



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

HOHP reference: HOHP/PF/13/0331

Re: ('the property') Application to Homeowner Housing Panel ("HOHP") in respect of: 17 Eden Bank, Arbroath Road, Dundee, DD4 6EN.

The Parties:

('the homeowner') Mr Fraser Smith, 17 Eden Bank, Arbroath Road, Dundee, DD4 6EN

('the factor') H & H Properties, 71 Blackness Road, Dundee, DD1 5PD

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:

(Chairperson) Simone Sweeney

(Housing member) Mike Scott

Decision of the committee

Decision

1. The committee determine that the factors have failed to comply with the Code of Conduct for property factors ("the code") in terms of section 17(1) (b) of the Property Factors (Scotland) Act 2011 ("the Act") as required by section 14(5) of the Act and have failed to comply with the property factors' duties as defined by sections 17 (4) and 17 (5) of the Act.

Background

2. By an application dated 17th December 2013 the homeowner applied to the HOHP to determine whether the factors had failed to comply with the duties imposed upon them by section 14 (5) of the Act.

3. The application alleged failings on the part of the factors to comply with the code, in particular, sections 1; 2.2, 2.3, 2.4, 2.5; 3.3; 4.4, 4.6, 4.7; 5, 6, 7.1 and 7.2.
4. Further, the application alleged failings on the part of the factors to comply with the property factor's duties as defined in section 17(5) of the Act. The allegations were:
 - (i) that the factors failed to communicate with the homeowner;
 - (ii) that there was no structure or service provided by the factors;
 - (iii) that accounts had not been provided despite requests and;
 - (iv) that repairs were not completed timeously.
5. By notice of referral dated, 29th April 2014, the President of the HOHP referred the application to a committee following her consideration of the application in terms of section 18(1) of the Act.
6. In response to the application, the factors submitted written representations to the application, dated 7th May 2014.
7. A hearing was assigned to take place on Thursday 14th August 2014 at 9.30am at the Queen's Hotel, Dundee. In attendance at the hearing were the homeowner and his witness, Mr Alan Dirom. Representing the factors were, Mr George Godsman, Financial Consultant and Ms Alison McKelvie, Factoring Co-ordinator.

Submissions at hearing

8. The committee heard submissions from the homeowner and his witness, Mr Dirom and then from Mr Godsman and Ms McKelvie for the factors. In addition, the committee had before it, the homeowner's application and copy letters and emails which he had sent to the factors and to the HOHP together with the factors' written representations, their written statement of service and a copy of the title deeds of the property being land certificate ANG55252.

Submissions of the homeowner

9. The committee chair referred the parties to the details of the homeowner's complaint as set out at section 7 of his application of 17th December 2013. The chair proposed that the homeowner go through each section of the complaint and provide detail as to the basis of the complaint. The chair proposed to deal with the complaints brought under the code set out by the homeowner at section 7 A of his

application and then hear from him on his allegations of a failure to meet the factors' duties set out at section 7 B of the application form.

10. Section 1 of the code of conduct related to written statement of services. The homeowner advised the committee that, at the date of completing the application of 17th December 2013, he was without anything in writing from the factors which provided him with any indication of the services which they offered. He had taken ownership of his property in 2010 and since this time, the homeowner submitted that he had requested information about services from the factors on several occasions by telephone. The dates were not specified. The homeowner had received the written statement of services from the factors in February 2014. The factors had registered with the Scottish Government in November 2012.
11. The chair referred to the letter which the homeowner had submitted, dated 20th February 2014. The letter was addressed to the factors and had attached to it a document bearing the title, "*Terms and Conditions for the provision of a factoring service.*" The homeowner accepted that this document was a written statement of the services which his factors undertook to deliver. The homeowner accepted that he had received this document from the factors in February 2014, after he had submitted his application to the HOHP. The homeowner conceded that receipt of this document addressed this part of his complaint.
12. Section 2 of the code was alleged to have been breached by the factors, specifically sections 2.2, 2.3, 2.4 and 2.5. Section 2.2 of the code states that factors,
"must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)."
13. The homeowner relayed to the committee his experiences of dealing directly with the factors' Managing Director, Mr Al-Saffar. The homeowner alleged that he had found Mr Al-Saffar to conduct himself in an aggressive manner. He had been rude and abusive when the homeowner had made requests of the factors in the past. He alleged that Mr Al-Saffar would rant and made it clear to the homeowner that he was the sole decision maker within the factors. The homeowner advised that this had made it difficult to progress any issues with the factors as Mr Al-Saffar was often out of the country for months at a

time. Initially the homeowner had made contact with his factors by telephone. Due to a lack of response, the homeowner had then began to submit his complaints in writing. Mr Al-Saffar had complained to the homeowner that the written communications were taking up too much of his time.

14. Section 2.3 of the code requires factors to:
15. *“provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out-of-hours emergencies including how to contact out-of- hours contractors.”*
16. The homeowner advised that, until he had submitted his application to the HOHP, he had only one telephone number for the factors. This was for business hours only. At no point has he ever been provided with any contact details or alternative telephone numbers for out-of-hours emergencies or contractors.
17. Section 2.4 of the code provides that factors:
18. *“must have a procedure to consult with the group 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. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or act without seeking further approval in certain situations (such as in emergencies).”*
19. The homeowner advised the committee that he had received nothing from the factors in this regard. He had no knowledge of whether or not the factors even had such a procedure in place and if they did he alleged that he had never received intimation of this procedure. The homeowner cited an example of emergency works being required during the winter of 2010. Snow had built up causing an obstacle to residents being able to move their vehicles from the car parks of the development. The snow had been cleared by contractors. The homeowner had assumed that the works had been undertaken by the local authority which had surprised him as the road was not adopted by the local authority at that time. However it had become apparent to him that the works had been instructed by the factors. He understood that the intention of the factors is to charge the residents for the snow clearing works.

20. Section 2.5 of the code sets out that the factors:
“must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement”.
21. The homeowner advised that the history had been a failure on the part of the factors to respond at all or excessive delay in communicating with him. No timescales were ever provided. The homeowner referred to the factors having in place a, “new regime,” since early 2014. This was the introduction of Ms McKelvie to the factors’ personnel. Whilst the homeowner conceded that he had refrained from much communication at all with his factors in recent months, he did acknowledge that greater communication within more acceptable periods of time had been brought about by Ms McKelvie’s involvement. This position was shared by Mr Dirom who described Ms McKelvie as a, “breath of fresh air.” The homeowner accepted that he now had a clear idea of the factors’ response times from the written statement of services intimated to him in February 2014.
22. The next section of the code which the homeowner claimed the factors to have breached was section 3.3. This section of the code places a duty on factors:
“to provide, to homeowners, in writing at least once a year...a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying.”
23. The homeowner submitted that he had made requests of his factors for copy financial accounts at various intervals since assuming ownership of his property in 2010. In 2010 his factors had responded with the accounts for 2009. Nothing further had been forthcoming until March 2014, despite requests. On 31st March 2014, the factors had intimated to the homeowner, the accounts for the years, 2010, 2011 and 2012. The homeowner submitted that he believed that the factors had only produced further financial information due to him having submitted his application to the HOHP. On this date, he had been advised that the accounts for 2013 would be provided to him in due course, but these had not yet been forthcoming. The homeowner confirmed that his

requests had been made by telephone. It was the homeowner's position that he had no specification of the charges he was being expected to meet.

24. Turning to section 4 of the code, the homeowner alleged breaches of sections 4.4, 4.6 and 4.7 of the code by the factors.

25. Section 4.4 requires factors to:

26. *"provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations."*

27. It was the homeowner's position that he knew nothing of the property factors' procedures to address such situations.

28. Section 4.6 places a duty on factors to:

29. *"keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them."*

30. Again, the homeowner submitted that he had received no information in this regard. His position was that, at the time he purchased his property, he required to pay a fee to the property factors. Since taking ownership he had paid a monthly fee by direct debit to the property factors. No payments had been missed. He was unclear why this procedure was not reciprocated by all other owners in the development. Should all other owners meet their monthly obligations as he did, then the homeowner could see no reason for a need for a debt recovery process.

31. Section 4.7 requires factors to:

"demonstrate that you have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of costs prior to charging those remaining homeowners if they are jointly liable for costs."

32. The homeowner claimed to be unaware of such a process being in place. The chair put to the homeowner the position of the factors to this point as set out in their written representations. Within the written submission of 7th May 2014, the factors had stated,
"it is freely admitted that there are issues surrounding non payment by some homeowners. These are being addressed and we are confident all monies will be collected or legal action commenced if necessary."

33. The homeowner accepted that section 4.7 requires factors to demonstrate the process which they have in place.
34. Section 5 of the code deals with the issue of insurance. The homeowner alleged that the factors had failed to provide him with any evidence that there was any insurance in place at all, notwithstanding the payments he made at regular intervals towards it. The homeowner accepted that in March 2014 the factors had intimated to him details of the insurance policy. The homeowner advised that the document was incomplete and failed to provide sufficient information. The factors' factoring co-ordinator, Ms McKelvie, offered access to the document to the homeowner either by him attending the factors' offices to view the document or to receive the document by electronic means. The homeowner accepted the latter of the two offers.
35. Section 6 of the code addresses the factor's obligations to carrying out repairs and maintenance. The homeowner alleged breaches of all parts of section 6 on the part of the factors. The chair went through each part of section 6. The homeowner alleged that the factors had failed to satisfy any part of section 6 of the code. He cited the example of a problem with the security entrance door to the property. The homeowner submitted that he had reported a problem with the security door not closing properly in 2012. He explained that the problem was with the seal. It was broken and meant that the main entrance door to the property failed to close securely. The homeowner submitted that the factors had failed to properly repair the defect although he conceded that a joiner had attended to inspect the defect. The homeowner confirmed that the problem still existed. This was confirmed by Mr Dirom who advised the committee that he had attempted to undertake repairs himself to make the entrance door safe. The homeowner submitted that he had experienced "vagrants" entering the communal close which could have been avoided had the factors met their obligation to carry out repairs. When asked by the chair when he had last reported the issue, the homeowner confirmed that he had not made any complaint to the factors since 2012.
36. The final part of the homeowner's complaint that the factors had failed to satisfy the code was in respect of section 7, specifically sections 7.1 and 7.2.
37. Section 7.1 states that factors:

“must have a clear written complaints resolution procedure which sets out a series of steps, within reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.”

38. The homeowner advised the committee that, until receipt of the written statement of services in February 2014, he had had no knowledge of the factors’ complaints procedure. In fact he was unaware that the factors had such a procedure and had never requested a copy as he had been unaware that he was even entitled to same.
39. Section 7.2 places the following obligation on factors:
40. *“When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.”*
41. The homeowner advised the committee that this was the first flat he had ever owned. He had no prior knowledge of what was expected of factors. He had no prior knowledge of how he should progress a complaint against the factors. He submitted that the factors had provided the homeowner with no information about the HOHP. His awareness of the existence of the HOHP had come from the homeowner’s local Citizens’ Advice Bureau and Dundee City Council.
42. When asked what he hoped to achieve from the hearing, the homeowner answered that he was looking for honesty from his factors. He wanted greater transparency around the financial position and to know who is paying what to whom. He claimed that this information is wanted by other homeowners who genuinely care about their properties. The homeowner advised that he had been taken aback and insulted by the conduct of Mr Al-Saffar who has behaved aggressively towards him outside his property when he was with his young grandson. The homeowner had hoped for an apology from the factors.

Submissions of Homeowner's witness, Alan Dirom

43. Mr Dirom was invited to advise the committee of his experiences of the homeowner's complaint. He began by advising that he hoped for openness and honesty by the factors today. He felt that there was a big gap between the homeowners and the factors.
44. Mr Dirom confirmed that he had received copy financial accounts for the first time in March 2014. He felt that they could have been better prepared. Amongst the charges which Mr Dirom was expected to meet were repairs for snagging issues which were being addressed separately through NHBC and for snow clearing from 2012 which had occurred on dates prior to him taking ownership at the development. Mr Dirom advised that he too was concerned about decision making within the factors' business and had no knowledge of any of the procedures they had in place to address many of the issues which the homeowner had already claimed to be a breach of the code. His experience was that there was no structure in place for any homeowner to have a say in what is done at the development.

Submissions of the property factors

Mr Godsman and Ms McKelvie

45. Mr Godsman confirmed to the committee that he was the financial consultant of the business. He opened by conceding that the factors had fallen down by failing to provide accounts to homeowners and failing to meet various other obligations on the factors. His position was that the failures were a direct result of personnel issues. The person who had been employed previously had worked part time hours only and Mr Godsman described her as having been unable to cope. The committee chair went through each section of the homeowner's complaint with Mr Godsman.
46. In relation to the alleged breach of section 2.2 of the code of conduct, Mr Godsman described Mr Al-Saffar as having a tendency to become, "excitable." The property factors' position was that relations between the parties had broken down over the years.

47. In respect of section 2.3, the factors argued that at the time of completion, each property had received a 'handover pack.' This contained a list of relevant information including out of hours telephone numbers. As it was the homeowner's position that he didn't have such a pack, Ms McKelvie identified herself as the property factors' factoring co-ordinator. She provided an undertaking to the committee that she would make sure that a copy was made available for him.
48. With regard to section 2.4, Mr Godsman accepted that the factors did not have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charge or fees in addition to those relating to the core service. Mr Godsman referred to the fact that the development in question contained new build properties where most emergencies were small. Mr Godsman cited the example of the snow clearing. He alleged that the factors had received a number of calls at the time from residents requesting that the snow be cleared to enable access to be gained in and out of the development. It would not have been possible to have put that sort of emergency work out to tender. Ms McKelvie and Mr Godsman accepted that having a procedure to consult with homeowners and seek written approval before providing work or services which could incur fees was a requirement on the factors in terms of the code and, as a result, something which the factors would now look to put in place.
49. In response to the part of the complaint concerning section 2.5, any failure on the part of the factors to respond to enquiries and complaints from the homeowner timeously was the result of personnel issues. Mr Godsman did not dispute that there had been a failure on the part of the factors to satisfy the terms of section 2.5 of the code.
50. Turning to section 3.3 of the code, Mr Godsman conceded that, previously, the factors had fallen down on the obligation to provide homeowners with a detailed financial breakdown. The factors had issued accounts in March 2014 and arranged a meeting with homeowners at the same time. Mr Godsman submitted that he was currently working towards issuing the homeowners with the accounts for 2013/14. He referred to the fact that section 3.3 places a duty on the factors to issue the information, "at least once a year." Being only 4 months after year end, he did not consider that the accounts not having yet been issued to be a valid complaint.

51. Turning to the allegation that the factors had failed to meet their obligations in terms of section 4.4, Mr Godsman denied any failure on the part of the factors. His position was that homeowners have a clear statement of how service delivery and charges will be affected if a homeowner fails to fulfil his obligations from the deed of conditions. Mr Godsman submitted that it is for the homeowner to check this himself from his deed of conditions. It is not for the factors to issue a separate statement on how they intend to recover debt.
52. Where section 4.6 is concerned, Mr Godsman advised that the factors have a list of which homeowners owed money to the factors. This was confirmed by Ms McKelvie who advised that it was herself who had compiled the list. To date the factors have not attempted to recover payment from other homeowners for those who have failed to pay their share. She advised the committee that this is not the company's policy. Neither Mr Godsman nor Ms McKelvie could foresee there being any issue for the factors in recovering debt.
53. As for the suggestion that the factors had failed to demonstrate that they had taken steps to recover unpaid charges from any homeowner who has not paid their share of costs, Mr Godsman and Ms McKelvie confirmed that this was currently, "in hand."
54. When asked of their response to the allegation that the factors had failed to meet the duties on them in respect of all parts of section 5 dealing with insurance, Ms McKelvie explained that the factors have a block insurance policy in place. Ms McKelvie advised that she had already issued the homeowner with documentation about what the insurance policy is and what it covers but was happy to issue to the homeowner the entire document electronically.
55. Turning to section 6 of the code, the duty to carry out repairs and maintenance, it was the position of the property factors that as it is a new build development which is the subject of complaint, any repairs required so far have been minor. In any event the necessity to notify repairs and maintenance at section 6.2 is contained within the written

statement of services and in light of the previous comments around emergency arrangements, the factors provided an undertaking that they would address this to ensure that they complied with the duty.

56. With regards to the allegations that the factors had failed in their duties under section 7 of the code, Mr Godsman accepted that the homeowner had not been made aware of HOHP through the factors. Nor would he have been aware of the factors' complaints procedure until the factors had issued their written statement of services this year. Mr Godsman submitted that the service which the factors had provided to homeowners in the past had been, "far from perfect." Mr Godsman submitted that he accepted that there had been a failure on the part of the factors to comply with the Act and had only made efforts to address this and meet their obligations with the appointment of Ms McKelvie in early 2014. It was accepted by the factors that communication had been poor. It was explained that there had been a delay in having all the properties within the development sold. Until they sold, a number of them were rented to tenants. The factors accepted that they had received complaints from the homeowner about anti-social behaviour by the tenants and had been aware of a problem of anti-social behaviour in and around the development. However, Mr Godsman submitted that any anti-social behaviour was not a matter for the factors. Notwithstanding this the factors had communicated the concerns over the anti-social conduct to a Mr Dal Chima who is the property manager appointed to manage the 12 properties at the development rented to tenants.
57. Mr Godsman accepted that the Act had come into effect on 1st October 2012. He confirmed that the property factors had registered with the Scottish Ministers, in terms of the Act, on 12th November 2012. He accepted the terms of Section 14 (5) which states that,
- a. *"A registered property factor must ensure compliance with the property factor code of conduct for the time being in force."*
58. Mr Godsman accepted that the property factors were bound to comply with the requirements of the code from 12th November 2012. Mr Godsman submitted that whilst the property factors had been aware of the Act, they had "not really looked into it" until 2014 when the homeowner had submitted his application to the HOHP.

Issues to be determined

59. It was the committee's view that it required to decide whether or not there had been a failure on the part of the property factors to comply with the specified sections of the code and whether or not there had been a failure on the part of the property factors to carry out its duties as required by section 17(5) of the Act.

Findings in fact

60. The committee makes the following findings in fact:-
61. That the homeowner is the heritable proprietor of the property at 17 Eden Bank, Arbroath Road, Dundee, DD4 6EN which bears the title, ANG55252, having taken ownership of the property on 31st December 2009.
62. That the title identifies the factors as having responsibility for arranging and administering repair and maintenance of the common parts of the property.
63. That the factors registered with the Scottish Ministers on 12th November 2012 and that the factors were bound by the obligations incumbent upon them by the Act from that date including the requirement of section 14(5) to comply with the code of conduct.
64. That section 1 of the code of conduct requires the factors to provide a written statement within 1 year of initial registration as a factor to existing homeowners and that the factors must supply the written statement before that time if requested to do so by the homeowner.
65. That the factors failed to provide the homeowner with a written statement of services to the homeowner until March 2014 and therefore have failed in their duty to comply with section 1 of the code.

66. That no evidence was led by the property factors to contradict the submissions of the homeowner that the Managing Director, Mr Al-Saffar, had been aggressive towards the homeowner and in the absence of same, the committee accept the evidence of the homeowner and find the conduct to amount to a failure on the part of the factors to comply with section 2.2 of the code.
67. That since the date of registration, the homeowner had made positive contact with the factors by letter, email and telephone but that response times had been slow by the factors to emails and letters.
68. That within the written statement of services, the factors undertake to deal with out-of-hours emergencies but, until the written statement of services was issued in March 2014, the factors failed to satisfy section 2.3 of the code of conduct by providing details of arrangements for dealing with out-of-hours emergencies including how to contact out-of-hours contractors.
69. That the first meeting between the factors and homeowners did not take place until April 2014 notwithstanding the requirement of section 2.5 of the code for factors to have in place a procedure to consult with homeowners.
70. That the factors accepted that they had failed to meet the requirements of section 3.3 of the code until March 2014 at which time they had provided copy accounts to the homeowner.
71. That the factors had failed to provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfill their obligations in terms of section 4.4.
72. That the factors did not consider it necessary to issue a statement of how service delivery and charges will be affected if one or more homeowner does not fulfill their obligations in terms of section 4.4 of the code.
73. That there was no evidence that the factors had kept the homeowners informed of any debt recovery problems of other homeowners which could have implications for them as required by section 4.6 of the code.

74. That there was no evidence led to demonstrate that the factors had taken reasonable steps to recover unpaid charges from any homeowner who had not paid their share of costs prior to charging those remaining homeowners, as required by section 4.7 of the code.
75. That the factors had failed to provide the homeowner with any information of the insurance policy in place until March 2014, despite requests received from the homeowner.
76. That the factors accepted that they had failed to comply with section 5 of the Act until March 2014.
77. That no faults or requests for any repairs to the entrance door had been reported by the homeowner to the factors since 2012.
78. That upon receipt of the repair request the factors had confirmed that they would send a joiner to repair the door.
79. That evidence was led by the homeowner and his witness, Mr Dirom, that the seal to the entrance door remained defective and repair was required.
80. That the factors had failed in their duties by not completing repairs effectively and timeously.
81. That no major repairs or works have been required to be carried out at the Eden Bank development since the development was completed
82. Until the written statement of services was issued in February 2014, the factors had no procedure to allow homeowners to notify them of matters requiring repair or maintenance as required by section 6 of the code.
83. That it was a matter of agreement that the homeowner had made payments to the factors for factoring services on a monthly basis by way of direct debit and that these payments were made between November 2012 and February 2014.
84. That Schedule 2, part 2 of the factors written statement of services sets out the allocation of costs to homeowners.
85. That the homeowner's monthly charge for factoring services is £45.

86. That the factors had no written complaints resolution procedure in place until February 2014.
87. The factors had not made the homeowner aware that he could take matters to the HOHP if dissatisfied with the outcome of any complaint.

Reasons for decision

Code of Conduct

88. Section 1. In respect of the complaint that the factors had failed to comply with Section 1 of the code, the committee found that the factors had not provided the homeowner with a written statement of services until February 2014. The code requires the factors to provide the written statement

“to existing homeowners within one year of initial registration as a property factor. However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within four weeks of the request).”

89. The committee accepted the evidence of the homeowner that he had requested a written statement of services from the factors on different occasions since taking ownership of his property in 2010. The requests had been made on the telephone. No dates were specified. The homeowner had received the written statement of services from the factors in February 2014. The factors had registered with the Scottish Government in November 2012. This evidence was not disputed by the factors' representatives.
90. Section 2. In respect of the complaints around the section 2 duties, the committee found that the property factors had failed to comply with sections 2.2, 2.3, 2.4 and 2.5 of the code.
91. Section 2.2. The homeowner provided an account of aggressive and abusive conduct on the part of the property factors managing director, Mr Al -Saffar during face to face communications with him. Amongst the papers before the committee was a letter from the homeowner to the HOHP dated 27th February 2014. The property factors had been provided with a copy of the letter by the HOHP in advance of the

hearing. The letter set out details of an encounter which the homeowner had had with Mr Al –Saffar approximately 2 years earlier during which the homeowner alleged that Mr Al-Saffar had shouted at him in the parking area before his property. The homeowner was in the company of his young grandson at the time. The homeowner gave evidence of the event during the hearing. In response, the factors' representative, Mr Godsman, had advised that the relationship between the homeowner and Mr Al-Saffar had broken down and described Mr Al-Saffar as becoming, "excitable" at times.

92. The homeowner had also submitted in evidence and within that letter that he had requested meetings with Mr Al-Saffar but the requests had gone unanswered. Mr Godsman confirmed that the first formal meeting between the factors and homeowners had not taken place until April 2014.
93. For these reasons the committee found a failure on the part of the factors to comply with section 2.2 of the code.
94. Section 2.3. The committee accepted the evidence of both parties that the homeowner was without any information as to how to deal with out of hours emergencies. The homeowner advised that he had only one telephone number for the factors' offices. Mr Godsman had referred to all properties having a 'handover pack' which contained such relevant information. The committee did not dispute that this may have been the factors' understanding. However the committee accepted the evidence of the homeowner that he did not possess such a pack. The committee accepted the evidence of both the homeowner and Mr Dirom that they were unaware of an emergency telephone number existing. Therefore the committee considered the factors to have failed in their duty to comply with section 2.3.
95. Section 2.4. The factors' representatives both confirmed, in evidence, that they had no procedure in place to consult with homeowners to seek their written approval before providing work or services which will incur charges or fees. Ms McKelvie confirmed that the factors would look into this as she accepted it was a requirement under the code. On the basis of their admission of a failure to comply, the factors have not complied with section 2.4 of the code.
96. Section 2.5. Mr Godsman accepted in his evidence that the factors had failed to respond to the homeowner's enquiries and complaints within prompt timescales. In mitigation he put this down to personnel issues. Response times were now within the written statement which had been

provided to the homeowner in March 2014. The committee found that the factors had failed to comply with section 2.5.

97. Section 3.3. The factors had provided the homeowner with financial accounts in March 2014 but Mr Godsman submitted that they had “fallen down” on that previously. Therefore the committee found the factors to have failed in their duty to comply with section 3.3.
98. Section 4. It was not disputed by the factors that the homeowner had made monthly payments for factoring services since taking up ownership of his property. The committee had before it the factors written statement of services provided to the homeowner in February 2014. Schedule 2, part 2 of that document sets out the allocation of costs to homeowners. The committee noted that the homeowner’s monthly charge for factoring services is £45.
99. Section 4.4. Mr Godsman submitted that the homeowner’s deed of conditions sets out how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations. Mr Godsman submitted that it was the responsibility of the homeowner to familiarise himself with the deeds to make himself aware of this. Mr Godsman confirmed that the factors have no separate statement to explain their procedure. The committee takes the view that section 4.4 requires the factors to provide the homeowners with a separate clear statement and simply referring the homeowner to the deed of conditions is not enough. The committee found that the factors had not complied with section 4.4 of the code.
100. Section 5. The complaint alleged the factors to have failed with all parts of section 5. The committee accepted the homeowner’s evidence that his payments to his factors had included a charge for insurance but until March 2014 he had received no information about what his insurance covered. This was accepted by the factors. Ms McKelvie confirmed that in March 2014 she had provided the homeowner with a document explaining what the block policy covered. The committee also found that there was information about insurance and the responsibilities of the factors within the written statement of services but this had not been issued until March 2014. Ms McKelvie undertook to provide the homeowner with more detailed information. There being no dispute by the factors to this part of the complaint and no evidence provided within the papers before the committee nor in the evidence of their representatives, the committee found the factors to have failed in their duty to comply with section 5 of the code.

101. Section 6. The factors accepted in evidence that they had not put in place procedures to allow homeowners to notify them of matters requiring repair or maintenance (section 6.1) or providing a program of works (section 6.4) or emergency arrangements (section 6.2) prior to issuing their written statement of services in March 2014. Mr Dirom had provided evidence that due to a failure of the factors to respond to a complaint around the main security door, he had attempted to carry out a repair himself. The committee had before it the evidence that there was no procedure for dealing with emergency repairs.
102. The committee accepted that there had been no major works undertaken so far at the development in which the property is located. For this reason, the committee was not in a position to consider whether or not the factors had complied with sections 6.3 and 6.6 as these relate to competitive tendering. No tendering process for works had been undertaken at the development so far. Neither could the committee consider section 6.8 as no evidence was provided by either party of a contractor or supplier having been pursued by reason of a failure to remedy defects from inadequate service. The committee found that there had been a failure on the part of the factors to comply with sections 6.1, 6.2 and 6.4 although these matters had now been addressed within the written statement of services.
103. Section 7. Mr Godsman conceded that the factors had not made the homeowner aware of the HOHP nor how to take a complaint forward until the written statement of services was issued to him in March 2014. The committee found that the written statement of services contained a section on the property factors' complaints procedure and that a homeowner could take matters to the HOHP if dissatisfied with the outcome of the complaint. On the basis of the evidence of the homeowner and Mr Godsman, the committee found that the factors had failed to comply with section 7 of the code in light of the absence of a clear written complaints resolution procedure.

Factor's duties

104. The second part of the homeowner's application alleged that the factors had failed in their property factors' duties. It was the view of the committee that the specific complaints had been covered by the allegations that the factors had breached the various parts of the code

which have been addressed, above. However for the sake of completeness, the committee make the following findings:

105. On the basis of the evidence of the homeowner that he had requested meetings with the factors and these requests had never been met together with the evidence of Mr Godsman that the first time the factors had arranged a meeting with the homeowners was in April 2014, the committee is satisfied that the factors failed in their duties to communicate with the homeowner.
106. The committee accepted the evidence of the homeowner and witness, Mr Dirom, that they were not in receipt of any detail of the structure of service provided by the factors until the written statement of service was issued in March 2014 and this was not disputed by the factors' representatives. The committee found the factors to have failed in their duties in this regard.
107. The committee accepted the evidence of the homeowner that he had requested copies of the factors' financial accounts. This was not disputed by the factors' representatives. Having issued only one set of accounts since the date of registration in November 2012 and March 2014, the factors had failed in their duties to the homeowner.
108. The committee accepted the evidence of the homeowner and Mr Dirom that a complaint had been recorded with the factors of a repair being required at the main security door. The committee had before it emails from the homeowner to the factors dated, 8th and 29th March 2013. The email of 8th March 2013 reported the seal of the external security door having come away. The report was received by the factors who responded on the same date stating, "*I will ask that our joiner attend to this next week.*" The homeowner had sought further advice about what action the factors intended to take in his further email of 29th March 2013. The evidence of the homeowner and Mr Dirom was that the seal of the door remained unfixed and that Mr Dirom had attempted repairs himself. The committee is satisfied that the factors have failed in their duty to carry out repairs timeously.

Property Factor Enforcement Order (PFEO)

The committee proposes the following): Property Factor Enforcement Order (PFEO)

109. Within 28 days of service of the PFEO, the property factors must:
110. Issue a written apology to the homeowner for their failure to comply with sections 1, 2.2, 2.3, 2.4, 2.5, 3.3, 4.4, 4.6, 4.7 5, 6.1, 6.2, 6.4, 7.1 and 7.2 of the code of conduct and for their failure to meet the property factors duties as required by the Act.
111. Make a payment to the homeowner of £576 in recognition of the inconvenience which the homeowner has experienced and by way of compensation for a failure to provide an adequate service between November 2012 and March 2014. The homeowner paid £45 per month to the factors to manage and maintain the development. On the basis of the evidence before them the committee was satisfied that the factors had failed to provide full factoring services between date on which they became registered with the Scottish Ministers in November 2012 and February 2014 when the factors provided the homeowner with a written statement of the services they provided. The committee is of the view that the homeowner should be reimbursed for 80% of the sums which he has paid.
112. Provide to the homeowner details of current arrangements for dealing with out of hours emergencies including how to contact out of hours contractors.
113. Provide to the homeowner a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations.
114. Section 19 of the Act provides as follows:

*“(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so-
give notice of the proposal to the property factor, and
allow the parties an opportunity to make representations to them.
(3) If the committee is satisfied, after taking account of any representations made under subsection 2(b) that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.”*
115. The service of this decision to the parties should be taken as notice for the purposes of section 19(2) (a) and the parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2) (b) reach the HOHP’s offices no later than 14 days after the date of service of this decision upon them.

If no representations are received within that timescale, then the committee may proceed to make a property factor enforcement order without seeking further representations from the parties.

116. Failure to comply with a PFEO may have serious consequences and constitute a criminal offence.

Right of Appeal

117. The parties' attention is drawn to section 21 of the Act which sets out parties' right of appeal against this decision and the time periods for doing so. It provides that,
- "(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 day on which the decision appealed against is made."

Simone Sweeney

Chairperson Signatur

Date...05/09/2014...