



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

HOHP reference: HOHP/PF/16/0050

Re: Property situated at and known as 6 Clydeview Apartments, High Carnegie Road, Port Glasgow, PA14 6BX ("the property")

The Parties:-

Miss Elaine Murray, residing at 6 Clydeview Apartments, High Carnegie Road, Port Glasgow, PA14 6BX ("the Homeowner")

And

Morison Walker Property Management Limited, having a place of business at 23 Patrick Street, Greenock, PA16 8NB ("the 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:

Andrew Cowan (Chairperson)

Ann MacDonald (Housing Member)

Decision of the Committee

The Factor has failed to comply with the Property Factor Code of Conduct in terms of section 14(5) of the Act and has failed to comply with the Factor's duties in accordance with Section 17 of the Act. The Committee accordingly proposes to make a Property Factor Enforcement Order.

Findings in Fact

1. The Homeowner is the owner of the property situated at and known as 6 Clydeview Apartments, High Carnegie Road, Port Glasgow, PA14 6BX.

2. The Factor has been appointed as the property factor, for the block of flats in which the property is situated, by a decision of the majority of the owners of the block of flat dated 15 October 2001.
3. The Factor is registered as a factor in terms of the Act, having been so registered on 1 November 2012 under registration number PF000249.
4. On 27 September 2013, the Factor issued to the Homeowner a statement of services in accordance with the requirements of the Act.
5. The statement of services issued by the Factor on 27 September 2013 did not include any details as to the Factor's in-house complaints handling procedure.
6. Between the end of 2014 and October 2015, the Factor and the Homeowner were in correspondence regarding proposed works to the common front door of the Property. That common front door was shared by flats 6 and 5 Clydeview Apartments, Port Glasgow. Correspondence passed between the Factor and the Homeowner regarding the possibility of replacing the door and the Factor's attempts to obtain quotations and specifications for the necessary works. Despite requests for further information, the Homeowner did not receive further correspondence in relation to the issue from the Factor, between October 2015 and April 2016.
7. On 16 April 2016, the Homeowner made a formal complaint in writing to the Factor, in which she set out her complaints and made reference to the Factor's duties in terms of the Property Factor Code of Conduct.
8. The Property Factor acknowledged the Homeowner's formal complaint by email dated 18 April 2016. At that time, the Factor attached to their email a further copy of their written statement of services. The written statement of service which was produced to the Homeowner at that time

did make reference to "complaints". This version of the statement of services stated that "A copy of our complaints handling procedure is available on request".

9. By email dated 20 April 2016, the Factor responded in detail to the Homeowner's complaint and apologised for their delay in actioning the necessary works to the common door at the Property, and apologising for any inconvenience caused to the Homeowner.
10. By email on 15 May 2016, the Homeowner again expressed concern as to the delay in progressing necessary works to the common door at the Property. In the same email, the Homeowner requested that the Factor make available a copy of their complaint handling procedure.
11. By letter dated 16 May 2016, the Factor advised the Homeowner that the Factor accepted that they had failed to "chase up matters" between October 2015 and April 2016. They confirmed that they intended to credit the Homeowner's account with the sum of £30, being a part refund in management fees for that period.
12. By email dated 16 May 2016, the Factor gave the Homeowner a further update in relation to difficulties in progressing the necessary works to the common door. The Factor, at that stage, made available to the Homeowner, a copy of their complaints handling procedure.
13. The Factor continues to seek the consents of both the owners of flat 5 and flat 6 to carry out works to replace the door and locking system at the common close entrance.

Background

14. By an application dated 16 April 2016, the Homeowner applied to the Homeowner Housing Panel ("the Panel") to determine whether the Factor had failed to:-
 - (a) carry out the Factor's duties; and

- (b) ensure compliance with the Property Factor Code of Conduct as required by Section 14(5) of the Act.
- 15. In her application, the Homeowner alleged that the Factor had failed to comply with the following sections of the Code of Conduct:-
 - (a) The Factor has failed to provide details of their complaints handling procedure within their written statement of services;
 - (b) The Factor has failed to provide details (within their written statement of services) of their proposed response times to complaints received;
 - (c) The Factor has failed to communicate with the Homeowner to inform her of the progress of required repairs at the Property; and
 - (d) The Factor has failed to inspect the Property every 12 – 18 months as required in terms of the Factor's statement of services.
- 16. The Homeowner further alleged that the Factor had failed to carry out the Property Factor's duties as the Factor had failed to respond to communications from the Homeowner and had failed to resolve the Homeowner's concerns.
- 17. By letter dated 10 August 2016, the Parties were advised that the President of the Panel had decided to refer the application to a Homeowner Housing Committee ("the Committee") for determination. Both parties were also notified in said letter that a hearing in relation to the application would be heard on 3 October 2016.
- 18. Prior to the hearing date, the Committee were able to consider all correspondence which had been lodged by the Homeowner. The Committee were also able to consider the

correspondence which had passed between the Factor and the Homeowner in relation to the application.

The Hearing

19. A hearing took place before the Committee at Wellington House, 134 Wellington Street, Glasgow, on 3 October 2016. The Homeowner was present and represented herself. The Factor was represented at the hearing by Mrs Florence Gallagher, a Director of the Factor. The hearing was also attended by Mr Bernard Gallagher, Property Inspector employed by the Factor and Mr Derek Robertson, Property Inspector employed by the Factor.

Complaint regarding the Factor's statement of services

20. Section 1 of the Code of Conduct requires the Factor to provide each Homeowner with a written statement setting out the terms of their service delivery standards and the arrangements in place between the Homeowner and the Factor. Section 1(D) and 7.1 of the Code of Conduct specifically requires the Factor to set out within their statement of services their in-house complaints handling procedure and details of how Homeowners may make an application to the Homeowner Housing Panel if they remain dissatisfied following completion of their in-house complaints procedure. Section 1(D) of the Code of Conduct further requires the Factor to set out in their statement of services, the timescales within which they will respond to enquiries and complaints received by letter or email and their procedures and timescales for responding when dealing with telephone enquiries.
21. Having heard evidence, the Committee are satisfied that the Factor has not complied with Section 1(D) of the Code of Conduct. The Factor originally issued a statement of services to the Homeowner under cover of their letter of 27 September 2013. That statement of services makes no reference to any complaints handling procedure and, further does not specify timescales within which the Factor proposes to respond to enquiries and complaints made by letter, email or telephone.

The Committee noted the evidence of the Factor that a further copy of the statement of service which was made available to the Homeowner by email dated 18 April 2016, does include a short statement under the heading of "complaints". In particular, that version of the statement of services states that "a copy of our complaints handling procedure is available on request".

Representatives of the Factor were unable to explain to the Committee why the statement of service which had been made available to the Homeowner in 2013 did not include the specific statement in relation to complaints, but appeared in the version of the statement of service emailed to the Homeowner in April 2016.

In any case, the statement of services which is currently used by the Factor and, which was exhibited to the Homeowner in April 2016, does not meet the requirements of the Code of Conduct. The statement of services does not set out a complaints handling procedure. The Factor made reference to a separate document which was eventually made available to the Homeowner entitled "Complaints Handling Procedure". This is a separate document and did not form part of the statement of services. The Code of Conduct is clear that the statement of services itself must set out the complaints handling procedure. The Committee are of the view that reference to a separate document (available only on request) does not, in itself, satisfy the specific requirements of the Code of Conduct in this respect. Further and, in any event, the complaints handling procedure issued separately by the Factor does not set out the timescales within which the Factor will respond to enquiries and complaints or timescales and procedures for responding to telephone enquiries. In all these respects, the Factor's statement of services is deficient and does not comply with the Code of Conduct.

22. The Committee accordingly determined that the Factor had failed to comply with Section 1(D) of the Code of Conduct.

Complaint of a failure to communicate with the Homeowner and to advise the Homeowner of the progress in relation to repairs required at the Property

23. Evidence was led by both parties at the hearing of communications which had been passed between parties in relation to work which was required to a common entrance door at the Property. The Factor accepted that they had failed to communicate properly with the Homeowner and had failed to progress the issue for the period between October 2015 and April 2016. In this respect, the Factor had acknowledged their failure by letter dated 16 May 2016, and had advised the Homeowner that they had credited her account with the sum of £30, being a part refund of their management fee.
24. The Committee accordingly proposed to make a Property Factor Enforcement Order ("PFEO") whereby the Factor must provide to the Homeowner a revised statement of services which specifically sets out the communication arrangements, in-house complaints handling procedures and timescales, all as specified within Section 1(D) of the Code of Conduct for Property Factor.
25. It has been accepted by the Factor that they had failed to communicate clearly and positively with the Homeowner, all as required by Section 2 of the Code of Conduct. The Committee accordingly determined that the Factor had failed to comply with Section 2 of the Code of Conduct.
26. The Committee noted that the Factor had already decided to credit the Homeowner with £30 as a part refund of the management fee in respect of their failure to communicate in relation to this matter. Given the history of the case and the extensive efforts the Homeowner had made to contact the Factor concerning the issue, the Committee consider that it is appropriate and reasonable that the Factor should credit the Homeowner with a further £30 towards her account. Accordingly, the total which should be credited to the Homeowner's account should be £60, as reasonable compensation and reimbursement of management fees for the period during which the Homeowner had difficulty with communications with the Landlord.

27. The Committee accordingly propose to make a PFEO requiring the Factor to credit the Homeowner's factoring account with a further sum of £30 (additional to the sum credited by the Factor in May 2016) as a further refund of management fees.

Complaint that the Factor failed to provide a condition report in respect of the Property

28. The Committee noted that, in terms of the statement of services issued by the Factor, the Factor confirmed that they would carry out an inspection of the Property every 12-18 months and would provide a written report thereon. Parties were agreed that a condition report in respect of the Property had been issued in September 2014. A further condition report was prepared in respect of the Property and was dated 5 May 2016.
29. The latest condition report dated 5 May 2016 had been issued to the Homeowner after she had raised the application to the Panel. Given that the previous report in relation to the Property was dated September 2014, the Factor (in terms of their own written statement of services), were obliged to deliver a further inspection report by the end of March 2016. The latest condition report prepared by the Factor has accordingly been delivered outwith the timescales fixed by the Factor in their own statement of services. The Committee noted the slight delay in delivering the latest written condition report. In an email dated 18 April 2016, the Factor had explained to the Homeowner that the condition report was "underway, but not yet finalised due to weather conditions. This will be sent out to you in due course and we apologise for the delay". The Committee are of the view that the delay in issuing the property condition report dated 5 May 2016 is not material. The Committee are satisfied that the Factor made their best endeavours to provide the property condition report within the timescales outlined in the Factor's own statement of services. The Committee accordingly determined that, as at the date of the hearing, there was no failure of the Factor to comply with the Code of Conduct or the Property Factor's duties in relation to this matter.

Outstanding issues in relation to the repairs to the common door at the Property

30. The Committee noted that, notwithstanding the material delays in progressing the works at the Property, that the Factor's inspectors were both satisfied that, although the fan light frame to the common door had been identified as requiring wet rot investigation and painting, there was no evidence that the fan light or the door were in a dangerous condition. The Committee further noted that the Factor had carried out *ad hoc* repairs to the door since the application was submitted. The homeowner, however, clarified at the hearing that on occasions due to certain weather conditions the door stuck as the wood swelled up. When the door was inspected the weather was not bad and the door worked. It was because of the occasional sticking and inability to get in or out when it happened that she believed the door repairs/ replacement were a health and safety matter needing urgent attention. The committee noted that in the written statement of services there was no need for the approval of both Homeowners to work required that was a health and safety matter since the Factor had delegated authority to proceed. The Factor advised they hadnot realised that this was the reason the homeowner though the door was dangerous, but reiterated that it was their view that the door was not a health and safety risk now that it had been planned and the lock adjusted.
31. The Committee noted that the Factor continues to take the instructions of both the Homeowners who have joint use of the common entrance door, with a view to agreeing the works to be taken forward which might include the replacement of the door and that a meeting with both Homeowners and the Factor to discuss the matter was scheduled. The Committee note that there is no specific complaint in relation to how the Factor is currently dealing with the issue and accordingly there is no decision to be made in relation to these matters.

Decision

32. The Factor has failed to ensure compliance with the Factor's Code of Conduct as required by Section 14(5) of the Act, in that they have failed to comply with Paragraph 1(D) and Sections 2.5 and 7.1 of the Code of Conduct.

33. As the Committee is satisfied that the Factor has failed to ensure compliance with the Property Factor Code of Conduct as specified, the Committee propose to make a PFEO. A copy of the Committee's proposed PFEO has been issued along with this decision.
34. In terms of Section 19(2) of the Act where the Committee proposes to make such an Order, it must before doing so, give notice of its proposal to the Factor and must allow the parties an opportunity to make representations to the Committee.
35. The service of this decision to the parties should be taken as notice for the purposes of Section 19(2)(a) of the Act and the parties are hereby given notice that they should ensure that any written representations which they wish to make under Section 19(2)(b) of the Act reach the Panel's office by not later than fourteen days after the date of service of this decision upon them. If no representations are received within that timescale, then the Committee may proceed to make a Property Factor enforcement Order without seeking further representations from the parties. Failure to comply with a Property Factor Enforcement Order without reasonable excuse constitutes an offence under Section 24 of the Act.

Right of Appeal

36. 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. Section 22 provides:-
- (a) 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 Committee or a Homeowner Housing Committee; and
- (b) 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..."

ANDREW COWAN

Andrew Cowan, Chairperson

24/10/16
Date