

7<sup>th</sup> April 2022

Woodilee Residents Association

By email to: [lmo@bto.co.uk](mailto:lmo@bto.co.uk)

Our Ref: EM/Factor-Replacement/003

Your Ref: GHU/LMO/RESI/2/237

Direct e-mail: [woodileeresidents@gmail.com](mailto:woodileeresidents@gmail.com)

Dear Mr Hunter

Many thanks for your letter of 6th April 2022.

### **RMG Acceptance of Termination and Ongoing Maintenance**

We are disappointed with your denial of the confirmation of termination supplied from the RMG appointed property manager, whose name has featured heavily on all correspondence from RMG, to an office bearer of the WRA. The confirmation was unqualified and the WRA had no reason not to take this at face value. RMG appear to have shown great care in not referencing the situation since January and then sent this message to an office bearer. This matter should really be considered closed at this point – there appear to be no grounds offered for denying the acceptance conveyed.

It is unacceptable of RMG to be issuing contradictory statements via solicitors and directly to the WRA, but unsurprising. We dispute that this termination confirmation was made in error but in the interests of progressing their termination, and in the best interest of Woodilee, we offer to revisit conformance with the Title Deeds.

We believe this to be a clear breach of Overarching Standards of Practice 4 in the Property Factors Code of Conduct (2021) hereafter referred to as the PFCoC.

The Treasurer of WRA, Paul Ellison, has received a further communication from the Property Manager in RMG, Melissa Syme on 28th March 2022 as follows:-

*With regards to your reference for the tree survey, law states that trees require to be inspected however no time line is provided on the frequency of such inspections. RMG and the appointed contractor have made the recommendation of inspections every 12 months due to the amount of trees within the development which attending frequently allows the contractor to identify any changes to the trees. We have also stated that due to delays which have seen the tree inspection not take place as yet, we feel that allowing NPM to carry out such inspection allows them to take the process from start to finish. The tree inspector has also advised that if the inspection was to take place the report would not be available prior to the date of transfer.*

WRA highlight that RMG remain property factor until any agreed termination date, and requirements to manage the estate continue to be the responsibility of RMG. It is an inconsistent position to state RMG do not accept proper notice of termination has been given, yet also refuse to carry out their duties in line with the Deed of Conditions, Written Statement of Service and Ground Maintenance Specification. By RMGs own email, tree inspections are due every 12 months. The last inspection report was dated 24th February 2021 and is now overdue. The delays referenced by Melissa in this email are purely due to RMG. As current factor it is RMGs responsibility to arrange this safety critical survey and we suggest you encourage your client to fulfil their obligations and arrange this survey. RMG could be held liable for any damage to property or persons from trees which have not been inspected in line with their own schedule.

## **Conformance with Title Deeds**

As regards your statement that “The purported termination of our client’s appointment as factor of the development is rejected as you have failed to evidence compliance with the conditions required for termination as set out in the title deeds.”, we are pleased that you recognise that the process outlined in GJ/FactorReplacement/001 to be compliant, and that only provision of confirmatory evidence is required.

The evidence of the voting record is contained within 250 Voting Forms submitted to the WRA – those suffixed with “-LATE” were received after the 12pm deadline and were included as noted in the minutes from the EGM, as previously shared. The size of these records far exceeds anything that can be emailed, so the WRA has encapsulated the forms within a Zip file protected with a password. The password will be sent separately, but the Zip file can be downloaded from:

[https://drive.google.com/file/d/1NGQEmRbxEUiQU7sv0fLvPglAVJ5BN6\\_v/view?usp=sharing](https://drive.google.com/file/d/1NGQEmRbxEUiQU7sv0fLvPglAVJ5BN6_v/view?usp=sharing)

In addition to the numbered voting forms in this file, a PDF named “Form Summary.pdf” is included that has a summary of all names and addressed to be found within the signed forms.

You furthermore requested confirmation that true owners of rented properties were contacted. The information given previously covered the posting of forms through individual properties; in addition to this, a notice was placed in the Woodilee Notice Board on Wednesday 13<sup>th</sup> October at 15:00, on the Association website and on social media that the vote was taking place, with contact details available should anyone have concerns.

The WRA maintain that contacting “every” owner is not the requirement of the deeds, and the word “every” has been added to the deeds summary in your letter of 18<sup>th</sup> February 2022 by either BTO or RMG, fundamentally reframing the requirement from the actual wording of the deeds. The deeds do not state “every”, nor would any reasonable person expect them to – at any given point in time, on a development the scale of Woodilee, houses may be in probate and the true owner may not even have been identified, thus rendering the fictional requirement for “every owner” realistically unobtainable. We can only presume that it is for a reason such as this that the word “every” does not appear in the deeds. It remains the WRA position that all requirements of the process conform to the deeds and neither BTO nor RMG have offered any reason for the extra word they have added to the requirements.

## **Written Statement of Services**

We have also considered your assertion as to RMGs position as stated in their Written Statement of Services. Your letter references clauses from a generic Written Statement of Services (WSS) which is available on RMG Scotland website, although it is unclear when this version of the WSS was published onto the RMG Scotland website. This WSS has never been provided directly to residents of Woodilee Village via email or letter. It has never been published on the site used by RMG (RMG Living) to store documentation residents may wish to view after they have been circulated to them via email or letter. Woodilee Residents Association (WRA), on behalf of residents, do not accept that this later version of the WSS is applicable to Woodilee Village as it has never been circulated to residents, residents were not consulted on the contents of the WSS nor any changes from prior versions, and neither residents or their representatives have agreed to any changes in the WSS.

Furthermore, Section 1.2 of the PFCoC states:-

*A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:...*

- *at the earliest opportunity (in a period not exceeding 3 months) where:*
  - o *a substantial change is required to the terms of the WSS.*

*Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.*

The only WSS available on RMG Living dates from May 2017, and was uploaded to RMG Living on 29<sup>th</sup> December 2017. WRA note that no notification was sent to residents to advise them of any changes to the original WSS prior or post to this document being loaded to RMG Living.

Changes to the May 2017 WSS, and an earlier version provided to residents when they moved into new properties after the appointment of RMG, were not notified to residents in line with the Code of Conduct for Property Factors, and changes to the WSS from the original version, and the May 2017 version, up to version you refer to in your letter of 6 April have not been noted in a summary of changes. As a result, WRA on behalf of residents do not recognise the validity or legality of any changes to the WSS and the earliest version, which makes no reference to a requirement to provide

*“Written evidence to illustrate that competent consultation of all owners has occurred and must be produced to RMG Scotland, along with a signed document verifying the decision of each owner”.*

As such, this later clause is invalid and no such obligation exists on Woodilee Village.

The May 2017 version of the WSS published on RMG Living has a section entitled “How to End the Arrangement”. This section states:

*“Either party, being the majority of owners (or other percentage of owners specified in the title deeds of the Development), or RMG Scotland may terminate the management arrangement by giving no less than 3 months prior written notice or such other period as defined in your Deed of Conditions if termination is on the grounds of failure on the part of RMG Scotland to provide a service or resolve a dispute, then the owners must first have exhausted the complaints procedure and given reasonable time (30 days) to remedy and resolve the dispute. Following termination, RMG Scotland will provide all financial information relating to the owners’ accounts within 3 months of termination unless there is a good reason why they cannot and will transfer the owners or the nominated managing agents all funds held by them in respect of managing the common property (subject to the deduction of any outstanding sums du[sic]). In the even of the termination of a management arrangement RMG Scotland reserve the right to charge a account closing fee.”*

WRA have provided termination which complies with the Deed of Conditions and the May 2017 WSS.

You have failed to demonstrate that we have not complied with the requirements of the Deed of Conditions and the May 2017 or earlier WSS, therefore the notice of termination provided to RMG is valid and must be accepted. If this is not accepted we will pursue complaints to the Housing and Property Chamber Scotland First Tier Tribunal, and any legal action that may be required to enforce this termination.

The expenses of such proceedings, should they be necessary, will be sought against RMG, as well as any additional costs incurred from any delay to transfer of management of the estate caused by RMG.

We highlight that the frequent offering of alternative documentation or wording to those that exist within the estate Deed of Conditions and issued versions of the WSS are unacceptable and act to try and confuse and frustrate WRA attempts to move on from RMG. We can only assume that RMG have offered BTO incorrect or different versions of documents but would suggest you review original copies and distribution records before applying for any Declarator or Interdict.

### **Conclusion**

The WRA and office bearers remain keen to ensure that RMG accept that the vote to terminate their role as manager was carefully planned to meet all requirements in the estate Deed of Conditions, and applicable Written Statement of Service. WRA have kept adequate records and contemporaneous minutes throughout the process which are available for inspection.

We look forward to arranging a suitable meeting for you or RMG to view the documentation gathered ahead of the EGM, and the EGM attendance records should you feel this is worth pursuing.

Alternatively we look forward to your communication of RMG acceptance that the termination notice provided by WRA is in line with the Deed of Conditions and their commitment to facilitate transfer of management in line with their WSS and the Property Factors (Scotland) Act 2011 and Code of Conduct as amended in 2021.

In line with your own restrictions on communications, this letter is written entirely without prejudice to and under reservation of our rights and pleas and neither the letter (nor any copy of it) nor its contents may be produced, exhibited, referred to or founded upon in any court action or in any other proceedings except (a) with our express written consent or (b) at our instance.

Yours sincerely

Ewan Miller

WRA Chair