Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/15/0079

Re: 29 Rannoch Avenue, Hamilton

The Parties:

Pamela McIsaac, residing at 29 Rannoch Avenue, Hamilton ("the applicant");

and

Clyde Valley Property Services Limited, trading as Nova Property Management, incorporated under the Companies Acts and having its Registered Office at 50 Scott Street, Motherwell ML1 1PN ("the property factor')

Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011('the Act')

Committee members:

George Clark (chair), Mary Lyden and Scott Campbell (housing members)

Decision

The Committee has jurisdiction to deal with the Application.

The property factor has not failed to comply with its duties under section 14 of the 2011 Act.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as "the 2012 Regulations". The Homeowner Housing Panel is referred to as "HOHP".

The property factor became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

This is one of 11 applications made in identical terms and numbered HOHP/PF/15/0072-0082 inclusive. The only evidence led at the Hearing was by Stephen Bissett and Lauri Kearney, 51 Nevis Avenue, Hamilton and in this decision they are referred to as "the homeowner").

The Committee had available to it and gave consideration to: the application by the homeowner received on 19 May 2015, and amended on 17 June 2105, with a file of supporting paperwork by way of written submissions, and further information from the homeowner received by HOHP on 25 June 2015, 3 September 2015, 7 October 2015 and 23 November 2015; and written submissions submitted by the property factor's agents, with supporting paperwork, received by HOHP on 15 January 2016. The paperwork submitted by the homeowner included a letter from the property factor to the homeowner dated 19 August 2015. The Committee confirmed that it did not require any further documentation prior to considering the application at a hearing.

The following is a summary of the content of the application to HOHP:- the homeowner had been reporting the lack of works carried out by the property factor's contractor from before November 2011. Since then, the homeowner had been keeping records of everything, as when the homeowner was reporting things, nothing was being done and the homeowner was not getting responses from the property factor. There were too many discrepancies within the billing aspect. The property factor was being told by the majority of owners in the estate of the works that the property factor's contractors had told the property factor had been done, but which the residents could see were not being carried out. The property factor did not want to listen. The homeowner's concerns had been falling on deaf ears and, instead of trying to resolve issues, the property factor had decided to take the homeowner to court when the homeowner had withheld payment of factoring fees until the issues were resolved. The homeowner wanted factoring charges of £481.60 refunded to each of the homeowners in the estate, together with compensation for the stress that this time-consuming case had caused. The homeowner considered that the property factor had

breached Sections 1, 1-1a A-b, 1-1a B-c, 1-1a B-d, 1-1a C-e, 1-1a D-n, 1-1b A-b, 1-1b C-h, 1-1b F-o, 2.2, 2.4, 2.5, 3.3, 4.1, 4.4, 4.5, 4.8, 4.9, 5.7, 6.1, 6.2 (including footnote 5), 6.3, 6.4, 6.6, 6.7, 6.9 and 7.1 of the Code of Conduct. The homeowner also considered that there had been a failure to carry out the property factor's duties. The homeowner had reported dangerous uneven cobbles which were a hazard. The property factor had decided that the cobbles were not its responsibility, but a resident had then fallen and broken her arm, leading to a claim. The property factor had then admitted liability and paid out compensation.

Summary of Written Representations

The Committee had received, in advance of the hearing, written submissions made by the homeowner and these are summarised as follows:-

The homeowner had never received from the property factor a Written Statement of Services, as required by Section 1 of the Code. It had only come to light shortly before the homeowner was due to go to court with the property factor when a neighbour had provided the homeowner with a copy.

On 12 May 2014, the homeowner had e-mailed the property factor, attaching a letter detailing complaints against Clyde Valley Property Services. Mr Stewart MacKenzie, Operations Director of Clyde Valley Property Services had accepted this as a Stage 2 complaint in the property factor's complaints process and had responded by letter dated 20 May 2014, intimating, with reasons, that he had not upheld the complaint. The homeowner had replied at length on 27 May 2014. Mr MacKenzie had responded by letter on 19 June 2014, reaffirming that he had not upheld the complaint, but confirming that he was consulting with the property factor's solicitors in relation to a list of information requirements that formed part of the letter of 27 May 2014.

Messrs Brechin Tindal Oatts solicitorshad written to the homeowner on 31 July 2014, enclosing various documents, namely a map of Little Earnock Estate, detailing the open space grassed areas, areas of hard standing and adopted roads and footpaths, a copy of the Tender Evaluation in respect of landscape maintenance services and repairs and maintenance services on properties managed by the property factor, a list of dates between 1 April 2013 and 17 March 2014 that landscape maintenance works had been undertaken by Land Engineering Limited, a schedule kept by J&M Hardie as retained managers for the property factor, detailing the work undertaken by them in connection with the management of the estate from 2 April 2013 to 19 March 2014 and a statement of the homeowner's

factoring account. Details which would have identified unsuccessful contractors in the Tender Evaluation had been redacted for reasons of confidentiality. The letter also advised the homeowner that the tendering process had been undertaken to cover all properties factored by the property factor, rather than individual estates, in order to achieve economies of scale. The solicitors also advised the homeowner that the open space land on the development did not belong to the homeowners in common, but remained within the ownership of Clyde Valley Housing Association Limited. The homeowners were, however, required in terms of their title deeds, to contribute to the cost of the maintenance of that land. The solicitors considered that the documentation supplied should address the issues which the homeowner had raised about the services provided by Land Engineering Limited and the supervision by J&M Hardie. They also asked the homeowner to specify any dates on which the documentation indicated that litter picking work had not been carried out and advised that the proprietors of the Estate were only being charged for the services provided.

The Committee had received, in advance of the hearing, written submissions from the property factor, dated 15 January 2016. These comprised an Inventory of Productions and a list of Witnesses that the property factor intended to call at the hearing. The Productions were a Map of Little Earnock Estate, copies of the property factor's Written Statement of Services, the Factoring Arrears Policy and the Complaints Policy, copies of a Presentation on Factoring Options for Little Earnock Estate and Newsletters issued by the property factor in respect of the estate, as well as correspondence between the property factor and Mr Bissett and Ms Kearney. It also included copies of paperwork relating to a Sheriff Court Small Claims case SA1631/14 in which a decree for payment had been granted against the Defenders (who were residents on the estate) in respect of unpaid factoring charges.

THE HEARING

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow G2 2XL on 22 January 2016. The homeowner was present at the hearing and was accompanied by Mrs Jeanie Shields, 35 Nevis Avenue, Hamilton, the applicant in case number HOHP/PF/15/0080. The property factor was represented at the hearing by Mr David Young, solicitor, of Messrs Brechin Tindal Oatts solicitors, Glasgow and Edinburgh, and in attendance from Clyde Valley Property Services Limited were Ms Nareen Owens, Customer Services Director, Ms Lesley Clarkson, Corporate Services Manager and Kevin McGhee, the Maintenance Manager.

Summary of Oral Evidence

The chairman told the parties that they could assume that the Committee members had read and were completely familiar with all of the written submissions and the documents which accompanied them.

The chairman advised the parties that there were 11 identical applications to be considered, all received by HOHP on 19 May 2015. Of these, 8 had been amended to include a copy of the notification to the property factor alleging failure to comply with the Code. Applications HOHP/PF/15/0074, HOHP/PF/15/0075 and HOHP/PF/15/0082 has not been so amended. The parties agreed that the homeowner was not acting under any formal authority granted by the applicant, so the evidence to be led would relate to HOHP/PF/15/0072, the application made by Mr Stephen Bissett and Ms Lauri Kearney, but that the decision on that application would inform the Committee in relation to disposal of the other applications before it. No objection to this approach was made by or on behalf of the parties.

There were two preliminary points which were raised on behalf of the property factor. The first point was that the homeowner had applied to HOHP under the wrong Sections of the Code of Conduct. The Committee agreed to consider this point when making its determination and, subsequent to the hearing did consider whether the application should be rejected on the ground that it was based on alleged failings to comply with Section 1.1.a of the Code, which applies where the common parts of a devlopment are owned in common by the group of homeowners, rather than Section 1.1.b of the Code, which applies where the common parts are owned by a land maintenance company or a party other than the group of homeowners.

The Committee had before it 11 applications, submitted by different homeowners. They were identical in terms and, with the exception of the first two pages of the applications, which identified the homeowners and the properties concerned, and the last page, which contained the homeowners' signatures, were photocopies of the application submitted by the homeowner Stephen Bissett and Lauri Kearney (HOHP/PF/15/0072).

Tha applications referred to several parts of Sections 1.1a of the Code and also to parts of Section 1.1b of the Code. Later Sections of the Code were also referred to. The Committee accepted that the references to Section 1.1a of the Code were incorrect, as the common parts of the development were not owned by the group of homeowners but remained in the ownership of Clyde Valley Housing Association. There was no equivalent, in Section 1.1b of the Code, to Sections 1.1a A-b or 1.1a C-e, but the Committee was of the view that there was sufficient overlap between the provisions of both parts of the Code for the Committee and the property factor to be clear as to the substance of the homeowner's complaint. In

any event, the property factor had not raised this point in written submissions or at any stage prior to the hearing. The Committee also accepted the view of the homeowner that the numbering and lettering process in the Code is very confusing to a lay person and determined to afford to the homeowner the benefit of the doubt and to continue to consider the application.

The second preliminary point raised by the property factor's agent was that the complaint was lacking in specification. It was, he said, common in such cases as this for the homeowner to attach appendices or papers apart to elaborate on the matters written in the boxes on the application form and the property factor had the right to know the case it was expected to answer. The homeowner commented that there was not much room in the boxes and he did not know that attaching further papers to the application was common. The Committee noted that the property factor had, by letter dated 19 August 2015 extending to 5 pages, responded in detail to the homeowner directly about the matters raised in the application and that the homeowner had, prior to the hearing, made detailed written submissions in support of the application. These had been cross-copied to the property factor, who had responded in detail in its written submissions. The property factor had not raised lack of specification as an issue in its written submissions or at any time prior to the hearing. The Committee accordingly concluded that the propery factor had had ample notice of the details of the homeowner's complaint and determined to continue to consider the application.

The Committee then proceeded to hear representations from the parties under the various heads of complaint set out in the application. In this Decision, the Committee is using the numbering of the sections of the Code of Conduct as given in the application. Evidence was taken first from Mr Bissett and Ms Kearney and Mr Young then responded on behalf of the property factor. For ease of understanding, however, the following summary of the evidence given at the Hearing sets out, under each Section of the Code to which it refers, the evidence given by the homeowner followed by the response of the property factor.

Section 1 requires property factors to provide each homeowner with a written statement of services. The homeowner stated that he had never received the property factor's Written Statement of Services and had only seen a copy of it two days prior to a court case in 2013. Mr Young stated that the property factor's position was that it would have been sent out to all homeowners on the estate at the same time and that, in any event, the homeowner had accepted that he now had the Written Statement of Services.

Section 1.1a A-b requires that the Written Statement of Services set out, where applicable, a statement of any level of delegated authority, for example financial thresholds for

instructing works, and situations in which property factors may act without further consultation. The homeowner contended that he had asked for a financial threshold, but that it had been refused. Mr Young told the Committee that the homeowner had not said when that request had been made and asked the Committee to hold that this element of the complaint was lacking in specification.

Section 1.1a B-c provides that the Written Statement of Services should set out the core services that the property factor will provide, including target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service). The homeowner gave, as an example of this alleged breach, the failure to carry out remedial work to cobbles between the date of the complaint about their condition and the accident that had resulted in one resident sustaining a broken arm. Mr Young told the Committee that it was clear from the Written Statement of Services what the core services were and that, in any event, the instance cited by the homeowner had taken place prior to the Act coming into force, so could not be considered by the Committee.

The homeowner also alluded to a problem with a CATV Box where there had been a delay of a year and a half in dealing with a complaint. Mr Young responded by saying that it was located on a footpath which had been adopted for maintenance by South Lanarkshire Council. The property factor had reported it to the Council when it was initially raised, but could not be held responsible for the Council's delay in carrying out the necessary work.

Section 1.1a B-d of the Code says that the Written Statement of Services should set out the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges. The homeowner told the Committee that the residents accept that if a tree has to be cut down, that incurs an extra charge to the homeowners, but they had previously asked for copy invoices and a breakdown for such work, as the account would simply say "tree cut down". The homeowners needed the detail in order to check that the work had been done, given the history of contractors not doing work that, according to the property factors, had been carried out. Mr Young, on behalf of the property factor, asked the Committee not to uphold this element of the complaint, as the homeowner had given no detail as to when any such requests had been made and there had been no evidence given that requests had been made querying specific items of expenditure.

Section 1.1a C-e of the Code provides that the Written Statement of Services should set out the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee. The homeowner told the Committee that the

homeowners on the Estate had never received separate notification of increases in factoring charges. The increase for the period from 1 April 2012 to 31 March 2013 had been applied from March 2012, resulting in an overcharge of £0.75 and in that year, homeowners had been charged 5 times instead of 4, payments being quarterly. That was not significant for an individual homeowner but, when multiplied by 491, it represented a large amount of additional income. Mr Young told the Committee that the property factor had changed the basis of charging management fees from quarterly in arrears to quarterly in advance. This would have resulted in an additional bill being sent when the new arrangements came into force, but that would not result in homeowners paying any more over their period of ownership. The change had been notified to all homeowners by Newsletter and it would also have been set out on the property factor's website. The Newsletter was published half-yearly, but it had been discontinued as homeowners were unhappy with the costs involved in producing and distributing it, although, following on the meetings with representatives in November and December 2014, it had been reintroduced in order to improve communication. The homeowner told the Committee that he could not recall ever having received the Newsletter.

Section 1.1a D-m of the Code states that the Written Statement of Services should include the timescales within which the property factor will respond to enquiries and complaints received by letter or e-mail. In evidence, the homeowner told the Committee that, due to the property factor's failure in some instances to answer enquiries, the homeowner had started in 2011 keeping track of all issues. The homeowners on the Estate had been trying to make the property factor aware that contractors who were supposed to be working on the Estate were sitting around in vans. The property factor was not checking up on its contractors and eventually in 2011, the homeowner told the property factor that the services for which the homeowners on the estate were paying were not being provided and he stopped paying the factoring charges. Mr Young responded by saying that the necessary procedures and timescales were in place. The complaint, he added, seemed to be that homeowners had reported things to the property factor and the remedial work had not been done, but the processes required by the Code were in place.

Section 1.1b of the Code applies where land is owned by a land maintenance company or a party other than the group of homeowners. The homeowner had included in the application a number of alleged breaches of Section 1,1b of the Code.

Section 1.1b A-b says that the Written Statement of Services should include a description of the use and location of the area of land to be maintained, including a map where possible and adds that this information must be kept up to date. The homeowner told the Committee that the property factor had been requested in 2014 to provide a map and their

solicitors had done so on 31 July 2014, but it had become apparent from the property factor's written submissions that they had provided an out of date map from 2010, when a more recent one was available at the time of the request. The homeowner had only become aware of this when the property factor's written submissions were submitted, a week before the Hearing. The later map was dated October 2013, so pre-dated the letter from the property factor's solicitors of 31 July 2014. It showed inshots which were the responsibility of property owners and the homeowner was concerned that the homeowners on the Estate were receiving bills for maintaining footpaths, some of which were the responsibility of South Lanarkshire Council.

Mr Young did not offer any explanation for the failure to send the most up to date map with the letter of 31 July 2014, but confirmed that it had been updated to reflect the title deeds position. He submitted that the homeowner had not been prejudiced and that the difference between the two versions of the map was an updating of the legend.

The parties agreed that the homeowner's complaint under Section 1.1b C-h of the Code had already been dealt with under Section 1.1a B-d.

Section 1.1b F-o of the Code provides that the Written Statement of Services should set out clear information on how to change or terminate the service arrangement between the factor and the homeowner, including signposting to the applicable legislation. The homeowner told the Committee that, at a residents' meeting in March 2012 (which was prior to the date on which the homeowner obtained a copy of the Written Statement of Services), Lesley Clarkson, who attended the meeting on behalf of the property factor, had stated that the property factor would help to tell homeowners how to go about changing their factor, but that it would be necessary to consult the title deeds for the process. The homeowner told the Committee that the title deeds required a majority to approve a change of factor. During an Estate inspection in November 2014, Noreen Owens had told the homeowner, who was pointing out discrepancies in the factoring accounts, that she would go over these with the homeowner, but she had failed to do so. Mr Young responded by telling the Committee that the property factor had given the information required by the Code and the Written Statement of Services clearly sets out the procedure for terminating the agreement.

Section 2.2 of the Code states that a factor must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that the property factor may take legal action). The homeowner told the Committee that Lesley Clarkson had started shouting and bawling down the phone, during a call about arrears, despite the fact that she knew the reason that the homeowner was not

paying and that she had told the homeowner that the property factor "had friends in high places" and had named HOHP and South Lanarkshire Council. The homeowner was unable to recall the date of the telephone conversation, but stated that it was prior to the date in November 2011 after which the homeowner started keeping records of issues with the property factor. Mr Young entirely refuted the allegation of abuse and pointed out to the Committee that HOHP had not been in existence in November 2011, so the alleged comment to the homeowner could not have been made.

Section 2.4 of the Code requires factors to have a procedure to consult with groups of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. The homeowner told the Committee that owners had been billed for work which was outwith the core service and he instanced moss scraping at 64 Nevis Avenue, cutting down of trees, work on gulleys and drains and CCTV investigation of drains that were the responsibility of Scottish Water and the fixing of manholes in the road. Work had been done on drains and the cost had later been credited back to the owners' accounts, but the work should not have been carried out in the first place. Mr Young responded that the bills in question were for drains and gulleys that were owned by Clyde Valley Housing Association and for pathways which the property factor was responsible for maintaining. The homeowner had also referred to repairs to a footpath after a wheelie bin had been set on fire, but Mr Young reminded the Committee that, as this had happened in 2008, it could not be regarded by the Committee as relevant.

Section 2.5 of the Code requires property factors to respond to enquiries and complaints received by letter or e-mail within prompt timescales and that response times should be confirmed in the Written Statement of Services. The homeowner told the Commitee that enquiries and complaints had not been dealt with and that it was not until November 2014, after years of neglect, that the propery factor had accepted they had to work exceptionally hard to get the estate up to an acceptable standard. Some of the owners on the estate had met with Nareen Owens, Lesley Clarkson and Kevin McGhee of Clyde Valley Property Services and on 25 November 2014, these owners had walked round the estate with the property factor's representatives. A representative of Land Engineering, the contractors who carry out the maintenance work on the estate, had been present and had accepted that things had to be done. The owners had shown a representative of Land Engineering a video which showed workmen using a blower to spread grass cuttings around rather than removing them as they said they had done. The homeowner conceded that Land Engineering had done a lot of work after the walk around the estate. Mr Young told the Committee that in his clients' view, the complaints were that work was not being carried

out, not that there was an absence of communication and the evidence led was not relevant to the complaint.

Section 3.3 of the Code states that property factors must provide to homeowners, in writing at least once a year, a detailed breakdown of charges made and a description of the activities and works carried out which are charged to the homeowners. The homeowner told the Committee that quarterly bills had included items such as "rebedding cobble stones at" and "make manhole cover within existing footpath and infill road manhole" without specifying an address or location, so the homeowner could not check whether it was correct. Mr Young told the Committe that billing is done quarterly and a breakdown is provided. It had been agreed following a meeting with homeowners in April 2015 that from 2016 onwards the property factor would itemise billing, perhaps by adding an appendix, so the property factor had taken steps to remedy any lack of clarity.

Section 4.1 of the Code requires property factors to have a clear written procedure for debt recovery. The homeowner told the Committee that, as he had not been sent a copy of the Written Statement of Services he had only seen the debt recovery procedure in 2013 and it did not set out how the property factor would deal with disputed debts. Mr Young asked the Committee not to uphold this complaint, as the homeowner had acknowledged having seen the debt recovery procedure.

Section 4.4 of the Code states that property factors should provide homeowners with a clear statement of how services delivery and charges will be affected if one or more homeowner does not fulfil their obligations. Mr Young advised the Committee that such a statement was not necessary in this case as, if an individual homeowner's debt became irrecoverable, the property factor would write it off rather than recharge it to the other homeowners in the estate.

Section 4.5 of the Code requires property factors to have systems in place to ensure the regular monitoring of payments due from homeowners and to issue timely reminders to inform homeowners of any amounts outstanding. The homeowner told the Committee that he had an outstanding balance but that no timely reminders had been received. The property factor had not contacted him to ask why they were not paying and, when Lesley Clarkson had telephoned, she had not been interested in knowing about the underlying issues for withholding payment and had shouted down the phone. The homeowner had not received any reminders, just a balance carried forward on the next statement. The property factor responded by saying that there were systems in place and the steps which had been taken were all in accordance with the company 's debt recovery procedures.

Section 4.8 of the Code stipulates that property factors must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of their intention. The homeowner told the Committee that there was no engagement with homeowners to try and resolve the problem, apart from giving the homeowner an opportunity to enter into a payment arrangement. The property factor told the Committee that court action is only taken by the company in accordance with the debt recovery policy and after letters to debtors, including a 7-day letter from a solicitor. This final demand letter had been sent by Brechin Tindal Oatts solicitors on 5 February 2013 and a copy of that letter was before the Committee.

Section 4.9 of the Code requires property factors , when contacting debtors, not to act in an intimidating manner or threaten them (apart from reasonable indication that the factors may take legal action). The homeowner referred the Committee back to the discussion under Section 4.5 and offered no additional evidence.

Section 5.7 of the Code states that, if applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. The homeowner asked the Committee to remove this part of the application, as the property factor had provided information which was sufficient to satisfy the homeowner that a tendering process had taken place in respect of the awarding of the maintenance contract.

The homeowner then moved on to Section 6 of the Code of Conduct and withdrew the complaints listed under Sections 6.4, 6.6 and Section 6.7.

Section 6.1 of the Code requires property factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention and to inform homeowners of the progress of work, including estimated timescales for completion. The homeowner asserted that matters had been reported which required action but that no feedback had been received. Section 6.2 requires property factors to have in place procedures for dealing with emergencies. The instances given to the Committee as indicating failure to comply with the Code took place prior to the setting up of the HOHP, so the Committee was unable to consider them. This was pointed out by Mr Young, but he also told the Committee that his clients would liaise with homeowners in respect of any works which were over and above the core service, before taking appropriate action. He also reminded the Committee that the requirement of the Code was to have procedures in place and that the actual complaint here was not that procedures were not in place, but that the homeowner was of the view that the property factor did not always follow them.

Section 6.3 of the Code provides that, on request, property factors must be able to show how and why they appointed contractors, including cases where they decided not to carry out a competitive tendering service or use in-house staff. The homeowner told the Committee that they were trying to sort out how much was being charged by contractors for their individual estate, as it was the homeowners on the estate who were paying for the contractors' services. They had, for example, been told that no landscaping maintenance work was being done over the winter, but the bills were sometimes higher than they were in the summer months. The homeowners wanted to know how much the contractors' costs were each year for their own estate, so that they could check whether the figure matched the invoices. The property factor stated that the tendering process had been across all of the estates managed by the property factor, as this achieved significant economies of scale. The contract price had, therefore, not been broken down estate by estate.

Section 6.9 of the Code states that property factors must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. The homeowner stated that they had reported several issues about inadequate work having taken place on the estate. After the meeting in November 2014, the contractors had carried out more work, but not all of the core activities were being dealt with as part of the contract and the homeowners were having to pay for litter picking carried out by the contractors which was actually the responsibility of South Lanarkshire Council. The property factor told the Committee that Mr Kevin McGhee held a meeting once a month with the Clerk of Works, Mr Jim Hardie, to monitor the work carried out across all the property factor's sites.

Section 7.1 of the Code requires property factors 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 the property factors will follow. This procedure must include how the property factors will handle complaints against contractors. The homeowner contended that the owners on the estate had not been told how the property factor would deal with complaints against contractors. Mr Young asked the Committee to accept that the complaints procedure was clearly set out in the Written Statement of Services and that, in any event, the incident of which the howmeoner complained under this heading took place before HOHP was established.

Ms Nareen Owens told the Committee that she was the Customer Services Director of Clyde Valley Housing Association. Following a complaint, she had met with a representative group of homeowners on 10 November 2014. It had been a very constructive meeting and it had been agreed to have a walkaround of the estate. This took place on 25 November 2014. Kevin McGhee was present at the walkabout, as was the contracts manager for Landscape Engineering. There was a discussion about some pro-active improvement works, which

would require the consent of all homeowners. There had been a further meeting on 2 December 2014, at which Ms Owens had given a presentation to a representative group, including the homeowner. There was discussion about a public meeting of the whole estate and it was agreed that it would have to wait until after Christmas. She had given a copy of her presentation to Lauri Kearney to use at the public meeting. The options set out in the presentation included the possible appointment of a new factor and Ms Owens had told the group that the property factor would co-operate, should that be the decision of the owners at the public meeting. It also included options for various improvement works.

Ms Owens told the Committee that she had expected that the public meeting would be held, but she heard nothing further until one of the Clyde Valley tenants gave her a letter from a local MSP, which implied that there had been no communication from the property factor. She had contacted the homeowner, Mr Bissett, at that point, but he had told her that he had decided not to call the public meeting as it would have been a waste of time. As a result of that discussion, the property factor had taken the view that Mr Bissett was no longer a representative of the estate owners as a whole.

The homeowner put it to Ms Owens that she was wrong in her statement that it was the homeowners themselves who were to call the public meeting. She responded that the intention at the December meeting was to hold a further meeting with the representative group, but the representatives had said that they wanted to go back to the whole estate first and she referred the Committee to a letter of 17 March 2015, which was included in the written submissions. That letter referred to the discussions in November and December 2014 and stated that the intention was that the residents with whom the property factor had met would feed back various findings and recommendations to a full residents meeting, but that to date the property factor had heard nothing back from the group representatives.

Ms Owens also told the Committee that the property factor had attempted to improve communications by reintroducing regular Newsletters and referred to those issued in summer, autumn and winter of 2015. The autumn edition included a customer satisfaction survey, but Ms Owens conceded that this was a sample taken across all estates for which the property factors carried out services and was not a survey as such. Large sample surveys were carried out every three years.

Mr Jim Hardie of J&M Hardie Landscape Management Services gave evidence to the Committee. He stated that he managed the landscaping on the estate, looked after the contractors and gave feedback to Kevin McGhee. He went round the whole estate twice a month, sometimes with technical inspectors, and once a month with representatives of the contractors, Land Engineering. He had ongoing communication with Kevin McGhee and he

produced a monthly report for the property factor. He also reported every Monday on the basic works being carried out. He agreed with Mr McGhee each month on work that had been carried out and work that remained to be done and no contractor was paid unless the relevant work was done. Mr Hardie also said that the trees on the estate were inspected twice a year.

The homeowner asked Mr Hardie about the inspection that had been carried out in November 2014 and referred him to a repair to a toby/drain cover, which had been reported long beforehand but which had only been repaired on the morning of the inspection. Mr Hardie replied that it had been reported to the property factor, but that the repair had been the responsibility of Scottish Water, to whom the property factor had passed on the complaint. The homeowner pointed out that there was another toby/drain cover requiring repair in another street on the estate, but Mr Hardie told the Committee that the property factor could not be held responsible for the length of time that Scottish Water took to carry out repair works.

Mrs Maureen Buick gave evidence to the Committee. She stated that she had lived on the estate for 40 years. Threre had been issues relating to factoring services for a couple of years, but there had been a considerable improvement in the past 18 months or so. She had, for example, phoned to complain about leaves which were causing a slip hazard and within two days someone had been there with a leaf blower. She had had dealings with Lesley Clarkson about damage, including broken windows and serious damage to her fencing, caused by large numbers of youths playing football. Lesley Clarkson had reported the matter to the police and had accompanied her to the police station at 6.30 at night and had dealt very well with the issue, with police patrols of the estate being organised. Mrs Buick found the reintroduced newsletters very informative. Questioned by the homeowner, Mrs Buick confirmed that she was a member of the Clyde Valley Housing Association Customer Panel, but insisted that she had not given her name when she had telephoned the property factor about the leaves and that she had not received any preferential treatment.

Mr Young concluded by submitting that the property factor had demonstrated that they are attempting to engage with the residents on the estate, that many of the homeowner's complaints were historical, in that they preceded the creation of the HOHP and that, on the merits, the property factor was a competent and suitable factor for Little Earnock Estate.

The Committee makes the following findings of fact:

- The homeowner is the owner of the property 51 Nevis Avenue, Hamilton ML3 8UB, part of a development of 491 properties at Little Earnock, Hamilton, erected by Scottish Special Housing Association (later Scottish Homes) in the late 1970s. 61 of the properties in the development are in the ownership of Clyde Valley Housing Association, following upon a Large Scale Voluntary Transfer in 2003 of the remaining properties rented out by Scottish Homes . The other residential properties in the development are privately owned.
- The property factor was set up as a subsidiary company of Clyde Valley Housing Association in 2006 to deliver property factoring services across all of Clyde Valley Housing Association's estates.
- The property factor manages and maintains land which is available for use by the owners of the residential properties within the development of which the homeowner's property forms part and the owners of those properties are required by the terms of their title deeds to pay for the cost of the management or maintenance of that land. The property factor, therefore, falls within the definition of "property factor" set out in Section 2 (1)(c) of the Property Factors (Scotland) Act 2011 ("the Act")
- The property factor's duties arise from a written Statement of Services, a copy of which has been provided to the Committee.
- The date from which the property factor's duties arose is unknown, but it is not disputed that it was prior to the date of the homeowner's application.
- The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- The date of Registration of the property factor was 1 November 2012.
- The homeowner has notified the property factor in writing as to why he considers that the property factor has failed to carry out its duties arising under section 14 of the Act.
- The homeowner made an application to The Homeowner Housing Panel ("HOHP") dated 15 April 2015 and received by HOHP on 16 April 2015 under Section 17(1) of the Act. The application was subsequently amended by letter received by HOHP pn 24 June 2015.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.

- On 3 August 2015, the President of HOHP referred the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter dated 3 August 2015.
- Section 1.1b of the Code applies to this case, as the land which is maintained under the factoring agreement is not owned by the group of homeowners at Little Earnock Estate.
- With effect from 1 April 2011, the landscape maintenance contract for the estate was awarded to Land Engineering Limited.
- Messrs J&M Hardie Landscape Management Services are engaged by the property factor as specialist landscape maintenance consultants for the estate.

Reasons for the Decision

The Committee considered the application, with its supporting papers, the written representations of the homeowner and the property factor and the evidence given by the parties at the hearing. The Committee made the following findings:

1. The Committee held that, on the balance of probabilities, the Written Statement of Services had been sent to the homeowner at the same time that it was sent to the other owners within the development. That is not to say that it had been received at that time, but the homeowner had confirmed in any event that it had been received in 2013. The property factor had also sent a copy with its letter to the homeowner dated 19 August 2015. **Accordingly, the Committee did not uphold the complaint under Section 1 of the Code.**
2. The homeowner had told the Committee that he had asked for a financial threshold, but provided no evidence as to when that request had been made. **Accordingly, in the absence of such evidence, the Committee did not uphold the complaint under Section 1.1a A-b of the Code.**
3. The Committee held that the Written Statement of Services does set out the core services that the property factor will provide, including target times for taking action in response to requests for both routine and emergency repairs. The Committee also accepted the submission by the property factor that the instance cited by the homeowner occurred prior to the HOHP being established, so could not be considered by the Committee. **Accordingly, the Committee did not uphold the complaint under Section 1.1a B-c of the Code.**
4. The Committee held that the Written Statement of Services did set out the procedure for dealing with works which were required in addition to the core service and that the homeowner had given no detail as to when request for copy invoices and a breakdown for such work had been made. The Committee accepted that

5. homeowners are entitled to make reasonable requests for information in order to satisfy themselves that factors are carrying out their responsibilities, but they should not seek to micro-manage the factoring contract, as this places an unreasonable administrative burden on property factors. **Accordingly, the Committee did not uphold the complaint under Section 1.1a B-d of the Code.**
6. The Committee accepted that that it would be good practice for factors to advise all property owners individually in advance of increases in their management fees, rather than merely intimating such changes on a website or in a Newsletter, but in the present case, the Written Statement of Services clearly states at Section 10.3 that the property factor will advise of changes in property factoring charges on the CVPS website and in its newsletter and that property factoring charges will also be clearly shown on the quarterly factoring invoices that are sent directly to customers. As regards the apparent "double billing" when the property factor changed from billing in arrears to billing in advance, the Committee held that it was an inevitable consequence of such a change that the bill showing the first charge in advance would also contain the charge at the old rate for the period just ended. This would, however "correct" itself when an owner came to sell. The Committee noted the assertion by the homeowner that the increase effective from 1 April 2012 had been applied to the payment due for March, resulting in an overpayment of £0.75. The Committee was unable to verify from the evidence given by the Parties whether this assertion was correct, so was unable to order that the sum be repaid, but the Committee would expect the property factor to investigate the situation and to refund or credit to individual factoring accounts any overpayment that it identifies. The Committee was of the view that the change from charging in arrears to charging in advance ought to have been intimated to individual homeowners specifically, rather than simply intimated in a newsletter and on the company's website, but did not regard this failure as amounting to a breach of the Code, as the process followed was that set out in the Written Statement of Services. **Accordingly, the Committee did not uphold the complaint under Section 1.1a C-e of the Code.**
7. The Committee held that the Written Statement of Services did include the timescales within which the property factor would respond to enquiries and complaints received by letter or e-mail. The homeowner's complaint related to his view that the property factor had not responded properly when complaints had been made, but the procedures and timescales were set out in the Written Statement of Services. **Accordingly, the Committee did not uphold the complaint under Section 1.1a D-m of the Code.**
8. The Committee held that the map of the estate provided to the homeowner on 31 July 2014 was not the most up to date map available, as it had been updated in October 2013, but accepted that no prejudice had resulted to the homeowner as a

9. result of that failure. The Written Statement of Services does not have a map attached, but the Committee was of the view that, as the map of the estate dated October 2013 extended over four A3 pages, it would not have been practicable to attach it to the Written Statement of Services. The written submissions by the property factor included a copy of the Written Statement of Services and in a Schedule it states that the Estate Plan is available for viewing at the property factor's office. The Committee was satisfied that the Written Statement of Services contained an adequate description of the use and location of the areas to be maintained. **Accordingly, the Committee did not uphold the complaint under Section 1.1b A-b of the Code.**
10. **The Committee did not uphold the complaint under Section 1.1b C-h of the Code, for the same reasons it had given for not upholding the complaint under Section 1.1a B-d of the Code.**
11. Section 9 of the Written Statement of Services referred to in numbered paragraph 7 above, contains a section entitled "How to end the agreement-terminating the property factoring arrangement". The Committee held that the property factor had met the requirements of the Code in this respect. **Accordingly, the Committee did not uphold the complaint under Section 1.1b F-o of the Code.**
12. The property factor had taken serious exception to the allegation that Lesley Clarkson had started shouting and bawling when she had telephoned the homeowner about arrears on his factoring account and to the alleged comment that the property factor "had friends in high places", including South Lanarkshire Council and the Homeowner Housing Panel. The Committee could find no independent evidence as to the tone of the telephone call in question, which would enable it to determine which of the competing versions of events should be preferred, so could make no finding that it was abusive or intimidating. It was a call made by the property factor regarding arrears and Ms Clarkson was aware of the homeowner's reason for non-payment (namely that he felt that the property factor was not doing its job properly), but, on the assumption that the property factor did not accept the reason for refusal to pay, she was entitled to threaten the homeowner with legal action. In addition, the allegation made by the homeowner that the property factor had friends in high places could not be correct if, as the homeowner had told the Committee, she had then referred to HOHP, which was not in existence at the time the phone call took place, which was, at latest, November 2011. **Accordingly, the Committee did not uphold the complaint made under Section 2.2 of the Code.**
13. The Committee held that the property factor had in place a procedure to consult with groups of homeowners and seek their written approval before providing work or services which would incur charges or fees in addition to those relating to core services. The procedure was set out in sections 4.2, 5.3 and 7 of the copy of the

14. Written Statement of Services referred to in numbered paragraph 7 above. The Committee had heard no evidence that the property factor had exceeded its authority. There had been one instance when property owners had been incorrectly billed for work to drains and gulleys, but this error had been recognised and rectified. **Accordingly, the Committee did not uphold the complaint made under Section 2.4 of the Code.**
15. The complaint by the homeowner in respect of Section 2.5 of the Code did not appear to the Committee to be that there was an absence of a procedure or a lack of communication, but rather that things were not being done. The Committee had heard evidence from the homeowner and from Mrs Buick that matters had improved following the walkabout in November 2014. It appeared to the Committee that the property factor had recognised that improvements in the service were necessary and had taken steps to implement such improvements. **Accordingly, the Committee did not uphold the complaint made under Section 2.5 of the Code.**
16. The Committee noted the comments made by the homeowner that certain items of work specified in the bills from the property factor did not identify the address or location at which the work had been carried out and this made it impossible for the homeowner to check that every item of expenditure was justified and correct. The Committee's view was that the homeowner, who admittedly stated that he had lost faith in the property factor, was nevertheless micro-managing the factoring service by requiring full details of every penny spent. The homeowners on the estate had delegated the authority for factoring services and it was not reasonable to expect the property factor to itemise expenditure to the extent that the homeowner had demanded. The Committee noted that the property factor billed on a quarterly basis and that a breakdown was provided and that the property factor had told the Committee that it had been agreed from 2016 onwards, to itemise billing, probably by adding an appendix to the quarterly bills. **Accordingly, the Committee did not uphold the complaint made under Section 3.3 of the Code.**
17. The homeowner told the Committee that he had not seen the property factor's debt recovery procedure until 2013, as he had not been sent a copy of the Written Statement of Services. The Committee held that the homeowner accepted that he now had a copy of the procedure. **Accordingly, the Committee did not uphold the complaint made under Section 4.1 of the Code.**
18. The property factor had told the Committee that the Written Statement of Services stated that it had a detailed Factoring Arrears Policy, which provided that, when the procedures for recovery had been exhausted, arrears would be written off if it appeared that they were irrecoverable. It had, therefore, not been necessary to provide the statement set out in Section 4.4 of the Code, as services delivery and charges would not be affected if one or more homeowner did not fulfil their

19. obligations. The Committee was satisfied that the policies and procedures were in place. **Accordingly, the Committee did not uphold the complaint made under Section 4.4 of the Code.**
20. The homeowner had told the Committee that he should have received reminders about his outstanding balance, rather than just a balance carried forward showing on the next bill. The Committee held that the property factor had debt recovery systems in place and that, whilst showing arrears carried forward from bill to bill was not as specific as the homeowner wished, there was no evidence that the property factor had failed to comply with its Debt Recovery Procedure. **Accordingly, the Committee did not uphold the complaint made under Section 4.5 of the Code.**
21. The Committee was satisfied that the property factor had taken reasonable steps to resolve the matter prior to taking legal action against the homeowner. The property factor did not accept the reason given by the homeowner for non-payment and the homeowner had refused the offer to enter into a payment plan. In addition, the solicitors for the property factor had sent a final demand letter. There was no indication that the property factor had failed to follow its debt recovery procedure. **Accordingly, the Committee did not uphold the complaint made under Section 4.8 of the Code.**
22. The issue raised under Section 4.9 of the Code has already been dealt with under numbered paragraph 10 above. The Committee held that there was a conflict in the accounts of the Parties regarding a telephone call made by the property factor to the homeowner regarding the arrears in payment of factoring charges and that there was no independent evidence to assist the Committee in evaluating that evidence. **Accordingly, the Committee did not uphold the complaint made under Section 4.9 of the Code.**
23. At the Hearing, the homeowner withdrew his complaints under Section 5.7, 6.4, 6.6 and 6.7 of the Code. **Accordingly, the Committee did not uphold the complaints made under those Sections of the Code.**
24. The Committee is satisfied that the property factor has, in the Written Statement of Services, procedures which satisfy the requirements of Sections 6.1 and 6.2 of the Code. The homeowner's complaint relates to his view that the property factor does not always follow the procedures, but the two instances which he gave to the Committee related to events which took place before the HOHP was set up, so lay outwith the Committee's jurisdiction. **Accordingly, the Committee did not uphold the complaint made under Sections 6.1 and 6.2 of the Code.**
25. The Committee had been told by the property factor that the tendering process they undertook is across all of the estates which they managed. This achieved considerable economies of scale, but it meant that it was not possible to break down contract costs estate by estate. The Committee had heard the concern expressed by

26. the homeowner to know how much of the contractors' total costs could be attributed to Little Earnock Estate, so that this could be checked against invoices, but was of the view that this was a further instance of micro-management of a service that the homeowners had delegated to the property factor. If, as the property factor had stated, it achieved considerable economies of scale, that operated for the benefit of all of the homeowners on the estate. **Accordingly, the Committee did not uphold the complaint made under Section 6.3 of the Code.**
27. The Committee was satisfied from the evidence given by the property factor, by Ms Owens and by Mr Hardie that concerns about the factoring service and repair and maintenance works had been raised and that, following the meetings of November and December 2014, the property factor had acted to ensure that concerns were addressed. The Committee was also satisfied that adequate supervisory systems were in place, with the regular meetings between Mr McGhee and Mr Hardie and with Mr Hardie's twice-monthly on-site inspections. **Accordingly, the Committee did not uphold the complaint made under Section 6.9 of the Code.**
28. The Committee held that the property factor has in place a clear complaints resolution procedure which covers both complaints about the property factor's services and complaints about others working on behalf of the property factor. **Accordingly, the Committee did not uphold the complaint made under Section 7.1 of the Code.**
29. The homeowner had also complained that there had been a failure to carry out the property factor's duties. In the application, the homeowner cited a failure to repair dangerous uneven cobble stones, which had resulted in injury to a resident. The Committee was unable to consider this particular incident, as it occurred prior to the setting up of the HOHP. At the hearing, the homeowner had made reference to a lack of supervision of the contractors employed by the property factor, but, as stated in numbered paragraph 22 above, the Committee was satisfied that adequate supervisory systems were in place. **Accordingly, the Committee did not uphold the complaint made that there had been a failure to carry out the property factor's duties.**

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

The Committee does not propose to make a Property Factor Enforcement Order.

Appeals

The parties' attention is drawn to the terms of section 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 ... "

George Clark

Chairperson Signature ... . Date 29 January 2016