Property Factor Enforcement Order

of

the Homeowner Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 19 (3) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/14/0076

Re : Property at 2/2, 256 Crow Road, Glasgow G11 7LA ("the Property")

The Parties:-

Mr Colin Strain and Mrs Eleanor Strain both residing at 2/2, 256 Crow Road, Glasgow G11 7LA ("the Applicants")

Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW ("the Respondents") represented by Hardy Macphail, solicitors, 5th floor, Atlantic Chambers, 45 Hope Street, Glasgow G2 8AE

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Colin Campbell	- Housing member

NOTICE TO THE PARTIES

Whereas in terms of its decision dated 17 April 2015 the Homeowner Housing Committee decided that the Respondents have failed to comply with the Property Factor Code of Conduct and failed to carry out their duty to take reasonable care to arrange insurance under clause (Sixth) of the Deed of Conditions by Robert

Stobo Renfrew dated 28 December 1955 and recorded in the General Register of Sasines on 30 December 1955 all as stated in said decision; the Committee makes a property factor enforcement order in the following terms:

(1) The Respondents shall, by no later than 2 weeks from the notification of this Order, have the tenement at 256 Crow Road, Glasgow G11 7LA and any washing house on its yard, insured against loss or damage by fire, storm damage and property owners' third party liability by a policy or policies in the joint names of the proprietors of the flatted dwellinghouses in the said tenement (including the Applicants) for a sum to include the reasonable cost of reinstatement or rebuilding of the said tenement and any washing house (including the whole of the parts of the tenement owned in common by the proprietors of the dwellinghouses), with the said policy of insurance being endorsed with the interest of any bondholder or standard security holder interested in any such dwellinghouse primo loco and the proprietor thereof in reversion;

(2) In arranging the insurance under paragraph (1), the Respondents shall, in assessing the reasonable cost of reinstatement or rebuilding of the said tenement, obtain assistance and advice from a suitably qualified chartered surveyor; shall within the time period mentioned in that paragraph provide to the Applicants a copy of the report of the said surveyor on said costs and reinstatement value of the tenement for insurance purposes; and shall bear the costs of the services of the said surveyor in providing his report, including work carried out by him in connection with it.

(3) The Respondents shall, by no later than 2 weeks from the notification of this Order:

    (a) provide the Applicants with a copy of the schedule for the insurance policy required to be in place under paragraph (1), which for the avoidance of doubt does not include as policy holders persons not having an insurable interest in the tenement;
    (b) issue to the Applicants an insurance certificate or certificates certifying that such insurance has been put into force and reflecting the terms of such insurance;

(4) The Respondents shall, by no later than 5 weeks from the notification of this Order provide to the Applicants information showing in respect of the periods from May 2013 to May 2015 :
    (a) the premiums paid by the Respondents under their block common insurance policies for that period covering all developments insured by them;
    (b) the part of those premiums that was allocated to the said tenement;

(c) how that part has been allocated to the owners of the individual dwellinghouses in the tenement, including the Applicants;
(d) the *cumulo* sum insured for the tenement as a whole under said insurance policies;
(e) full details of the claims history for the tenement together with any other information necessary to allow the Applicants to obtain their own insurance quotes for insurance of the tenement as required by the Deed of Condtions

(5) The Respondents shall, by no later than 5 weeks from the notification of this Order inform the owners of dwellinghouses in the said tenement, including the Applicants, of the frequency with which property revaluations will be undertaken for the purposes of the insurance mentioned in clause (Sixth) of the said Deed of Conditions (referred to as clause (Fifth) in titles under the Land Register of Scotland);

(6) The Respondents shall, by no later than 5 weeks of the notification of this Order issue to the Applicants an amended Service Level Agreement which incorporates a written statement of services under section 1.1a of the Code of Conduct for Property Factors under the Property Factors (Scotland) Act 2011 in which -

(a) the services provided as core services and those not provided as core services are clearly identified;

(b) the core services are stated to include the arrangement of insurance for the said tenement in terms of clause (Sixth) of the said Deed of Conditions (referred to as clause (Fifth) in titles under the Land Register of Scotland);

(c) the seventh paragraph on page 6 of the existing Service Level Agreement (September 2014) beginning with the words "Please note" is deleted and substituted with -

"and

- a statement of the frequency with which revaluations of the said tenement are to be carried out for the purposes of buildings insurance,
- that this frequency may be adjusted if instructed by the appropriate majority of homeowners in the tenement, and
- how the fees and charges for such revaluations are to be calculated and notified"

(d) on page 10 at the foot of said Service Level Agreement there is the following statement:

"If you remain dissatisfied, and consider that there has been a breach of the Property Factor Code of Conduct or any other property factor's duty relating to insurance, there is the option of lodging a complaint in writing with the Homeowner Housing Panel whose contact details are set out above."

(7) within two weeks of the notification of this Order pay to the Applicants the sum of one hundred and twenty-five pounds sterling (£ 125.00).

(8) The Respondents shall, by no later than 5 weeks of the notification of this Order issue on their website and issue to the Applicants an amended Complaints Procedure in which -

(a) on page 3 immediately after the words "www.financial-ombudsman.org.uk" there is the following paragraph:

"If you remain dissatisfied, and consider that there has been a breach of the Property Factor Code of Conduct or any other property factor's duty relating to insurance, there is the option of lodging a complaint in writing with the Homeowner Housing Panel whose contact details are set out above."

(b) on page 3 *the paragraphs under and relating to the heading "Surveying and Commercial Services" shall be deleted.*

(c) *on page 2 in the second paragraph under the heading "Property Management", between "regarding the services" and "you should initially submit" the following words are inserted:*

"including surveying services, which we provide, as property factors or otherwise in respect of property management"."

The parties are given a right of appeal on a point of law against this decision and Order by means of a summary application to the Sheriff made within 21 days beginning with the date when this decision is made. All rights of appeal are under section 22(1) of the Act. A separate Statement of Reasons dated 3 July 2015 accompanies this Order.

Signed .....3 July 2015
David Bartos, Chairperson

Statement of Reasons
of the Homeowner Housing Committee

(Hereinafter referred to as "the Committee")

for the Property Factor Enforcement Order under Section 19 (3) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/14/0076

Re : Property at 2/2, 256 Crow Road, Glasgow G11 7LA ("the Property")

The Parties:-

Mr Colin Strain and Mrs Eleanor Strain both residing at 2/2, 256 Crow Road, Glasgow G11 7LA ("the Applicants")

Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW ("the Respondents") represented by Hardy Macphail, solicitors, 5th floor, Atlantic Chambers, 45 Hope Street, Glasgow G2 6AE

The Committee comprised:-

Mr David Bartos - Chairperson
Mr Colin Campbell - Housing member

1. These reasons for the making of the property factor enforcement order are further to those in the decision of 17 April 2015 which was accompanied by a notice of proposal of a property factor enforcement order. The Committee has taken account of the Applicants' representations dated 12 May 2015, their addendum to their representations dated 13 May 2015 and the Respondents' representations dated 12 May 2015. Following these the Committee made a direction dated 3 June 2015 directing certain documents to be lodged, fixing a hearing on the question of whether the notice of proposal had been complied with and allowing the parties to apply to it to extend the scope of the hearing.

2. Following the direction of 3 June the Respondents lodged a second inventory of productions with additional productions numbered R24 to R31. The Committee has taken account of these. At the hearing which took place on 26 June 2015 at the Europa Building, 450 Argyle Street, Glasgow, the

Respondents lodged a further production namely a certificate of buildings insurance with an effective date of 15 May 2015. There was no objection by the Applicants to its lodging and it had also been taken into account.

3. Further to the said direction the Applicants made two applications to the Committee. The first, numbered 4 sought to raise two additional issues at the hearing. These issues were lettered "a" and "b". The second application, numbered 5 sought to lodge further productions for the purposes of dealing with issue "a". These applications were opposed, in part. By its direction dated 23 June 2015 the Committee granted application number 4 in respect of issue "b" and otherwise refused both it and application number 5. The reasons are given in the direction itself and are referred to for their terms. This direction was intimated by the HOHP to the parties by e-mail and by post on 24 June 2015.

4. Both Applicants attended the hearing on 26 June 2015. During the course of the hearing the Applicants were represented by the First Applicant and the Respondents by Mr Ritchie of their solicitors Hardy Macphail. Both representatives made oral submissions. No oral evidence was led. The First Applicant had been offered a loop system for his hearing difficulties but at the hearing he explained that he did not have a hearing aid and his wife's hearing aid did not accommodate this system. He explained that he had received the direction dated 23 June only by post that morning as on the previous day he and his wife had been caring for a friend terminally ill with cancer. He had been unable to check e-mails. He accepted that it was possible that the hard copy of the direction might have arrived on 25 June. He indicated his dissatisfaction with the terms of the direction but it was explained to him that the hearing was not concerned with the correctness of the direction. He expressed the view that despite his late reading of the direction an adjournment would not serve any purpose.

Applicants' Representations

5. The Applicants' principal document of representations on the decision of 17 April 2015 comprised 26 numbered pages but with un-numbered paragraphs. Accordingly the individual representations are referred to by reference to page number. The references to paragraphs are to those in the decision.

6. *Page 2* Criticism was made of finding in fact (xvi) as being unsupported by evidence. The Committee accepts that Mr Cassidy spoke to the September 2014 Service Level Agreement (production R22) having been put onto the Respondents' website in September 2014. It follows that the Applicants did not receive a copy of it until 9 October 2014 as part of the Respondents' first inventory of productions. Finding in fact (xvi) is amended accordingly.

7. *Page 3* It is suggested that the Committee applied the wrong test in assessing breach of section 7.1 of the Code in not looking at the position at the commencement of the application. As is apparent from paragraph 153 it is apparent that the Committee has looked at that position and found a breach.

However the Committee is perfectly entitled to find that the breach has been purged since the start of the application.

8. *Page 4* It is suggested that finding in fact (vi) is in error. The arguments are essentially those already made to the Committee before its decision and dealt with in paragraphs 56 to 64 of the decision. The Committee adheres to that reasoning.

9. *Pages 5 to 6* The Committee sees no criticism of paragraph 44. It is not concerned with onus of proof as the Applicants appear to submit.

10. Criticism is made of paragraphs 45 to 48. This was the issue "b" which the Applicants were allowed to present at the hearing. The issue is whether a property factor has under common law a "duty" not to act beyond the authority delegated to him by homeowners and if so whether actions beyond delegated authority amount to a failure to carry out "property factor's duties" as defined in section 17(5) of the Property Factors (Scotland) Act 2011.

11. The Applicants' argument was that in case HOHP/PF/13/0001, 0010 and 0011) (*Hacking and Paterson*), the committee had by implication found that the arrangement of a float beyond the authority delegated to the factor amounted to a failure to carry out property factor's duties and that the current situation with regard to insurance was analogous. This argument was repeated at the hearing. The Respondents' representative indicated that they were content with actions beyond delegated authority being treated as failure to carry out property factor's duties. However he maintained that the Respondents had not acted beyond delegated authority with regard to arranging insurance. Both representatives were given an opportunity to address a passage in Erskine's Institute at 3.3.35. The Applicants submitted that it favoured their argument. The Respondents had no observation on it.

12. In paragraphs 45 to 47 the Committee was unable to discern the existence of any common law "duty" not to act outwith delegated authority or powers. The passage in Erskine's Institute at 3.3.35 states,

> "The chief obligation arising from this contract [of mandate/agency] lies upon the mandatary, who by his acceptance, is bound to the execution of the mandate; in which he must follow the precise rules prescribed by his employer; for as all his powers flow from the mandant's commission, whatever he does *ultra fines mandati,* is without authority, and cannot bind his constituent."

This passage might be seen as imposing a duty on a factor (being a type of mandatary in this context) to act only within the authority delegated to him. The passage was not mentioned in the *Hacking and Paterson* case where the issue was not raised and committee appears to have assumed that such a duty exists and its breach amounts to a failure to carry out a property factor's duty.

13. The view of the Committee is that a mischief sought to be addressed by the dispute resolution scheme in the 2011 Act was the taking up of the time of the sheriff court, and in particular its small claims procedure by complex disputes

between property factors and homeowners. It seemed to the Committee that it could hardly have been intended by the Scottish Parliament that the scope of the new scheme should depend on fine distinctions between "powers" and "duties" and that disputes over a factor's powers should be excluded from the new dispute resolution scheme. This appeared to be reflected in the pragmatic position of both parties in this case.

14. The issue is a difficult one caused by drafting which on no view could be described as clear and informed. It does not appear that the draftsman gave any real consideration to the substantive law at issue in factoring disputes. The Committee concluded that the passage from Erskine was authority for the proposition that a factor had a duty to act within his powers and that a failure to do so would be a failure to carry out "property factor's duties" within the meaning of section 17(5). Even if the Committee was wrong on that, it seemed to the Committee, albeit with hesitation, that having regard to the purpose of the dispute resolution scheme in Part 2 of the 2011 Act, a failure to "carry out the property factor's duties" in terms of section 17(1) and (5) could include a failure to act within delegated powers.

15. In these circumstances the Committee revises its reasoning in paragraphs 45 and 46 to exclude anything inconsistent with its conclusions above and finds that it has jurisdiction to decide matters (i) to (iii) as set out in paragraph 43. However it adheres to its reasoning on these matters as set out in paragraphs 49 to 67.

16. *Pages 7 to 10* The Committee has an inquisitorial jurisdiction and it can raise arguments that parties have not raised, but ultimately it is for the Applicants to present their case. An applicant cannot simply rely on a committee to develop its case for them, particularly when it depends on establishing issues of fact.

17. *Pages 11 to 12* The Additional Skeleton Arguments for the Respondents, the terms of which the Applicants were fully aware, made the submission that the Respondents had been appointed by the co-proprietors and indicated that power to do so had been given by the Deed of Conditions. Prior to the second hearing the Applicants were given the opportunity to comment on legal authorities that bore on the issue of whether a meeting appointing the Respondents had taken place. It is not open to the Applicants to suggest, if they do, that they had no notice that the committee might find that the Respondents had been appointed in terms of the Deed of Conditions. The Respondents' written closing submissions (pages 3 and 4) were also based on appointment in terms of a meeting under the Deed of Conditions. In their rebuttal the Applicants made no objection to those submissions on the basis that they did not have an opportunity to deal with them. Instead the rebuttal sought to deal with them.

18. The Respondents' case must be taken from the written representations, skeleton arguments and submissions made by their solicitors. These did not rely on custom and practice, whatever may or may not have been said by their witnesses in cross-examination. The solicitors' submissions clearly

founded on appointment by the proprietors under the Deed of Conditions. They were dealt with by the Applicants in their closing submission and rebuttal. In any event the Committee has no record of Mr Cassidy claiming in cross-examination that he was relying on custom and practice. Even if he did, that could not form any basis for the Applicants to conclude, reasonably, that appointment under the Deed of Conditions was no longer under consideration.

19. It was open for the Applicants to say that they accepted that the Respondents had been validly appointed, not by a meeting of proprietors but by some other method such as by the granter of the Deed of Conditions, Mr Renfrew. However they did not qualify their position other than by saying that they challenged the rights and powers of the Respondents under the appointment. The Applicants did not put forward any specific means by which the Respondents had been appointed.

20. *Page 13* There was nothing ambiguous about the question, "Are you challenging Ross & Liddell's appointment as factors ?". The concession by the Applicants related to the appointment of the Respondents as factors. It was not, in fact, and was not accepted by the Committee to be, a concession that the Respondents had been appointed by a meeting of proprietors. For that reason in paragraphs 53 to 64 the Committee dealt with the question of whether it could find that a meeting of proprietors had taken place.

21. *Pages 14 to 18* There is no basis for the assertion that the Respondents had explicitly rejected the proposition that they had been appointed under the Deed of Conditions. The criticism of paragraph 55 is misplaced. The Applicants did not found on appointment by Mr Renfrew. The Respondents did not do so. Appointment by Mr Renfrew was not an issue at the hearing. It is prejudicial to the Respondents and the proper conduct of proceedings as a whole to allow such a factual matter to be raised after the hearing. The extent of productions sought to be lodged after the decision is eloquent testimony to this. There is no reason why this issue could not have been raised and these productions could not have been lodged at any time up to the October 2014 hearing date.

22. It is not for the Committee to make the Applicants' case for them. This is particularly so in the context of the presentation of a case by a party who has the investigatory and presentational skills to make a detailed 36 page skeleton argument.

23. *Pages 19 to 22* The Committee is unable to discern any coherent submission on these pages which would lead it to revise paragraphs 69 to 87.

24. In all the circumstances the Committee remains satisfied with and adheres to the terms of its decision of 17 April 2015.

25. *Page 23* The Committee is unable to make the expressions "joint names" or a "sum" more precise.

26. The expression "joint and several" relates to liability and not to entitlement under policy of insurance. A joint entitlement under a policy of insurance gives the policy holders a right to claim on the whole sum insured, provided there is an insurable interest of the claimant in the item of loss, which in the case of a flat owner should extend to the whole tenement necessary for the flat to be rebuilt.

27. *Page 24 - Part 2* At the hearing Mr Ritchie accepted that the Respondents would pay for the reasonable cost of the report on the reinstatement value which has been carried out and that a copy of the report would be made available to the Applicants. The application has been made by the Applicants alone and the Committee does not think it necessary for the report to be provided to other homeowners. They will see the value in the insurance information provided to them and if they wish to see the report no doubt they can ask for it. As a general rule, however, given that a factor's assessment of reinstatement value is carried out on behalf and for the benefit of the homeowners it would be for the homeowners to meet the cost of future assessments.

28. *Page 24 - Part 4* It seems reasonable for the claims history to be supplied to the Applicants to allow them, if they wish, to seek to obtain alternative quotations for buildings and occupiers' liability insurance for the tenement.

29. *Page 25* The Committee can see no reason why the sum insured requires to be broken down into parts which are allocated to individual flats. The premium is designed to insure the whole tenement to allow it to be repaired or reinstated if the insured risk materialises. There is no reason to think that the sum insured for the tenement is insufficient to cover the immoveable property comprising each individual flat. Nor does there appear to be any reason why such a break-down is necessary for the obtaining of an alternative insurance for the tenement. The Committee has no difficulty with the "catch-all" requirement in the last part of part (3) of the Order in HOHP/PF/13/0051 (not 0076) (Redpath Bruce) being included.

30. *Page 26* The Committee doubts that an insurer would give the assurance sought in the first paragraph. In any event to require the Respondents to obtain such an assurance from insurers is out of the control of the Respondents. For these reasons the submission is rejected.

31. *Page 26 - Part 6* The Committee is satisfied with the "joint names" formula in the part (1) of the Order. In order to avoid ambiguity part (6)(c) of the Order should read, "the seventh paragraph on page 6 of the existing . . .". The suggestion in the last paragraph is reasonable and has been agreed to by the Respondents at the hearing.

Respondents' Representations

32. Three matters were raised by the Respondents in their representations of 12 May. Firstly it was claimed that part (4) of the proposed Order had already been complied with. The Respondents' position was said to be fully detailed in productions R17 and R18. Part (4) addresses the breach of section 5.2 of the

Code. Productions R17 and R18 were not relied upon in that connection. It is now too late for the Respondents to rely on them. In any event these productions do not demonstrate compliance with section 5.2 or the proposed part (4).

33. Secondly it was suggested that part (4) (a) of the proposed Order went beyond section 5.2 of the Code in that it required the disclosure of commercially sensitive information to third parties, namely the premiums paid by the Respondents for all developments insured by them. Alternatively it is suggested that part (4)(a) has already been complied with by means of productions R17, R18 and a further letter from the brokers which is presumably production R31 (although not referred to as such). Deletion of part (4)(a) is sought in its entirety.

34. The purpose of section 5.2 is transparency to enable a homeowner to assess objectively the reasonableness of the premium and coverage and to obtain alternative provision is desired. There is no limitation of the duty in section 5.2 on account of commercial sensitivity. If transparency requires disclosure then disclosure there must be even if to the insurer or broker the information may be regarded as commercially sensitive. This submission is rejected. With regard to alleged compliance, as already noted productions R17 and R18 do not advance matters. R31 does not set out the premiums paid. For these reasons this submission is rejected.

35. Thirdly the proposed amendments to the Complaints Procedure (R23) in part (8) of the Order are commented upon. The Committee agrees to the deletion of the "Surveying and Commercial Services" section as suggested but given the possibility of the factor having duties to homeowners in respect of surveying services inserts into page 2 in the second paragraph under the heading "Property Management" the underlined words in the following
"If you have a complaint regarding the services, <u>including surveying services, which we provide, as property factors or otherwise in respect of property management,</u> you should initially submit . . .".

Applicants' Addendum to Representations

36. The principal subject of the hearing on 26 June 2015 was whether parts (1), (2), and (3) of the proposed Order had been implemented. On pages 2 and 3 of the Applicants' addendum, they submitted that the wording of parts (1), (2), and (3) of the proposed Order should be tightened up as the insurance certificates provided by the Respondents since 17 April were insufficient. Since that date there had been two insurance certificates issued. One, produced as R24 did not evidence insure for the reinstatement value of the whole tenement. That was not disputed by the Respondents. The second, produced as R25, did seek to evidence insurance for the whole tenement. However it lacked an "effective date". To cure this Mr Ritchie lodged a third certificate in the same terms as the second, but with an "effective date" of 15 May 2015.

37. The First Applicant made the following criticisms of R25:

(1) the Respondents being named as a policy holder. This could lead to them making a claim despite not having an insurable interest. It could not be guaranteed that the insurers would refuse to pay such a claim;
(2) the flat owners were not named as policy holders. The description of "co-proprietors" was insufficient to meet the requirements of the Deed of Conditions;
(3) there was vagueness as to who the "other parties as required by contract" were.

The First Applicant explained that the single main door flat in the tenement was numbered 258 and therefore the tenement was correctly described as "256/258 Crow Road".

38. The Committee raised with Mr Ritchie their concerns with R25 as follows:
(1) while the certificate had the "Zurich" logo there was no identification in it of the insurer;
(2) the insurance policy lodged as R26 provided the indemnities only if the relevant provisions were stated in the schedule to be operative and no such mention was present in the certificate, which did not bear to be a schedule signed on behalf of the insurer;
(3) the policy provided for indemnity by a "Company" as stated in a schedule, but the certificate did not appear to be a schedule nor did it identify the insurer;
(4) the policy provided for indemnity for property owners' liability for an "Insured" to be named in a schedule but the certificate did not give any names of persons being insured;
(5) while page 9 of the policy appeared to indicate that the "buildings" insured could be those designed for use by the insured in computing the sums insured, and therefore the tenement, the certificate did not make it explicit that the whole tenement was the "Insured Property".

39. Mr Ritchie submitted initially that the third certificate did comply with parts (1) and (3) of the proposed Order. There was no prejudice to the Applicants in having the Respondents as policy holders, given that they were the managers for the co-proprietors. Upon being informed of the Committee's concerns he explained that the schedule was a document separate from the certificate. In the circumstances he could not contend that part (1) had been complied with. He did submit that the words "co-proprietors" on a policy could satisfy the requirements of the Deed of Conditions that the policy be "in joint names".

40. The purpose of parts (1) to (3) of the proposed Order is to allow compliance with the provisions of the Deed of Conditions relating to the insurance of the tenement. It has become evident to the Committee both from the policy that has been lodged as R26 and Mr Ritchie's submission that sight of the schedule and reflection of that schedule in the certificate of insurance supplied to the Applicants is required to allow confirmation of compliance with the Deed.

41. The requirements of the Deed are crucial. In the first place the Committee are not convinced that insurance which names the Respondents as a joint policy holder is permitted by the Deed. The Deed contemplates that all sums recovered from the insurers are to be held by the proprietors "in their joint names in trust" for the reinstatement of the tenement. The purpose of this is to avoid loss of the sums through insolvency or misdeed of an individual proprietor. The presence of the Respondents on the policy raises the possibility of the proceeds being paid on a claim by them, not being held in trust and being lost through their insolvency. This indicates that their presence on the policy is inconsistent with the Deed of Conditions. Secondly, while Mr Ritchie submitted that the Respondents had an interest as managers, their Service Level Agreement issued to homeowners does not include the submission of insurance claims. It would appear that claims must be initiated by one or more homeowners. Clearly they can instruct the Respondents to submit a claim on their behalf but there is no need for the Respondents to be named as policyholders for that purpose.

42. The position of the other parties, namely the "bondholders" and the "other parties" is similar. The Deed of Conditions provides for bondholders' interests to be endorsed on the policy as having an interest. It does not provide for them to be policy holders. The reason is that the principal insurable interest lies with the homeowners and not their heritable creditors (mortgage holders). Equally "other parties" (whoever they may be) may have an interest to be endorsed but this will not give them the principal insurable interest. They should not be treated as having such rank.

43. The description of "Policy Holder" in the certificate is ambiguous. It is unclear whether disclosure to the "Company" is an essential pre-requisite of coverage. This must be clarified. It appears to the Committee that there must be some naming of the policy holders in a document linked to the policy. Firstly it is required by the Deed of Conditions. Secondly, Property Owners' Liability on page 12 of the policy itself requires naming of the insured in the policy schedule.

Appeal

44. The parties are given a right of appeal on a point of law against this decision and Order by means of a summary application to the Sheriff made within 21 days beginning with the date when this decision and Order are made. All rights of appeal are under section 22(1) of the Act.

Signed ....3...July 2015

David Bartos, Chairperson