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

Hohp Ref: HOHP/PF/15/0011

Re:

Properties at 4 Comelypark Street, 22 and 28 Sword Street, Dennistoun, Glasgow G31 1TA (collectively "the Property")

The Parties:-

Mr Christopher Lord, 34A Cuthelton Street, Glasgow, G31 4RG ("the Homeowner")

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)
David Godfrey (Surveyor Member)
Irene Kitson (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, 4, 6 and 7 of the Code of Conduct for Property Factors.

The decision is unanimous.

Background

1. By application dated 6 January 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 1, 2, 3, 4, 5, 6 and 7 of the Code of Conduct imposed by section 14(5) of the 2011 Act. He also requested a determination as to whether the Factors had failed to comply with their general duties in terms of section 17(5) of the Act. Further specification of the complaints contained within the application insofar as they related to breaches of the Code

was sent to HOHP under cover of a letter dated 6 February 2015. These are referred to collectively as "the Application" in this decision.

2. Prior to the Application being submitted, the Homeowner sent a formal complaint to the Factors dated 3 December 2014 in accordance with section 17(3) of the Act. The Homeowner also sent a pro forma notification to the Factors dated 6 February 2015 in which he set out the reasons why he considered that they had failed in their duties as factors.

3. Notices of referral to the Committee were sent to the parties on or about 15 April 2015 following a Minute of Decision by the President of HOHP to do so.

4. An oral hearing in relation to the application was held on 30 June 2015 within the offices of the Homeowner Panel, Europa Building 450 Argyle Street, Glasgow. The Homeowner attended on his own without representation and gave evidence and submissions to the Committee on his own behalf. The Factors were present at the hearing and were represented by three property managers employed by them, namely Sarah Wilson, Stephanie Haig and Christopher Vallance, all of whom gave evidence at various points. More specifically, Ms Wilson is an associate director of the Factors and Ms Haig is a senior property manager. Ms Wilson provided brief submissions at the end of the hearing on behalf of the Factors.

5. At the outset of the hearing, it was clarified that the Factors no longer acted as property managers in respect of the Property, having been dismissed by the Eastern Court Residents' Association (known as ECORA) with effect from 1 June 2015. Nonetheless, the Homeowner indicated that he wished to insist in all parts of the Application being explored at the hearing and for a determination to be made upon them. Accordingly, the Committee treated the Homeowner's letter of 6 February 2015 as being the full extent of the matters being raised in the Application and considered each of the points detailed therein in the course of evidence at the hearing.

Committee findings - general

The Committee met again on their own on 13 July 2015 in order to carry out their deliberations. 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 which consists of the following: Flat 1/1, 4 Comelypark Street, Flat 2/2, 28 Sword Street and Flat 3/1, 22 Sword Street. 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"). The Homeowner has owned the flats at Comelypark Street and 28 Sword Street since the time the Development was first built as part of his post-retirement occupation as property investor. He

subsequently acquired the property at 22 Sword Street in November 2011, having purchased it following a receivership

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. Accordingly, the common charges in relation to maintenance of the common grounds are apportioned in 1/50 shares for each property while other common charges applicable to each close are apportioned in 1/6, 1/8 or 1/12 as appropriate. These are set out in the Written Statement of Services applicable to the Development effective January 2014 which was produced in evidence.

8. A deed of conditions in respect of the Development dated 17 August 2005 was recorded in the Land Register by the developers, Carvill (Scotland) Limited ("the Deed of Conditions"). A full copy of the Deed of Conditions was very helpfully supplied by Mr Vallance at the hearing.

9. The Factors were appointed as factors to the Development sometime in 2008. They were registered in terms of the Act on 7 December 2012. Their duties under the Act to comply with the Code arise from that date. Their duties in terms of section 17(5) of the Act arise from the entry into force of the Act, namely 1 October 2012.

10. The Factors are the property factor 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. Despite their dismissal, there remain some ongoing issues which they still require to resolve as discussed below.

11. A particular difficulty arose in relation to the Development in that between 2011 and 2013, no fewer than 9 of the properties in the Development were re-possessed by heritable creditors due to the insolvency or bankruptcy of their owners. The Factors had been unable to collect service charges in respect of those properties for a considerable period of time with the result that the funds available to them to carry out their factoring duties were not available. This in turn resulted in a moratorium on maintenance services being provided by the Factors. The Homeowner stated that services were removed for the period running from November 2011 to May 2012. On the day of the hearing, the Factors produced a copy of a newsletter produced for the residents of Eastern Court dated December 2012. In that newsletter, it was narrated that the Development's bank account had a balance of less than £300 although there were outstanding invoices from contractors totalling approximately £1200. Accordingly, at that time, the Factors announced to the residents of the Development that services would be suspended until the common debt was cleared.

12. The Committee found the Homeowner to be a credible and generally reliable witness who gave his evidence in a straightforward and unexaggerated manner.

Findings in relation to the alleged breaches of duty

Section 1 of the Code

13. Section 1 of the Code requires property Factors to supply existing homeowners with a copy of their Written Statement of Services ("WSoS") within one year of registration, unless requested prior to then by a homeowner. Since no homeowner did request a copy of the WSoS, the Factors required to provide a copy to all of the homeowners within the development by 7 December 2013. The Homeowner stated that he did not receive the Written Statement until June or July 2014. Miss Wilson gave evidence that the first Written Statement was sent to all Homeowners within the Development on 16 April 2013 with the latest version provided to the Committee (effective January 2014) having been sent to all Homeowners on 29 October 2014 at the latest.

14. The Committee had sight of letters to the Homeowner dated 16 April 2013 and 28 March 2014 where reference to the Written Statement of Services was made, indicating an assumption that the earlier version at least, had already been received by him. However, no covering letter actually enclosing the Written Statement was produced. Nor was there any evidence of a specific request for the WSoS having been made by the Homeowner (in which case it would have required to have been supplied within 28 days). On the balance of probabilities, given those pieces of earlier correspondence, the Committee was prepared to accept that a Written Statement had been provided to all homeowners within one year of the Factor's registration. Accordingly, it did not find that there had been a breach of section 1 of the Code.

Section 2 of the Code

15. Section 2.4 of the Code requires the Factors to have a procedure to consult with homeowners and to seek their approval prior to providing work which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where the Factor can show that it has delegated authority to incur expenditure up to an agreed threshold without seeking further approval.

16. Section 2A of the WSoS sets out the list of eight core services which are provided. These include communal electricity, block insurance, cleaning of common areas, security and managing finances. Section 2B(ii) lists additional services which may be provided over and above those covered by the standard management fee. These are termed Project Management services and include matters such as painting of the common areas and major roof and structural repairs for which there is a standard fee of 10% plus VAT of the value of the contract in question. Section 2B does not set out in what circumstances such additional services may be provided. There is no method of instigation which would provide a trigger for such works to be carried out and subsequently charged to homeowners, or any approval mechanism.

17. Within the WSoS there is accordingly, no procedure for consultation with the group of homeowners in respect of providing work or services outwith those provided as part of the core services. The Committee did not hear evidence of any other mechanism being in place in order to consult with homeowners for such additional works or to seek their approval before they were carried out. Nor does the WSoS contain any delegated authority such as to fall within the exception provided for within section 2.4 of the Code. The Factors have therefore breached that section.

18. The absence of a formalised reporting or consultation procedure between the Homeowner and the Factor appears to the Committee to be symptomatic of poor communication generally in relation to the upkeep of the common parts of the Development. It has also contributed to a large number of issues not being properly attended to within the Development where they fall outwith the very narrow range of core services which are in fact provided by the Factors. Two examples of this are in relation to ironwork such as fencing within the development which has been allowed to corrode through lack of painting and a failure to have a plan in place to maintain woodwork in communal doors as demonstrated by the photographs shown to the Committee by the Homeowner.

19. Section 2.5 of the Code requires the Factors to respond to enquiries and complaints received by letter or email within prompt timescales. 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. The Homeowner gave evidence that his preferred method of communication was by means of email so that there would always be a record of what was said, rather than by telephone. He also gave evidence, not disputed by the Factors, that each time he sent an email to the Factors, he received an automated response indicating that his message would be responded to within five working days in order to comply with the target set out at point (iii) above. In most cases, this appeared to be the minimum time for response, rather than a target, no matter how trivial the query was. Even then, that target was not always met. This led to a great deal of frustration on his part when reporting defects. It did not work as a system when reporting an urgent matter or when attempting to arrange a meeting. On the latter point, the Committee noted the difficulty in arranging meetings given that the Development is in Glasgow, whereas the Factors are based in Edinburgh. In fact, other than attendance in the very late stages of the factoring arrangements at the Residents' Association EGM held on 26 March 2015, no meeting was ever successfully set up between the parties. One such

attempt at a meeting unfortunately had to be called off due to the sudden availability of the Homeowner's vice chairman within ECORA. However, due to the inherent difficulty in setting up a meeting, it would appear that no other meeting between representatives of ECORA and the Factors was attempted again.

21. A specific example of poor communication provided by the Homeowner was in relation to the replacement of a faulty satellite dish. Faulty equipment on one occasion had simply been replaced whereas had proper discussion taken place, the opportunity could have been taken to upgrade it for a very limited additional cost. Such cost as was incurred was simply placed on all of the homeowners within the Development without proper prior discussion. Another example was the difficulty in obtaining information regarding the level of indebtedness in respect of non-paying residents within the Development. This is dealt with specifically in relation to Section 4 of the Code below.

22. Another example provided by the Homeowner was in relation to charges for communal electricity. The Homeowner provided quarterly statements from September 2014 to February 2015 showing charges made. The statement dated 25 February 2015 shows a refund of £2,101.40 in respect of incorrect deductions made under this head. According to the Homeowner, the Factors required to be chased repeatedly before they finally rectified the errors in billing during this extended period. In addition, in response to a question from a member of the Committee, the Homeowner indicated that he paid management charges by way of direct debit in respect of all three of his properties. When reconciling the payments from his bank statements, he repeatedly found discrepancies running into many hundreds of pounds which meant that his confidence in the Factor's accounting procedures "went through the floor." The Committee notes in particular the terms of an email sent by the Homeowner to the Factors on 6 August 2014 in this regard, itself following up on three identical reports of such errors in the past. Although this is on the face of it a financial issue, it also falls under this heading of the Code, given the repeated delays which the Homeowner encountered in having these issues responded to and resolved.

23. In addition to accepting the above evidence, the Committee also noted correspondence lodged in evidence which demonstrated habitual delays in responding to the Homeowner's queries. One series of ongoing queries dated 20 August 2014 was not responded to until 8 September 2014. An email from the Homeowner dated 19 September 2014 in which he suggested a meeting on Friday 26 September 2014 or the following week was met with the response (over a week later) that at least 14 days advance notice of a meeting was required by the Factors. On 18 December 2014, Ms Haig stated that "I have asked on several occasions for clarification of information you wish to be presented, however this has never been made clear." This was despite a detailed 4-point list having been supplied to the Factors by the Homeowner on 3 October 2014 which specified in clear terms what information was being sought by him.

24. The Factors provided examples of some correspondence being dealt with promptly, such as queries dealing with insurance on 13 and 20 October 2014. However, taking the totality of the evidence as set out above into account, the Committee was of the view that the Factors failed consistently to deal with enquiries and complaints from the Homeowner as quickly and as fully as possible. Accordingly, it found the Factors to be in breach of Section 2.5 of the Code.

Section 3 of the Code

25. Section 3.1 of the Code provides that if a homeowner decides to terminate their arrangement with their factor, after following the procedures laid down in the title deeds or legislation, the factor must make available to the homeowner all financial information that relates to their account. Such information must be provided within three months of termination of the arrangement unless there is a good reason not to.

26. The Homeowner provided email correspondence from May 2015 between the Factors and new factors now managing the Development. He did so to support his evidence that the Factors had been obstructive in providing the information necessary to facilitate a smooth transition between the two factors. In particular, the allegation was in relation to the attempted transfer of debt in relation to uncollected factoring charges from the Factors to the new factors. Without going into the merits of that particular allegation, the Committee noted that as the hearing took place on 30 June 2015, the full three months allowed for in terms of Section 3.1 of the Code had not yet elapsed. Accordingly, it was not able to make a finding of a breach of that particular requirement.

27. The substance of the allegation made otherwise, appeared to the Committee to fall within the terms of Section 3.3. of the Code. This requires factors to provide homeowners with a detailed financial breakdown of charges made on at least an annual basis. The Committee had sight of financial statements provided to the Homeowner which covered the periods from 21 October 2013 to 9 December 2014 and another one covering the period 10 December 2014 to 25 February 2015. The Factors also pointed to debtors reports prepared on 8 December 2014 and 24 February 2015. The latter which will be considered under Section 4 of the Code did not in the view of the Committee constitute compliance with the requirements of the Code. The former, however, was considered by the Committee to be the minimum necessary in order to comply with the requirements of Section 3.3 of the Code. Accordingly, it did not find there to have been a breach under that particular section. The general failures in financial accounting have in any event, been largely covered by the finding of a breach by the Committee in terms of Section 2.5 of the Code, given the inevitable overlap of Code issues which arise from the same facts.

Section 4 of the Code

28. Section 4.6 of the Code requires factors to keep homeowners informed of any debt recovery problems which could have implications for them (subject to the limitations of data protection legislation). The Homeowner gave evidence that the first time he realised that there was an issue with regard to funding as a result of debtors within the Development was in December 2011 when he reported a roof leak at number 22 Sword Street. He was at that time informed that repairs could not be carried out because no funds were available. That was prior to the advent of the HOHP's jurisdiction. In any event, he stated that at no time during his time as owner was he provided with notification as a matter of course in relation to this issue. The exception to that generality was shortly prior to the ECORA EGM held in February 2015 when the debtor schedule referred to above was produced for the first time.

29. The Factors pointed to the newsletter of December 2012 referred to above as evidence of compliance with this section of the Code. The Committee accepted that at that time, the Factors had flagged up the problem to the homeowners within the Development. However, it considered that the full implications of that debtor situation had not been made sufficiently clear. In particular, aside from indicating that services would be suspended, it did not let the remaining owners know that if unpaid, the outstanding debts would be shared among the remaining paying owners. The full implications of the debt situation were not therefore made clear. Nor was this made clear in the annual statements provided. In addition, the Committee was not provided with any follow-up newsletter or other information as supplied to the residents of the Development. They were not therefore kept informed as to progress regarding obtaining outstanding funds or when full services would be resumed. The Committee therefore found that there had been a breach of Section 4.6 of the Code.

30. Section 4.7 of the Code provides that Factors must be able to demonstrate that they have taken reasonable steps to recover unpaid charges from defaulting homeowners before charging those remaining homeowners. The Committee was of the view that the debtor schedules referred to above complied with this requirement. They did so in the sense that they were able to demonstrate the steps taken. Where they fell down was in actually communicating that information to the homeowners until very late in the day, at the EGM in February 2015 referred to above. This matter has been considered in relation to Section 2.5 of the Code, above.

31. The debtor schedules consisted of a table listing the amounts outstanding and their current status. In the final right hand column, the action taken is summarised, such as "NOPL in place" or "pays £58 pcm" and so on. For this reason, the Committee was of the view that reasonable steps were in fact being taken in order to recover debts from non-paying residents and that those steps were demonstrable. As noted above, even although the Factors have ceased to

provide services to the Development, there are still outstanding Notices of Potential Liability which have been raised in their name prior to 1 June 2015. At the hearing, the Factors indicated that an updated debtors report will be sent to the homeowners within the Development with their final account. They will be responsible for remitting any sums recovered further to the NOPLs issued and any other debt recovery procedures undertaken in their name to the new factors. The Property Factor Enforcement Order to follow on from this decision will address these issues specifically and formalise those undertakings.

Section 5 of the Code

32. Section 5.3 of the Code requires factors to inform homeowners of any commissions received by them from the company providing insurance cover. This matter is disclosed in section 2 B (x) of the WSoS. Accordingly, this part of the Application was withdrawn at the hearing.

33. The Homeowner also took issue with the inclusion of Terrorism cover in the common insurance policy which increased the premium paid. There was some dispute regarding whether this was a necessary risk and appears to be a matter of varying practice in the industry. However, there is no requirement within the Code for the Factors to stipulate the particular risks to be covered by the common insurance policy. The Committee therefore found no breach of the Code under this heading.

34. A further issue regarding insurance was periodic revaluation of the common property for insurance purposes. This had been done at the end of 2013 without reference to the homeowners, having been done by way of indexation prior to that. The Committee considered that periodic revaluation (which would inevitably incur some cost to the homeowners) was good practice which could be expected of prudent factors from time to time. The homeowners had in any event been informed of the revaluation process in February or March 2014 at the latest. Accordingly, it found no breach of the Code under this heading.

Section 6 of the Code

35. Section 6.1 of the Code requires Factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. This has already been discussed in relation to the breach found in relation to Section 2.4 of the Code. Further, it is implicit within that provision that apart from providing an organised channel for communication of such notification (which the Committee found to have been absent in this case), factors must actually also act upon such notifications as made, otherwise the duty would be meaningless.

36. In this case, the Homeowner had taken photographs covering many issues arising around the Development on a regular periodic basis. His formal letter of complaint dated 3 December 2014 summarises them. They include a failure to carry out gardening works such as trimming and pruning shrubs, uncleared rubbish, dislodged roofing tiles in the gutters, smashed fire mains access panels,

untidied grounds as well as other long-standing problems. The long standing problems included graffiti in the common stairwell at 4 Comelypark Street as a result of the doors not being fitted with effective door closers and locks, missing tiles on the canopies above stairwell doors, absence of electricity in one stairwell and a persistent roof leak at 22 Sword Street which was not properly repaired. Perhaps the most egregious of the long standing problems which the Factors failed to address was the access being taken by neighbouring shop proprietors onto the Development to allow entry to their goods entrance, even to the extent of cutting a two doorway sized holes in the common fence.

37. The Committee found the photographs produced by the Homeowner, together with his repeated complaints by way of emails in relation to all of these issues to be compelling evidence of a failure on the part of the Factors to comply with their duty to repair and maintain the common parts of the Development. The Factors point to an email from the Homeowner dated 16 June 2014 where he informed them steps were being undertaken to replace them as factors and therefore not to undertake cyclical maintenance at the Development between then and their eventual replacement.

38. The Committee rejected the suggestion put forward by the Factors that, but for the email of 16 June 2014, all of the ongoing issues requiring attention at the Development would have been resolved: There had been ample time prior to that date for matters to have been attended to; specific repairs were not included in the term "cyclical maintenance" used by the Homeowner so no embargo in carrying out those repairs could reasonably have been inferred by the Factors. Moreover, the Committee did not see any evidence of progress of works being reported to homeowners or timescales for completion being provided. Again, as noted in relation to Section 2.5, the absence of any systematic approach to repairs led to these matters being overlooked unless specifically brought to their attention and even then, not followed up thereafter.

39. Mr Vallance gave evidence in relation to the potentially unlawful access being taken by the neighbouring shops. The totality of his investigations had apparently been to telephone the Council for advice on one occasion. When that proved to be inconclusive, he failed to follow it up in any way, such as by seeking authority from the residents to obtain legal advice with a view to ending the encroachment. In all of these circumstances, the Committee had no hesitation in finding that the Factors had breached Section 6.1 of the Code.

40. Section 6.3 of the Code requires factors to show on request how and why contractors are appointed. Roof repairs were in the past carried out by a contractor called Rowan Roofing. There was no evidence of any other repairs having been carried out by contractors outwith the scope of core services. Accordingly, it was perhaps unsurprising that the Committee saw no evidence of a competitive tendering process having taken place. Nor did the Committee hear any evidence that a request had been made by the Homeowner for them to

demonstrate how a particular contractor had been appointed. Accordingly, the Committee could find no breach of Section 6.3 of the Code.

41. Section 6.4 of the Code provides that if the Factors provide periodic property inspections, then they must produce a programme of works. The Committee heard evidence from Mr Vallance that he carried out periodic inspections of the Development every six weeks. As will be apparent from the above findings *inter alia* in relation to stair cleaning, the Committee does not accept that evidence as being credible. However, given that periodic property inspections are purportedly part of the core services provided to homeowners, the Factors were under an obligation to produce a programme of works. Based on the evidence before the Committee, they did not do so. Therefore, the Factors have breached Section 6.4 of the Code.

42. Section 6.9 requires the Factor to pursue contractors to remedy defects in any inadequate work or services provided. The Committee heard evidence of the gardening services contractor having been replaced due landscaping works having been carried out inadequately. That would appear to have been done belatedly and after many years of poor performance. Mr Vallance for the Factors gave evidence that he would not normally see it as part of his function to inspect any works once they had been carried out. He was, he said, content to accept the word of contractors that work instructed by the Factors had been completed. Sometimes he might seek photographs from the contractor. This was apparently the case in relation to the roof canopies above the common entrances at the Development.

43. As the photographs supplied by the Homeowner clearly demonstrated, that work and many other items of work had not been completed satisfactorily. In addition, roof repair works had not been carried out satisfactorily with the result that they required to be re-done within a relatively short space of time, after further water damage having occurred. Cleaning record sheets showed that one common close had not been cleaned due to an absence of electricity in the stairwell. However, this problem was allowed to persist, apparently, because the cleaning records were never inspected. The Committee therefore found that the Factors had breached Section 6.9 of the Code.

Section 7 of the Code

44. Section 7.1 of the Code requires factors to have a clear written complaints procedure which sets out a series of steps, with reasonable timescales, which they will follow. At section 4 of the WSoS the Factor's internal complaints procedure is set out under the general heading of Communication Arrangements. In terms of that procedure, homeowners are invited to place their concerns in writing to the property manager responsible. In terms of the WSoS, the property manager will (a) acknowledge that correspondence within 48 hours and (b) seek to correct any problems to the homeowner's satisfaction within 28 business days.

The Factors therefore had a written complaints procedure in place as required by the Code.

45. As noted above in relation to Section 6 of the Code, it is implicit that procedures once put in place will be followed. Otherwise, the duty stipulated would be meaningless. In this case, on 3 December 2014 the Homeowner sent a detailed email extending to over a full page of A4 headed "Formal Complaint" to the Factors. This email was in fact a compilation of many other emails where the same issues had repeatedly been raised but not dealt with. To emphasise the formal nature of the complaint, the Homeowner ended no fewer than 7 separate paragraphs with the phrase "Accept this as my formal complaint on the matter." It was accepted by Ms Wilson on behalf of the Factors that despite this abundantly clear indication, the formal complaint was never acknowledged as such, for which she apologised (which apology was accepted). The brief response which was made to this email by Ms Haig on 11 December 2014, was fully eight days later and therefore well outwith the 48 hour acknowledgment period provided for in the WSoS. Self-evidently, the substance of the complaint was not satisfactorily addressed either, whether within 28 business days, or at all, hence the Application to HOHP.

46. The further point made by the Homeowner was that neither his formal complaint of 3 December 2014 nor any other made prior to that time had ever concluded to his satisfaction. They had never been followed up or progressed as part of discrete procedure with the result that they had just lain in abeyance, or "died off" as he put it. For that reason, there was never a clear cut–off point where the Factors had said "we have done everything we can further to your complaint, your only recourse is now to the Homeowner's Housing Panel." Accordingly, in the light of the admission made and the Factor's failure to actually follow their written complaints procedure, the Committee found the Factors to have breached Section 7.1 of the Code.

Factors duties generally

47. Given the exhaustive consideration of the terms of the Code, the Homeowner indicated that he no longer insisted in a separate consideration of the factors' duties generally in terms of s 17(5) of the Act. Accordingly, that part of the Application was formally dropped at the hearing.

Decision

37. 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 2.4, 2.5, 4.6, 6.1, 6.4, 6.9 and 7.1 of the Code.

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

38. **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: 27 July 2015