that, should a future application come before it from a homeowner whose property is factored by the Respondent under the same Specification of Services & Code of Conduct as was under consideration in the present case, it would make a Property Factor Enforcement Order. The Committee recommends, therefore, that the Respondent revises its documentation to ensure it complies with the Code of Conduct and that it reissues the revised Statement of Services to the homeowners of the other blocks for which it provides factoring services.

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 day on which the decision appealed against is made..."

Signed

Date 13 December 2013

GEORGE CLARK, Chairperson