



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

HOHP Ref: HOHP/PF/14/0026

Property at: Flat 2/1 10 Armadale Path, Dennistoun, Glasgow, G31 3EZ

The Parties

Donald Cameron, residing at Flat 2/1 20 Armadale Path, Dennistoun, Glasgow, G31 3EZ ("the applicant")

and

Milnbank Housing Association Ltd, 53 Ballindalloch Drive, Dennistoun, Glasgow, G31 3DQ ("the respondent")

Decision of the Committee

The Home Owner Housing Committee, having made enquiry, and having due regard to the oral and documentary evidence presented, has determined that the Respondent has neither failed to carry out the property factor's duties, nor has the Respondent breached the Code of Conduct for Property Factors

Committee Members

Paul Doyle	(Chairperson)
Sara Hesp	(Surveyor Member)

Background

1 By application dated 14 February 2014, the applicant applied to the Home Owner Housing Panel for a determination as to whether the respondent has failed to comply with the code of conduct imposed by Section 14 of the 2011 Act.

2 The application stated that the applicant considered that the respondent failed to comply with sections 1.1C(e); 1.1C(h); 2.1; 2.5; The second overriding objective was Section 3; sections 4.2; 6.1; 6.3; 6.4; 6.9 & section 7.1 of the code of conduct for property factors.

3 By minute dated 11 November 2014, the vice-president of the Home Owner Housing Panel intimated a decision to refer the application to a Home Owner Housing Committee. The Home Owner Housing Panel service notice of referral on both parties, directing the parties to make any further written representations.

4 On 5 December 2014, the applicant responded to the notice of referral and provided further documentary evidence. On 15 December 2014, the respondent responded to the notice of referral and provided further documentary evidence.

5 A hearing was held at Europa House, Argyle Street, Glasgow on 12 February 2015. All parties were timeously notified of the time, date and place of the hearing. The applicant was present (and was unrepresented). The respondent was represented by Ms A Brynes, solicitor. There was one witness for the respondent, Ms J McMillan, a property management officer employed by the respondent.

6 Both the applicant & Ms McMillan answered questions from committee members. The Committee then reserved their determination.

Findings in Fact

7 The Committee finds the following facts to be established:

- (a) The applicant purchased the property at 10 Armadale Path, Dennistoun, Glasgow in 2002 from the local authority. The property forms a second floor flat, entering from a common passage and stair. There are seven other flats entering from that same stair. The applicant's property is one of a number of properties in a residential area. At the time the applicant purchased the property, Glasgow City Council were the property factors. On 25 July 2011, the respondents were appointed as property factors to manage *inter alia* the areas owned in common by the applicant and other proprietors in the development of dwellinghouses there. On 23 October 2012, the respondents were registered as property factors on the Property Factors Register.
- (b) When the respondent was appointed as property factor to the larger development of which the applicant's house forms part, the respondent sent to the applicant, an information pack which included the respondent's factoring policy. That factoring policy was

replaced by a written statement of factoring services. A copy of the written statement of factoring services was sent to the applicant on 3 April 2014. Within that written statement of services, there is a section headed "Invoicing". There, the respondent sets out their practice of issuing a yearly statement of account, detailing the charges raised by the respondent and the state of the applicant's account with the respondent; there, the respondent sets out the cost of factoring services for the preceding 12 months, the cost of insurance and *inter alia* the cost of repairs for which the applicant is liable.

- (c) In each of April 2012, April 2013 and April 2014, the respondent sent the applicant a factoring agreement, asking the applicant to sign the factoring agreement. The respondent sent similar factoring agreements to other proprietors on the residential development of which the applicant's property forms part. The applicant resolutely refuses to sign the factoring agreement.
- (d) In the accounting period ending in 2014, the respondent charged the applicant £223.92 more than in the financial year to 2013. The increase was caused by an annual increase in buildings insurance cover of £10, an annual increase of estate services fee charge of £6, an annual increase to maintenance fee charge of £6, gutter clearing of £27, common repairs contractors of £51 and £114 of repairs to the interior of the applicant's dwellinghouse on 6 October 2012 (those repairs related to the installation of television services). It is part of the respondent's factoring policy that individual proprietors are only notified of common repairs which will cost more than £150 per owner/occupier.
- (e) The respondent charges management fees and estate services fees in advance with invoices for repairs in arrears. The respondent is registered for VAT and became so registered in December 2008.
- (f) In the financial year to 2014, the respondent charged the applicant for a number of common repairs, each of which was valued at less than £150. The respondent, in error, charged the appellant twice for a stair lighting repair. The correct charge should have been £17.47. Instead, the respondent charged the applicant £34.94. When that error was drawn to the respondent's attention, the respondent issued a credit note refunding to the applicant's factoring account £17.47.
- (g) On or about 31 March 2014, the applicant wrote to the respondent alleging breaches of Section 1.1a, Section 2a and 2b, Section 2.5, Section 3.2, Section 4.2, Section 5.4 and Section 6.1 of the Code of

Conduct. It is the applicant's position that the respondent has breached those various sections of the Code of Conduct because their policy of sending out an invoice for repairs up to one year after the repairs have been carried out deprives the applicant of the opportunity to ensure that the work has been carried out properly and to check the work for which he has been invoiced has been completed satisfactorily. The applicant is aggrieved that the respondent has used third party contractors to complete work and believes that the respondent's policy amounts to a flaw in the building process and a breach of the Code of Conduct.

- (h) By e-mail dated 10 June 2014, the applicant withdrew his complaint insofar as it relates to property factor's duties and emphasised that his complaint is that the respondent has breached the Code of Conduct.
- (i) In or about April 2014, the respondent issued a factor's invoice to the applicant for the year to April 2014. Included in that account was a charge for common repairs. Those common repairs were:
 - £256.50 for a door entry upgrade to a magnetic fob system, work carried out in December 2013
 - £4.64 to fit an electric keeper to the controlled door entry system, on 9 July 2013
 - £18.45 to supply high pressure water jetting equipment to clear a blockage of drainage and return to flow, on 8 January 2014
 - £4.64 to supply and fit an electric keeper to the controlled door entry system, on 5 June 2014

When the applicant received the invoice for the year to April 2014, he questioned the cost of a repair to the stair door intercom system. As a result of the points raised by the applicant, the respondent credited a further £114 to the applicant's factoring account.

- (j) Because of the dispute between the parties, the applicant decided to withhold payment of factoring charges. By November 2014, there were outstanding factoring charges of £839.04.
- (k) The deed of declaration of conditions (recorded GRS Glasgow 29 July 2001) by Glasgow City Council is the basis for the appointment of property factors to maintain and repair the common parts of the building of which the applicant's property forms part and the common areas of the larger development of which the applicant's property forms part. Condition 6 of that deed of conditions provides that the common property in the larger development should be held

in equal shares by the various proprietors in the development (with one share for each household) and empowers the factor to instruct necessary repairs without reference to the proprietors, provided that the estimated cost of such work does not "*exceed £2,000 or such greater amount as made from time to time be fixed by a meeting of the proprietors of all dwellinghouses in the property.*"

- (l) Condition 6(e) in said deed of conditions is in the following terms:

"(e) As soon as reasonably practicable after the end of each quarter, the factor shall prepare a statement of the common charges incurred in respect of that quarter and shall furnish a copy thereof to each of the proprietors of dwellinghouses in the property."

- (m) Between 25 July 2011 and the date of hearing, no repairs were required to the applicant's property which would cost more than £150. In the same period, no repairs were required to any part of the larger development of which the applicant's property forms part which would cost any individual proprietor more than £150.
- (n) The respondent arranges buildings insurance for the larger development of which the applicant's property forms part. The excess on the insurance policy is £250 per proprietor.
- (o) Because the applicant has not paid factoring charges for the years to April 2013 and April 2014, the respondent has written to him a number of times seeking payment. By letter dated 21 May 2013, the respondent wrote to the applicant seeking payment of outstanding factoring charges (which then amounted to £628.70) and warning that if he did not make arrangements to pay within 14 days of the date of that letter, his account would be sent to sheriff officers for recovery - stating "*any costs in this action will be levied to your account*". The respondent has added the sum of £10 to the debit of the applicant's factoring account, representing a charge made by sheriff officers for writing to the applicant seeking payment of outstanding factoring charges. The respondents have not applied any interest or late payment charges to the outstanding factoring accounts rendered to the applicant in April 2013 and April 2014.
- (p) Each year, the respondent approves a list of contractors to carry out routine maintenance and repairs to the properties factored by them. The respondents have their own property inspection staff and a maintenance team which is complemented by the approved list of third party contractors.

- (q) The respondent is linked to an associated limited company, which operates teams of maintenance officers who visit the properties for which the respondents are factors every day. Regular inspections are carried out of the residential estate of which the applicant's property forms part and of the applicant's property, and whenever necessary work is required, it is carried out.
- (r) As part of the programme of cyclical maintenance of the residential property of which the applicant's property forms part, the respondent has an arrangement where works which would appropriately form part of a buildings insurance claim are reported to a buildings insurance officer employed by the respondent, so that a timeous insurance claim can be made. The respondent have not had to make a claim on the buildings insurance since they were appointed as property factors.
- (s) The respondent's written statement of services contains details of the complaints resolution procedures. The factoring agreement which has been presented to the applicant for signature in April 2013 and April 2014 contains details of the respondent's complaints resolution procedures.

Reasons for Decision

- 8 (a) The hearing in this case took place during the morning of 12 February 2015. The applicant was present and was unrepresented. The respondent's property management officer, Joanne McMillan, gave evidence for the respondent. The respondent was represented by Ms A Brynes, solicitor. The applicant answered a number of questions put to him by committee members. Ms McMillan then answered questions from committee members. Closing submissions were made by both the solicitor for the respondent and by the applicant. The committee then reserved its determination.
- (b) The applicant's application was received on 17 February 2014. In his original application, the applicant complained that the respondent had failed in the property factor's duties and had breached Sections 2.1, 6.1, 6.3, 6.9 and 7.1 of the code of conduct. In the course of correspondence that followed the application, the applicant refined his complaint. In e-mails dated 31 March, 3 April and 10 June, all 2014, the applicant focused his complaint and explained that his complaint does not relate to the property factor's duties, but to various sections of the code of conduct. Before the commencement of oral evidence on 12 February 2015, the applicant confirmed that he has no complaint in relation to the property factor's duties and that the thrust of his complaint relates entirely to allegations of breaches of the code of conduct. No argument is advance in relation to the

property factors duties; the only question before the committee is, therefore, whether or not there has been a breach of the code of conduct.

(c) The applicant alleges that the respondent has breached the following sections of the code of conduct:

1.1C(e)

1.1C(h)

2.1

2.5

The second overriding objective was Section 3

4.2

6.1

6.3

6.4

6.9

7.1

(d) The essence of the applicant's complaint is that the property factors submit their accounts to the applicant annually. The respondent sends the applicant an invoice for the property factor's fees, management fees and for repairs that have been carried out throughout the preceding 12 months without either discussion with or intimation to the applicant. The applicant is concerned that because he only finds out that the repairs have been carried out up to 12 months after they are carried out, it is difficult to check either that the work was necessary or that the work was carried out or that the work was carried out to a satisfactory standard and properly invoiced.

(e) The applicant complains that Section 1 of the code of conduct is engaged. Section 1 of the code of conduct relates to a written statement of services. The file of papers placed before the committee contains a written statement of services issued by the respondent. It is common ground that the applicant received the written statement of services in April 2014. It is the respondent's position that when the respondent was appointed, the property factor's policy which predated the written statement of services was delivered to the applicant. The applicant adopts a neutral position in relation to receipt of the property factor's policy. The weight of evidence therefore indicates that, at the very outset, the applicant received the property factor's policy and that, in April 2014, the applicant received the written statement of services.

(f) The applicant focuses on Section 1.1C(e). Section 1.1C relates to financial charging arrangements. It is the applicant's complaint that the respondent unilaterally decides what management fee should be charged and has sole control of the fee structure and the process for reviewing and increasing the fee. Section 1 of the respondent's written statement of

factoring services sets out their authority to act. Section 2 sets out the management fee charge and provides detail of the actual charge and the basis on which the respondent reserves the right to review that charge.

(g) In reality, the applicant complains of a lack of control of property factors fees by the homeowner. What the applicant overlooks is the terms of the deed of conditions recorded GRS Glasgow on 29 July 2001. Condition 9 of that deed of conditions provides for the appointment of a factor. Condition 10 provides for the calling of meetings of proprietors and the ability of proprietors to instruct the factors by majority vote. Condition 9(b) is in the following terms, "*the remuneration of the factor and the terms and conditions of his appointment shall be determined from time to time by the persons entitled to appoint him*".

(h) The weight of evidence indicates that the management fee and the process for reviewing increasing or decreasing that fee is adequately explained in the respondent's written statement of services and that there is adequate provision for the applicant's contribution to the control of the charging arrangements contained within the deed of conditions recorded GRS Glasgow on 29 July 2001.

(i) The applicant complains that the respondent has breached Section 1.1(a)F of the code of conduct ("*How to end the arrangement*"). Section 1 of the code of conduct relates entirely to the written statement of services. The respondent's written statement of services is placed before the committee. Clause 16 of the written statement of services is headed "*Changing Factor*". Reference is made there to the deed of conditions - and the summary which is given there is entirely consistent with the conditions set out in the deed of conditions recorded GRS Glasgow on 29 July 2001. The respondent correctly interprets clauses contained within the deed of conditions and provides a concise summary of the method of ending the factoring arrangement, which is not only accurate but is easier to understand than the arcane terms of the deed of conditions.

(j) The applicant alleges that Sections 2.1 and 2.5 of the code of conduct has been breached. Section 2 of the code of conduct relates to communication and consultation. Section 2.1 provides "*you must not provide information which is misleading or false*".

(k) Committee members asked the applicant to specify what misleading or false information had been provided. The applicant was not able to identify any misleading or false information. The committee considers the documentary evidence and the oral evidence placed before the committee and finds that the respondent has not provided misleading or false information. The respondent has made an accounting error which was rectified when the applicant challenged entries on his account

rendered in April 2013 and April 2014; the respondent acted quickly when the error was pointed out to them and credited the applicant's factoring account. A genuine accounting error does not amount to the provision of misleading or false information.

(l) The applicant complains that he has been intimidated and threatened by the respondent. Committee members asked the applicant to specify in what way he had been intimidated and threatened. The applicant took committee members to the terms of the written statement of services and referred specifically to Section 8 of the written statement of services. Section 8 relates to "*Factoring Arrears*" and commences with the sentence, "*the company will always pursue owners who fail to pay their accounts*". The written statement of services then dwells on "*potential legal action*", setting out eight potential steps that can be taken to obtain and enforce a decree. What is contained in the written statement of services is a concise statement of the legal procedure for a court action of repetition and for recovery of debt. It is written in clinical, neutral terms. The respondent does not adopt an oppressive, hectoring or threatening tone. The respondent simply sets out the methods of debt recovery which are well established in Scots Law. There is nothing either abusive, intimidating or threatening in the way in which the respondent has set out the debt recovery process in the written statement of services.

(m) Section 2.5 of the code of conduct relates to the response to enquiries and complaints. When asked by committee members, the applicant could not give a specific example of the respondent's failure to respond to enquiries and complaints within prompt timescales. Exchange of correspondence by letters and e-mails is reproduced in the documentary evidence before the committee. That documentary evidence supports the oral evidence of Ms McMillan (for the respondent) who stated that every time a complaint or enquiry was received by the respondent, the property factor responded quickly. It was Ms McMillan's evidence (and it is clear from the documentary evidence) that there was one occasion when the respondent did not understand that a complaint had been made and thought that the applicant had made an enquiry seeking information. The documentary evidence makes it abundantly clear to the committee that the information sought was provided and that when the respondent realised that the applicant's intention had been to raise a complaint (rather than seek information), the respondent apologised for the delay and dealt with the complaint. The weight of evidence indicates that the respondent has maintained a high standard of communication and consultation with the applicant. Section 2 of the code of conduct is not engaged.

(n) The applicant complains that the respondent has failed in the second overriding objective of Section 3 of the code of conduct, which relates to the clarity and transparency of accounting procedures. This

matter is in clear focus. As the committee has already indicated, the essence of the applicant's complaint is that he is aggrieved by the respondent's practice of issuing annual accounts, rather than issuing quarterly accounts. The preamble to Section 3 of the code of conduct includes the following sentence, "*Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved*".

(o) The weight of evidence indicates that the actual accounts prepared and presented by the respondent are clear and have provided sufficient detail to enable the applicant to raise queries about certain charges. There is therefore clarity and transparency in the accounting procedures. The very fact that the applicant is able to enter into an exchange of correspondence with the respondent querying charges (and, on two occasions, correcting charges) is an indication of clarity and transparency. There is no suggestion of dishonesty on the part of the respondent. The real issue between the parties is the frequency of the accounting period. Ms McMillan for the respondent explained that the respondent issues factoring accounts annually because that is the most cost effective way of managing the finances of the factored property. Ms McMillan volunteered that after appointment and once the annual issue of invoices had been established, residents were sent a survey - and 74% of those who responded stated that they were happy with annual accounting. It is clear from the evidence placed before the committee that the decision to send annual accounts is one which is based in the respondent's view of business efficacy.

(p) The problem for the respondent is that the foundation for their appointment, and the root of their mandate, is contained in the deed of conditions recorded GRS Glasgow on 29 July 2001. Condition 6(e) of that deed of conditions is in the following terms, "*As soon as reasonably practicable after the end of each quarter, the factors shall prepare a statement of the common charges incurred in respect of that quarter and shall furnish a copy thereof to each of the proprietors of the dwellinghouses of the property.*"

(q) The respondent's practice does not accord with the real burdens created in the deed of conditions recorded GRS Glasgow on 29 July 2001. The question for the committee is whether or not the respondent's failure to adhere to the specific terms of the deed of conditions amounts to a breach of the code of conduct.

(r) Committee members consider the entire terms of the code of conduct and focus on Section 3 of the code of conduct. Section 3.3 of the code of conduct commences with the following sentence, "*You must provide to homeowners, in writing at least once a year (whether as part of*

billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities or works carried out which are charged for." Other parts of Section 3 of the code of conduct refer to the title conditions but the obligation for accounting is not tied to the terms of the deed of conditions by the code of conduct.

(s) Whilst the respondent's accounting procedure does not accord with the terms of the deed of conditions recorded GRS Glasgow on 29 July 2001, their accounting procedure is fully in accordance with the terms of Section 3 of the code of conduct. There is a difference between the provisions of the deed of conditions recorded GRS Glasgow on 29 July 2001 and the terms of the code of conduct. That difference does not place the respondent in breach of the code of conduct. It is something that the respondent may well want to consider when reviewing their accounting procedures, but the respondent's accounting procedure is fully in accordance with the code of conduct.

(t) The applicant claims that the respondent has breached Section 4.2 of the code of conduct. Section 4 of the code of conduct related to debt recovery. The applicant complains that the respondent's attempts at debt recovery (for the outstanding invoices for April 2013 and April 2014) should have halted when he complained to the Homeowner Housing Panel and that the respondent should not apply interest or late payment charges to the outstanding accounts for April 2013 and April 2014. The applicant complains that he has received a number of letters threatening court action for non-payment of factoring fees.

(u) The weight of reliable evidence placed before the committee indicates that neither interest nor late payment charges have been applied. It is beyond dispute that no court action has been raised by the respondent in relation to the outstanding factoring fees for April 2013 and April 2014. Ms McMillan told the committee that a sheriff officer's fee of £10 had been added to the applicant's account. When we take a holistic view of each strand of evidence in this case, it appears to the committee that the respondent has been very patient with the applicant and the respondent has applied neither interest nor late payment charges to the outstanding sums. The £10 charge added to the applicant's factoring account represents an outlay reasonably incurred as an expense in a realistic attempt at recovery, which is a duty incumbent on the respondent in the overall financial management of the factored estate.

(v) The applicant focuses on Section 6 of the code of conduct ("*carrying out repairs and maintenance*"). The applicant complains that sub-sections 1, 3, 4 and 9 of Section 6 of the code of conduct have been breached by the respondent. The committee accepts Ms McMillan's evidence that each year, the respondent collates a list of approved

contractors and that, daily, there are inspections of the factored estate to ensure that maintenance and repairs are promptly attended to. Ms McMillan explained to committee members the procedure for periodic property inspections and the planned programme of cyclical maintenance. Ms McMillan explained, in credible terms, the procedure engaged when a large repair which should be referred to the buildings insurers is identified. The evidence from both the applicant and the respondent is that no repair has been required which would result in an invoice to the applicant in excess of £150 since the respondent became the property factor, nor has there been any need to pursue a contractor or supplier to remedy defects. Placing reliance on Ms McMillan's evidence and on the inability of the applicant to specify the way in which the respondent has failed to carry out repairs and maintenance, the committee finds that Section 6 of the code of conduct is not engaged.

(w) In reality, the applicant's complaint is that the respondent retains control of the regime of repairs and can elect to carry out repairs up to a value of £150 without reference to the applicant. Clearly, the applicant wants to have greater control over the decision to repair, over supervision of contractors and over the costs of repairs. In order to determine whether the respondent is authorised to carry out repairs up to a value of £150 without reference to the applicant, the committee (once again) consider the terms of the deed of conditions recorded GRS Glasgow on 29 July 2001. Committee members note that Condition 6 of said deed of conditions empowers the factors to carry out work at a value of up to £2,000 without reference to the proprietors of factored dwellinghouses.

(x) The applicant is dissatisfied with the respondent's complaints resolution procedure and complains that Section 7.1 of the code of conduct has been breached. Section 7.1 requires the respondent to have *"...a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow..."* When pressed, the applicant could not specify the manner in which he alleges the respondent has failed to provide a written complaints resolution procedure. The written statement of factoring services placed before the committee contains a section headed *"Complaints"*. That section confirms that the respondent has a comprehensive complaints resolution procedure and that copies of that procedure are available on request. It also provides the applicant (and others) with details of the Property Factors (Scotland) Act 2011 and details of the Homeowner Housing Panel. It is common ground that the applicant has had a copy of that written statement of services since April 2014. It is also common ground that the applicant was sent a copy of the respondent's complaints resolution procedure prior to lodging his complaint with the Homeowner Housing Panel in February 2014.

(y) The weight of evidence indicates that the respondent does have a clear, written complaints resolution procedure which fulfils the requirements of Section 7 of the code of conduct.

(z) Having considered each strand of evidence and after considering the terms of the code of conduct, the committee comes to the conclusion that the respondent is not in breach of the code of conduct of property factors.

Decision

9 The committee therefore finds that the respondent has not breached the code of conduct for property factors. The committee refuses the application. No property factor enforcement order will be made in response to this application.

Appeals

10 The parties' attention is drawn to the terms of section 22 of the Property Factors (Scotland) 2011 Act regarding their right to appeal and the time limit 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..."

Signec
Chairperson

Date

2nd March 2015