

## Decision of Retirement Villages Disputes Panel

**Name of the applicant in dispute:** The Residents' Association Committee at The Vines at Bethlehem Village

**Name of the respondent in the dispute:** Mr X

**Date of dispute notice:** 10 March 2023

The disputes panel has been appointed under the Retirement Villages Act 2003 to hear and deliver a decision on the dispute between the applicant and the respondent.

### **Matters in dispute**

A request that the respondent retract and apologise for his allegations of bullying against the Residents' Association Committee (the Committee) has not been agreed to.

Specifically, the Committee seek a public retraction of the allegation, and a personal apology to each Committee member.

### **Background**

The background to this matter has been thoroughly set out by The Covenant Trustee in his email to the parties on 14 February 2023 indicating that the dispute arose from an allegation made by Mr X about the Committee during a scheduled resident's meeting on 12 October 2022.

A meeting with the Village Manager and both parties followed. When this was unsuccessful in bringing about an agreed resolution between the parties, the matter was referred to The Covenant Trustee. The Covenant Trustee concluded his report by making recommendations of a way forward for the parties. As these recommendations were not acted on by Mr X, the Committee then filed a dispute notice on 10 March 2023.

A zoom hearing was held in the morning of 27 April 2023 and the decision made that jurisdiction did exist through the careful linking of all the documents associated with residency at the Village. That decision is dated 27 April 2023 and has been sent to the parties.

At the substantive hearing that afternoon (27 April 2023) the Committee were represented by Mr Eric Newman and Ms Toni Izzard. Mr X was assisted by Mr R.

### **Evidence:**

Both parties made written submissions and the committee gave oral evidence.

In advance of the substantive hearing getting underway – Mr R for Mr X (using s 49 RVA) asked to clarify a process matter. They restated that their position remained that the panel had no power to revoke or withdraw a decision once issued (referring to the decision of 7 April 2023). They also confirmed that the only legal advice they have received from the RVR was in relation to this issue and not on the substantive matter.

Mr X and Mr R then without warning, terminated their zoom connection.

As is required by the RVA, the hearing continued (s 65(2), 67). Mr X did not therefore have the benefit of hearing the Committee evidence given by Mr Newman and Ms Izzard. I will therefore summarise that evidence below:

1. In relation to the written evidence of Mr X (30 March 2023) they believe that there has been no such apology as is referred to in his numbers 3 & 5.
2. In relation to number 6 in Mr X's evidence they question how he believes that the village residents accepted his apology, as there is no evidence of this having been given, or accepted – just because he states it to be so, does not make it so.
3. In relation to the incidents that Mr X referred to on 12 October 2022 they state that he was not personally involved in any of them and therefore has acted on hearsay which on several matters was inaccurate. In 9(a) the matter was sorted with a direct apology and did not involve the manager. In 9(b) there was no action taken as this was a non-issue. Aqua Aerobic sessions continue as before without intervention. In 9(c) they consider that the settlement agreement negotiated by the Village Manager should have brought an end to the matter however Mr X chose not to follow through with the proposed resolution.
4. In relation to Mr X's number 11 they agree – these issues were not for anyone to be involved in – including Mr X.
5. They gave evidence of the impact Mr X's accusation of bullying has had on the 8 members of the Committee. It has resulted in a great deal of mental stress and injury with all 8 resigning from the Committee at the AGM (although generally only 4 would have done so, on rotation). I believe that this evidence should be treated confidentially and I will not include those details here since all decisions of the panel are published on line and it is not appropriate to publish that personal information. Suffice to say I accept it.
6. The Committee reconfirmed that all they seek are the apologies requested in their dispute notice, and gave evidence that both the Village Manager in the negotiation, and the Statutory Supervisor in his review had suggested that such apology would lay the matter to rest. They agree that it would.
7. They noted Mr R for Mr X's expressed misunderstanding of their reference to termination of a right to occupy. They state that that was simply mentioned in the context of linking the relevant occupancy documents to prove the panel had jurisdiction – they are not seeking termination of an Occupational Right as an outcome of this hearing.
8. The Committee seek closure to this unfortunate dispute, and want their members and the Village community to be able to move on from it – quite simply they seek Mr X's public acknowledgement that he "got it wrong", and a personal apology to each of the former members of the Committee for his accusation that they are all bullies. They accept that any such apology would be in Mr X's own words and they do not dictate this.

**Decision:**

I have listened carefully to both parties and reviewed all the documentation provided. I also observe, that as is commonly the way – each party has become entrenched in their own views, and sees this matter only from their perspective. That makes it difficult for each of them to understand the other's approach, and may make it difficult for the parties to understand how or why I have come to the decisions I, as an independent panel adjudicator, have reached.

1. In relation to Mr X's statement that the decision of 7 April 2023 could not be withdrawn or rescinded - I accept that this was indeed an unusual action. However, it is for the panel to determine its own process (s64 RVA) and the breach of process which led to this decision was in part the fault of Mr X, and in part the fault of the panellist. Mr X did not forward a copy of his response to the Committee as he had been instructed to do in the timetabling directions (24 March 2023). That error was compounded when I (as panellist) noticed this, and believed I had forwarded his statement on to the applicant. Unfortunately, I used an inaccurate email address (which is not active) it was of course not received by the applicant who therefore believed that Mr X had not responded, so the matter lay with their initial dispute notice. Therefore, there they believed there was no requirement for them to reply.
2. I as the panellist assumed they had received Mr X's response and chosen not to re-engage. I proceeded to make a decision based on the evidence before me at that time. I have apologised for my part in this series of errors (using a faulty email address) – it should never have happened, and as a matter of natural justice adjusted the process (s64) to allow for the issue of jurisdiction to be reconsidered following receipt of further evidence from the parties.
3. **I dismiss the application from the Committee** for want of an appropriate remedy, however I consider that the application was properly brought. The Committee had a right to have their legitimate grievance heard by the panel. I do not consider it to be either vexatious or frivolous.
4. It is clear to me that had Mr X actually apologised for his accusations against the Committee as requested, and acknowledged he had misunderstood the situations and “got it wrong”, this matter would have come to an end some 6 months ago. I have no doubt that his failure to do so has caused emotional harm to a number of members of the Committee, and has almost certainly caused a division in loyalty amongst some of the Village residents.
5. I am aware that Mr X states that he has apologised, but there is no proof of that and as he chose not to take part in the hearing, we were unable to question him further on that matter. As a result, I have accepted the Committee's evidence that no such apology has to date been forthcoming.
6. It is likely that the ongoing dispute leading to this hearing will also have had a detrimental and distressing effect on Mr X and his family and friends. In my view, the matter should never have reached this point, but the blame for that does not lie with the Committee. Treating members of the Village and community with respect is a requirement of the ORA and appears in s10.7 of the Village rules. Mr X was not respectful in the manner in which he spoke of, and to, the Committee. He chose the incorrect forum and process leading to the harm that has followed.
7. I regret that Mr X (and Mr R) chose not to participate in the substantive hearing, as this might have allowed an opportunity for them to understand what had brought this matter to the point of a hearing, and perhaps if he chose to express his position, the opportunity for his actions and refusal to apologise to be understood. As it is, I have no idea why he has chosen that route and must make this decision without the benefit of his testimony or defence in this matter.

8. Whilst I could order Mr X to give an apology, I believe the Committee understand that there is no consequential order I could appropriately make to support that order if he fails to do comply. This is why I dismiss the application from the Committee.
9. I therefore respectfully ask that Mr X apologise as requested, and allow this issue between the parties to come to an end.
10. It is my hope that if this can be carried out, the Committee members will accept those words of apology and allow the matter to lie, thus beginning the healing process for those in the Village who have been involved and suffered.
11. When parties offend one another, and harm such as this occurs, there is no magic solution. A genuine apology for what has happened, and the fallout which has followed, may bring about the space for each to put this unfortunate event behind them. Without that opportunity this matter will continue to fester and cause pain and division in the months and years to come.

Jenny Leith  
(Member of Retirement Villages Disputes Panel)

Date of decision: 30 April 2023

**Note to parties:**

You have the right to appeal against the decision of the disputes panel (or of the District Court sitting as a disputes panel) under [section 75](#) of the Retirement Villages Act 2003. An appeal must be filed in the appropriate court within 20 working days of the panel's decision.

