



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

HoHP Ref: HOHP/PF/15/0113

Re:

**Property at Flat 2/3, 28 Sword Street, Dennistoun, Glasgow G31 1TD ("the
Property")**

The Parties:-

**Mr Michael Wood, Parklands of Muiry Hall, Urquhart, Moray, IV30 8LW ("the
Homeowner")**

and

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the
Factors")**

**Decision by a Committee of the Homeowner Housing Panel in an
application under section 17 of the Property Factors (Scotland) Act 2011**

Committee Members:

Maurice O'Carroll (Chairman)
Sally Wainwright (Housing Member)

Decision of the Committee

The Factors have failed to comply with their duties under s 14(5) of the 2011 Act in terms of Sections 2.1, 2.5, 5.4 and 6.1 of the Code of Conduct for Property Factors.

The decision is unanimous.

Background

1. By application dated 27 July 2015, amended on 9 August 2015, the Homeowner applied to the Homeowner Housing Panel ("HOHP") for a determination of whether the Factors had failed to comply with the duties set out in sections 2, 5 and 6 of the Code of Conduct imposed by section 14(5) of the 2011 Act.

2. On 9 August 2015, the Homeowner sent formal notifications to the Factors in terms of section 17(3) of the Act on *pro forma* letters supplied by HOHP for that purpose. The formal notification of alleged Code breaches was in respect of Sections 2.1, 2.5, 5.4, 5.5, 6.1 and 6.3 of the Code.
3. Notices of referral to the Committee were sent to the parties on or about 28 October 2015. This followed a Minute of Decision to refer the Application to a Homeowner Housing Committee made by the President of the HOHP on 8 October 2015.
4. An oral hearing in relation to the application was held on 15 December 2015 within Wellington House, 134/136 Wellington Street, Glasgow. The Factors were present at the hearing and were represented by two of their employees, namely Sarah Wilson, Associate Director and Stephanie Haig, senior property manager, both of whom also gave evidence to the Committee. The Homeowner was neither present nor represented. Despite notice of the hearing having been given, he indicated that he was not prepared to attend a hearing in person in view of the distance and disproportionate expense that would be involved in doing so. The hearing was therefore, at the Homeowner's request, conducted in his absence. The Application was however very complete and contained a substantial amount of supporting documentation which was of assistance to the Committee.
5. The Application centres around a leak into the Homeowner's property and the Factors' failure to deal with the enquiry relating to it adequately or promptly.

Committee findings - general

The Committee made the following findings in fact pursuant to Regulation 26(2)(b)(i) of the 2012 Regulations:

6. The Homeowner, is the heritable proprietor of the Property. He resides in Morayshire and rents out the Property. The Property forms part of a six block development in Dennistoun, Glasgow, known as Eastern Court which was constructed in or around 2007 ("the Development").
7. The blocks in the Development are of varying sizes: Three of them contain six flats, one contains eight flats and two contain twelve flats, making fifty in total. The block in which the Property is situated contains a total of 12 individual properties.
8. The Factors produced a Written Statement of Services ("WSoS") applicable to the Development which was effective from January 2014. The annual management fee was at that time stated to be £91.30 plus VAT.

9. The Factors were the property managers responsible for the repair, maintenance and insurance of the common parts of the Development. They were first appointed to act by the developer on 20 April 2005. They ceased to act as factors with effect from 31 May 2015 following a majority vote by the residents' association to remove them and replace them with new factors.
10. The Factors were registered in terms of the Act on 7 December 2012. Their duties under the Act to comply with the Code arose from that date.
11. At some point in January 2015, the Homeowner became aware from his tenants that there was water ingress into the Property from the front window area. On 27 January 2015, the Homeowner wrote to the Factors asking them to advise him on the responsibility for repairs, given that the source of the leak could potentially have been caused by two cracks on the external render. The point of the enquiry was to establish whether the repairs were purely confined to the Property (in which case the Homeowner would have been solely responsible for the cost of repair) or whether they were communal, in which case it would have the responsibility of the Factors to effect a repair and to bill all of the common proprietors for the cost of such a repair. Potentially, the issue could have been a combination of both, so some form of survey required to be carried out to establish the source and cause of the leak.
12. After reminders sent on 17 and 19 February 2015, the Homeowner received a reply from Mr Vallance who at the time was a property manager employed by the Factors (although he has since left their employ). Mr Vallance advised that any remedial works to the render of the property would be the responsibility of the Factors, whereas any breakdown of internal sealant around the window frame to the Property would be the responsibility of the Homeowner. Mr Vallance further commented that if the damage was wear and tear it would not be covered by insurance. If, however, it was due to faulty workmanship, it might be covered under the NHBC guarantee over the Development. Mr Vallance undertook to instruct a builder to survey the area in question and to submit a report in order to progress the necessary repairs.
13. The Homeowner heard nothing further from Mr Vallance. In April he received a complaint from his tenants that the leak had become worse and was resulting in a damp smell in the property. This prompted the Homeowner to travel from Elgin to Glasgow to view the Property for himself on Thursday 16 April 2015. At that point he ascertained that no-one had in fact inspected the property to source the leak to his property. On that date, the Homeowner effected a temporary repair by placing mastic sealant around the front window frame of the Property.
14. On 30 April 2015, the Homeowner was informed by Mr Vallance that a survey of the area in question had been made and that the survey had ascertained that the leak had been caused by a breakdown in frame sealant which the Homeowner would be solely responsible for as it pertained to his own property only.

15. On 18 May 2015, the Homeowner discussed matters with Mr Vallance which he summarised in an email later that day. The email provided demonstrated that a survey of the Property had not in fact taken place as stated. The only inspection which had taken place had been on 8 January 2015, which is to say, prior to the water ingress issue having been reported. Mr Vallance had apparently confused the inspection which taken place in respect of another block within the Development with the promised inspection of the Homeowner's property. He apologised for that error at the time of the phone call. Mr Vallance subsequently sent an email dated 18 May again apologising for his error and undertaking once again to have the Property surveyed. The assertion relating to the source of the leak and the responsibility for its repair were therefore clearly without foundation.
16. The mis-statement made by Mr Vallance was admitted by the Factors at the hearing as having been incorrect. They also accepted that there was an inexcusable delay between 27 January and 16 April 2015 being the periods from the issue first being reported and the Homeowner being forced to attend to matters himself. As at the date of the Application, the Homeowner had still not received a copy of the survey report.
17. The Homeowner seeks payment of £189.90 in respect of travel costs and a further £185.30 as being the cost of the purchase of one day's holiday on 16 April 2015. There was no separate vouching of those travel costs. The Committee was not provided with any evidence that Thursday 16 April 2015 required to be taken as a holiday as opposed to merely being time off between working shifts. It was unfortunate that due to the Homeowner's unwillingness to attend the hearing, this matter could not be tested.

Findings in relation to the alleged breaches of duty

Section 2.1 of the Code

18. Section 2.1 of the Code provides that factors must not provide information which is misleading or false. The email of 30 April 2015 was clearly false and misleading. The Factors admitted the breach and provided an explanation for that statement as narrated above. The Committee therefore found that the Factors had breached Section 2.1 of the Code.

Section 2.5 of the Code

19. Section 2.5 of the Code requires the Factors to respond to enquiries and complaints received by letter or email within prompt timescales. Overall the Factors aim should be to deal with enquiries as quickly and as fully as possible, and to keep homeowners informed if additional time is necessary to respond. This is covered by section 4 of the WSoS headed "Communication Arrangements." It is provided that the Factors will endeavour to work within the following timescales:

(i) to return telephone messages within one working day,

(ii) to acknowledge both electronic and paper correspondence within forty-eight hours, and

(iii) to respond to both electronic and paper correspondence within five working days.

20. In light of the general findings made above and the admission of the Factors at the hearing, the Committee had little difficulty in finding that the Factors had breached of Section 2.5 of the Code. The enquiries made by the Homeowner were not responded to promptly, either in terms of their own WSoS or on any reasonable view. The Homeowner was forced to send repeated reminders to have action taken. That action would have enabled him to ascertain whether an insurance claim was appropriate or whether he should proceed to take prompt action to effect repairs himself to repair the leak at the front window to his property. As a result, he was put to unnecessary trouble and inconvenience.

Sections 5.4 and 5.5 of the Code

21. Section 5.4 requires factors to provide Homeowners with all necessary information to enable them to submit claims on their own behalf, if they are required to do so. As the above findings in relation to Section 2.1 make clear, the Homeowner was not provided with that information to enable him to even begin to consider an insurance claim. In fact, he never received the long-promised survey report from any builder employed by the Factors. Therefore, the Factors also breached Section 5.4 of the Code.

22. Section 5.5 requires factors to keep homeowners informed of the progress of their insurance claim or provide them with sufficient information to progress the claim themselves. The issue in relation to the provision of information has been covered in respect of Section 5.4. However, as a claim was not in fact made, this section has no relevance. There was accordingly no breach of Section 5.5 of the Code.

Sections 6.1 and 6.3 of the Code

23. Section 6.1 requires factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance and attention. They must thereafter inform homeowners of the progress of this work, including timescales for completion. As found above, there was a procedure in place for informing the Factors of the work which required to be done, it was just that they failed to carry it out. Accordingly, the Factors breached the second part of Section 6.1 in that the Homeowner was not properly informed of the progress of the necessary work.
24. Section 6.3 requires factors to be able to show how and why they appointed contractors on request. This section is not relevant to the Application as the Homeowner did not request that information. Nor was a contractor actually appointed. In any event, the Application is concerned with the failures on the part of the Factors to provide correct information and to take appropriate action

promptly, rather than anything to do with the contractors which they appointed. There was accordingly no breach of Section 6.3 of the Code.

Decision

25. In all of the circumstances narrated above, the Committee finds that the Factors have failed to comply with their property factor's duties in terms of s 14(5) of the Act in respect of sections 2.1, 2.5, 5.4 and 6.1 of the Code as narrated above.

In relation to losses sustained by the Homeowner, the Committee notes that neither of those claimed were adequately vouched or supported. Accordingly, the compensatory award will be in respect of trouble and inconvenience only.

It has therefore determined to issue a Property Factor Enforcement Notice which will follow separately.

26. **Appeals**

The parties' attention is drawn to the terms of s 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..."

Signed: M O'Carroll
Chairperson

Date: 30 December 2015