



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 ref: HOHP/PF/16/0024

Re: 4/13 Stewart Terrace, Edinburgh, EH11 1UY (the property)

The Parties:

Mr Craig Reid, residing at the property (the homeowner)

James Gibb Residential Factors, 4 Atholl Place, Edinburgh, EH3 8HT (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: Sarah O'Neill (Chairperson), Ann MacDonald (Housing member)

Decision of the committee

The committee determines that the property factor has not failed to comply with its duties under section 14 of the Act in respect of section 2.4 of the code of conduct for property factors.

The committee also determines that the property factor has not failed to carry out its property factor's duties as defined in section 17 (5) of the Act.

The committee does, however, make a number of observations at the end of this decision about areas where it considers there is room for improvement in the wording of the property factor's written statement of services, its communication with homeowners and its processes.

The committee's decision is unanimous.

Background

1. By application received on 1 March 2016, the homeowner applied to the Homeowner Housing Panel ('the panel') to determine whether the property factor had failed to comply with its duties under the Act. In his application form, the homeowner complained that the factor had failed to comply with its duties under section 14 of the Act in respect of section 2.4 (communication and consultation) of the code of conduct for property factors ('the code'). He

also complained that the factor had failed to carry out the property factor's duties as defined in section 17(5) of the Act.

2. He enclosed with his application form copies of the following:
 - A copy of the property factor's written statement of services (WSS) (Issue 3, dated August 2015), together with development schedule relating to the property (Issue no. 1, August 2015)
 - A copy of his letter to the property factor dated 3 February 2016 notifying it of his complaints.
 - Copies of email correspondence between the property factor and himself dated: 5, 7, 12, 14,15 and 16 December 2015; 17 and 31 January 2016, and 1 February 2016.
 - Copy letter to the homeowner from the property factor dated 12 January 2016 regarding his complaints.
 - Copy invoice from the property factor dated 30 November 2015.
 - Some photographs of the exterior of the property.
3. On 26 March 2016, an email was received from the homeowner, attaching further email correspondence between the property factor and himself dated 29 February; 12, 15,19, 23, 24 and 26 March 2016. In this email, he stated that he would like to add this further information to his application.
4. On 28 April 2016, the President of the Panel issued a minute of decision to both parties, stating that she considered that in terms of section 18(3) of the Act there was no longer a reasonable prospect of the dispute being resolved at a later date; that she had considered the application paperwork submitted by the homeowner, comprising documents received in the period of 1 March to 26 March 2016; and intimating her decision to refer the application to a panel committee for determination. On 13 May 2016, the President issued a notice of referral to both parties, advising that a hearing would be held on 30 June 2016, and requesting written representations by 3 June 2016.
5. No written representations were received from either party. On 8 June, the committee issued a direction to the parties, which notified the parties that, at the hearing, the committee intended to consider 1) the complaints set out in the homeowner's application form and 2) the complaints set out in his email of 26 March 2016, which the committee considered related to the same section of the code and the same property factor's duties, but regarded a related issue. The committee invited the parties to submit written representations regarding the issues the committee intended to consider.
6. The direction also required the property factor to provide confirmation as to:

- whether the level of its delegated authority to act (£20.00 excluding VAT), as set out in section 03 of the development schedule relating to the property which accompanies its WSS, applies to maintenance, as well as to repairs.
 - whether its core services include the maintenance of and planting of, common balconies and terraces within the development and where this is indicated in its WSS or the accompanying development schedule.
 - The process and/or criteria followed by the property factor in reaching a decision as to when it is 'appropriate' to arrange multiple quotations for works in accordance with section 2.7 of its WSS.
7. Finally, the direction required the homeowner to provide to the committee a copy of the title deed for the property. Responses to the direction were received from the property factor on 17 June 2016 and from the homeowner on 20 June 2016.
8. A further email was received from the homeowner on 22 June, attaching copies of a letter and recent invoice from the property factor dated 30 May, and email correspondence with the property factor dated 4, 12 and 19 June relating to this. In the email, the homeowner indicated that he wished to add a further complaint about this matter to his application.

The hearing

9. A hearing took place before the committee on 30 June 2016 at George House, 124 George Street, Edinburgh EH2 4HH. The homeowner represented himself and gave evidence on his own behalf. The property factor was represented by Ms Jeni Bole, Operations Manager and Mr Neil Main, Senior Property Manager, who gave evidence on its behalf. Neither party called any other witnesses to give evidence on their behalf.

Preliminary issues

10. The committee considered three preliminary issues at the start of the hearing, as set out below.

1. Whether the homeowner had followed the correct complaints process

11. The committee noted that in his response to its direction, Mr Main stated that the homeowner had not correctly followed through the property factor's complaints procedure with regard to his complaints. He said that, in the event that the homeowner was not satisfied with the complaint response letter dated 12 January 2016 from David McCallister, Senior Property Manager, there were two further internal levels and opportunities to carry out

further investigations into the matter, via Mr McCallister's line manager, Ms Bole, and the Director, Nic Mayall.

12. The committee noted that this point had not previously been raised by the property factor. It also noted that this did not tally with the complaints process set out at section 6.2 of the property factor's WSS. This states that a complaint should be made in writing to the relevant Property Manager, and that if it is not satisfactorily resolved by them, it will be passed to the Operations Director. If, after discussions with the Operations Director, the homeowner considers the complaint to be unresolved, the internal complaints procedure will be deemed to have been exhausted, and at that stage the homeowner may make an application to the panel.
13. In this case, the homeowner's initial complaint was made in writing to Mr Main. When he was not satisfied with the response, he asked Mr Main (in his email of 15 December 2015) for details of the Operations Director, stating that he wished to make a formal complaint. In response, Mr Main sent him a copy of the complaints procedure, and copied Mr Mayall, the Director (not the Operations Director) into his email. The homeowner replied, copying in Mr Mayall, thanking Mr Main for copying in the Operations Director, and requesting that Mr Mayall treated his email as an official complaint. Mr Mayall replied on 16 December, stating, 'in line with our complaints procedure, I have asked Neil's line manager (and our Senior Property Manager) to formally respond to your complaint'.
14. Mr McCallister wrote to the homeowner on 12 January responding to his complaint, and making no mention of any further stage of the process to be followed if he was unhappy with his response. The homeowner wrote to Mr McCallister on 31 January stating that he was not satisfied with the response to his complaint, and asking for details of the panel. Mr McCallister replied stating that it was not for the property factor to supply details of the panel. He finally sent these details after the homeowner had pointed to the requirements of section 7.2 of the code.
15. The committee therefore took the view that, given the provisions of the WSS, and the way in which the property factor had responded to his complaint, the homeowner was entitled to reach the conclusion that he had exhausted its complaints procedure before he made his application to the panel. Mr Main indicated that he did not wish to insist on this point, and was content for the committee to consider the homeowner's complaints.

2. The complaints about the balcony cleaning

16. The homeowner's two initial complaints, which had been dealt with through the property factor's complaints process, related to planting works on the common balcony/terrace area in front of the flats within the development and above the retail units below (referred to throughout this decision as 'the common balcony'). He later complained in a series of emails to Mr Main between 28 February and 26 March 2016 about similar issues in relation to work which had been carried out to clean the common balcony. He stated in his email of 26 March: *"Rather than a separate complaint, I will fold this into the current complaint I am pursuing with the home owners housing panel about the communication and process of the renovation of that area."*

17. The committee noted that this second complaint had been referred to it as part of the homeowner's application paperwork, which was defined in the President's minute of referral as including documents received up until 26 March 2016. It therefore stated in its direction that it considered that the homeowner's complaints in relation to the common balcony also related to an alleged failure to comply with section 2.4 of the code, and an alleged failure to carry out the property factor's duties in relation to sections 2.7 and 4.4.3 of the WSS. It invited the parties to submit written representations to the committee regarding the issues it intended to consider. Neither party submitted written representations on this issue. Both parties confirmed to the committee at the hearing that they were content for it to consider the complaints about the common balcony cleaning on this basis. The committee therefore proceeded to consider these complaints.

3. The issues raised in the homeowner's email of 22 June

18. In his email of 22 June, the homeowner had asked for the complaints raised by him in the attached correspondence to be added to his application. The committee noted that the complaints made raised new issues, namely an increase in cleaning costs; whether regular garden maintenance was being carried out; and the transparency of the bill received for balcony cleaning. None of these issues had been included in his original application. The committee therefore considered this to be a request by the homeowner to amend his application in terms of regulation 22 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012.

19. The committee noted the terms of regulation 22(1), which states that no application may be amended to refer to any failure by the property factor which is not referred to in the notification from the homeowner for the purpose of section 17(3) (a) of the Act. The committee determined that the homeowner had not referred to the new complaints in his original notification

letter, and that the property factor had not been given fair notice of these complaints. The committee therefore refused the homeowner consent to amend his application in terms of regulation 22 (2), and advised him that if he wished to pursue these complaints, he would need to make a new application to the panel. The homeowner indicated that he accepted this.

The homeowner's complaints

20. The homeowner's initial complaint related to an invoice dated 30 November 2015 which he had received from the property factor. There was an entry on this invoice for 'additional landscape maintenance - improvements on balcony area', for which he and other owners within the development had been billed at a total cost of £760 plus VAT, or £19.00 per homeowner. This was in respect of work to renew plants and gravel for the planters and balcony boxes on the common balcony.
21. The homeowner accepted that the areas had been in poor condition, and that they were much improved as a result of the works. He told the committee that he was not suggesting that the work did not need to be done, but that his complaints were about the transparency of the process for instructing the works, and whether the property factor had obtained value for money for homeowners. He thought that homeowners should have been consulted before the works were instructed, and felt that the cost of the works was very high for what had been done.
22. The homeowner's second, related complaint concerned cleaning works to the common balcony instructed by the property factor which had been carried out at a later date, at a cost of £7.50 per owner. Again, the homeowner was unhappy that these additional works had been instructed without consultation of homeowners and felt the cost represented poor value for money.
23. The homeowner made three specific complaints, in relation to both the planting works and the balcony cleaning, as set out below.

1. Code complaint

24. The homeowner complained that the property factor had failed to comply with section 2.4 of the code, which states:

'You 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 to act without seeking further approval in certain situations (such as in emergencies).'

25. The homeowner argued that both the planting and balcony cleaning works were additional to the routine maintenance works, and were not emergency repairs. He said that the property factor should therefore have consulted homeowners before the works were instructed, as required by section 2.4.
26. He made the comparison with works which were proposed in 2013 to redecorate the common stairwell in his block. In that instance, quotes had been sent to homeowners, who had been asked to vote on whether the works should go ahead. He had been told that no such consultation had been carried out regarding the planting and balcony cleaning works because the cost of these works was below the property factor's level of delegated authority for the development, which was £20 per property (excluding VAT).
27. He said that he did not accept this explanation for two reasons. Firstly, as the whole balcony area needed to be renovated, quotes should have been obtained for both the planting and cleaning works together, in order to obtain value for money rather than splitting these into two separate parts, each of which cost less than £20 plus VAT. Secondly, he did not accept that the works done were repairs or maintenance. He quoted the definition of maintenance from the Oxford online English dictionary as 'the process of preserving a condition or situation or the state of being preserved'. He argued that the work had in fact been 'renovation', which was defined in the same dictionary as 'restoring something to a good state of repair'.
28. When asked by the committee whether he thought the property factor had a consultation procedure in place as required by section 2.4, the homeowner said that he believed there was, as there had previously been a consultation for the stair redecoration works. He added that he thought it seemed to be a good process, but that it had not been followed here.

2. Duties complaints

29. The homeowner complained that the property factor had failed to comply with its duties under a) section 2.7 and b) section 4.4.3 of its WSS.
30. Section 2.7 of the WSS states: *'James Gibb residential factors will only use approved and authorised contractors for any repair work and will always endeavour to obtain the best possible value for its customers. Multiple quotations will be arranged, where appropriate, by James Gibb residential factors.'*

31. The homeowner said that the planting works had been done by the property factor's usual landscape maintenance contractor, and that he was unhappy about this. He did not feel that the contractor did a good job of the regular maintenance work, and said that he believed it was appropriate for the property factor to seek at least 2, or preferably 3, quotes for this work. He felt that the work done had not provided homeowners with value for money, given the level of cost involved. He also said he did not believe that the additional planting works should have been necessary, as it should have been done as part of the ongoing regular landscape maintenance.

32. Section 4.4.3 of the WSS states: *'Alterations/ enhancements – any alterations or enhancements to a development or block should have the approval of the Homeowner's Association (or the majority of owners) before a request is made to James Gibb residential factors. This would include, but not be limited to:*

- *Tree removal*
- *Lighting sensors*
- *Service bell amendments*
- *'No Parking' signs etc*

Once approved and requested, the response times for normal repairs will apply'.

33. The homeowner said that he believed the planting and balcony works were renovations, rather than maintenance or repair. He considered that they constituted alterations or enhancements, and that the property factor should therefore have sought the approval of a majority of homeowners (as there is no Homeowners' Association for the development) before the works were done.

Findings in fact

34. The committee makes the following findings in fact:

- a) The homeowner is the owner of the property at 4/13 Stewart Terrace, Edinburgh, EH11 1UY.
- b) The property is situated within a development known as the Gorgie Road development, which comprises numbers 235, 241 and 247 Gorgie Road and 4 Stewart Terrace, Edinburgh. There are 40 flats and five retail/office units within the development.
- c) The Deed of Conditions by Teague Homes (Scotland) Limited registered in the General Register of Sasines for the County of Midlothian on 15 October 1999 provides (at clause (Second)) that the owners of the flats (or 'flatted dwellinghouses') within the development are each liable to pay an equal share of the expense of maintenance of the 'dwellinghouse common parts'. 'Dwellinghouse common parts' are

defined in clause (First) as *'those parts of the building and/or the development exclusively serving the Dwellinghouses and shall include the common entrances and entrance doors, the interior faces of the entrance halls, all cupboards, staircases, stair railings, the interior faces of the walls enclosing the stairs, the stair windows...the hatchway or hatchways leading to the roof, the attic space, the stair lights, the common television aerial and any security or entry phone systems, the binstores...the cycle store, the car parking spaces and all other parts and pertinents as used in common by the proprietors of more than one dwellinghouse.'* The owners are also responsible, along with the owners of the retail/office units for maintenance of the 'development common parts', such as the solum and foundations, roof, load bearing walls etc, as set out in more detail in the Deed.

- d) Clause (Twelfth) of the Deed of Conditions provides that the factor appointed for the development is responsible for *'instructing and supervising the common repairs and maintenance' of the dwellinghouse common parts and the development common parts, and for apportioning the costs of this among the proprietors in accordance with the provisions of the Deed'.*
- e) Section 2.1 of the property factor's written statement of services (WSS) provides that its authority to act comes from either appointment by the developer, by a decision of the majority of homeowners, by custom and practice or by formal business acquisition. James Gibb Residential Factors was appointed as the property factor for the development as at 1 April 2014, by virtue of its takeover of the former property factor, Aspect Residential.
- f) Section 2.4 of the WSS states: *'for non-emergency repairs, the ultimate decision to authorise any work up to the value detailed in Section 02 of your Development Schedule will be made by James Gibb residential factors. Any works that are likely to exceed this cost will require the approval of the Homeowner's Association (or the majority of owners)'.*
- g) The development schedule attached to the WSS for the development states at Section 02 that the property factor has an authority to act, for non-emergency repairs, of £20.00 (excluding VAT) per household.
- h) James Gibb Residential Factors became a registered property factor on 23 November 2012.
- i) The property factor's contractual duties regarding the management and maintenance of common areas within the development are set out in:
 - i. the said Deed of Conditions
 - ii. its WSS and the attached development schedule.

Statement of reasons for decision

35. It appeared to the committee that at the heart of the homeowner's complaints lay three key questions, as set out below.

1. Were the works included in the property factor's core services?

36. Section 3 of the WSS states that the services provided '*cover the maintenance, management and repair of the "communal" areas detailed in Section 03 of your development schedule*'. Section 03 of the development schedule which is annexed to the Property factor's WSS, sets out a list of the services provided. While 'planting' is included in this section, the committee notes that planting is not included in the routine maintenance gardening schedule attached to the development schedule.
37. With regard to the balcony cleaning, while section 03 of the development schedule makes reference to a variety of common areas, such as parking areas, bin stores, boundary walls and fences, there is no specific reference to the common balcony. Neither is the balcony mentioned in the 'Routine Maintenance- Cleaning Schedule' annexed to the development schedule. Mr Main told the committee that the balcony was not included in the schedule because it did not require cleaning on a regular basis.
38. The committee notes that the balcony is not in fact specifically mentioned in the Deed of Conditions for the development. The committee draws the conclusion from the terms of clause (Second), as set out at paragraph 34 above, that the balcony forms part of 'the dwellinghouse common parts, as it is encompassed by *'all other parts and pertinents as used in common by the proprietors of more than one dwellinghouse.'* While the committee considers that the property factor should have made specific reference to the common balcony in the development schedule, it therefore concludes that the property factor had power in terms of clause (Twelfth) of the Deed to carry out the balcony cleaning works.
39. Ms Bole told the committee that neither the planting nor the balcony cleaning works were part of the core services provided. She said that the core services covered routine works which are paid for through homeowner's floating funds. These works were exceptional work which were only occasionally required, and involved an additional cost to homeowners. The homeowner did not dispute that these works were not part of the core services provided. The committee therefore determines that these works did not form part of the core services provided.

2) Were the works covered by the level of delegated authority set out in the WSS?

40. The property factor's position was that both the planting and balcony cleaning works, although not part of the core service, fell within the agreed level of delegated authority, which gave the property factor authority to act without the need to consult owners.
41. Section 02 of the development schedule attached to the WSS states that the property factor has an authority to act, for non-emergency repairs, up to a value of £20.00 (excluding VAT) per household. Section 2.4 of the WSS states that the ultimate decision to authorise work up to the delegated level of authority is made by the property factor. It also states that the source of the level of delegated authority may be the Deed of Conditions or an agreement with the Homeowner's Association. There is no mention of a level of delegated authority in the Deed of Conditions for the development. Neither is there a Homeowners' Association, as acknowledged by both parties. Mr Main advised that the current level of £20 plus VAT was that which had been applied by the previous property factor, which been subject to a takeover by James Gibb in 2014, and which it had continued to apply.
42. The homeowner said that he had been unaware previously that there was an agreed delegated level of authority, but that he accepted that this exists. He said that he understood that there was a need for this in emergencies and small repairs, and that he appreciated that it did not make sense to have to write to every homeowner for every small item of work that needed to be done.
43. The committee notes the homeowner's argument that the two sets of works should have been aggregated and put out to tender at the same time, as this would have exceeded the level of delegated authority. Mr Main told the committee that the two items were entirely separate, and that he had not been trying to squeeze the costs under the limit. He told the committee that they had been instructed at different times, and this was evident from the correspondence before the committee. He said that sometime after the planting works had been done, he had noticed that the walls and floor of the common balcony were dirty, and had then instructed the cleaning works. He said that even if the works had been done at the same time, they would have involved separate contractors. The committee accepted his evidence on this point.
44. The committee therefore accepts that the works done cost less than £20 plus VAT in each case. There is, however, a question as to whether they were covered by the level of delegated authority set out at section 02 of the

development schedule, which explicitly covers 'non-emergency repairs'. This leads on to the third question, as to whether the works done constituted repairs, maintenance, alterations or enhancements.

3) Were the works repairs, maintenance, alterations or enhancements?

45. The homeowner argued that the works done were not 'repairs', but constituted 'renovation' and were in fact alterations or enhancements. It is unfortunate that the WSS and schedule make reference at various points to 'repairs' only and do not mention maintenance, as it appears to have been the intention that the delegated authority limit should apply to both. As Ms Bole pointed out to the committee, section 2.3 of the WSS does state that the property factor's authority to act includes the management of routine maintenance contractors, as well as ongoing repair works.
46. The committee notes that the Deed of Conditions states (at clause Twelfth) that the property factor is responsible for instructing and supervising the common repairs and maintenance of the 'dwellinghouse common parts'. The Deed defines "maintenance" as *'the obligation to repair, maintain, replace, renew, re-build, reinstate and cleanse irrespective of the cause of the damage, destruction or deterioration necessitating the same.'*
47. With regard to the planting works, the property factor argued that this was not an alteration or enhancement, but involved reinstating the plants to the condition they were in when the development was built. The committee agrees that this work was in fact reinstatement or renewal, rather than an alteration or enhancement. This work was therefore included in the definition of 'maintenance' in the Deed of Conditions. With regard to the balcony cleaning, the committee notes that the said definition also includes cleansing, and is also therefore maintenance, rather than alteration or enhancement.

Code complaint

48. The first part of section 2.4 of the code states: *'You 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.'* This section therefore applies only to work or services which are not part of the property factor's core service. As the committee has concluded that the planting works and balcony cleaning are not part of the core service, section 2.4 therefore applies here.
49. When asked by the committee, the homeowner agreed that the property factor did have such a procedure in place, which had been used in respect of the proposed stair cleaning works. While the core of the dispute here was

whether the procedure should have been applied in this case, the committee notes that the requirement under section 2.4 is simply to *have such a procedure in place*, which both parties agree has been satisfied.

50. The second part of section 2.4 states that there is an exception to this requirement where the property factor can show that there is an agreed level of delegated authority to incur costs up to an agreed threshold. Both parties agreed that there was such a level of delegated authority in place, as set out in the WSS and development schedule. While this delegated authority is described as applying only to 'non-emergency repairs', the committee takes the view that, while the wording in the WSS could be improved, the clear intention was that it should also apply to ongoing maintenance works, which the property factor has authority to instruct in terms of the Deed of Conditions.

51. For the reasons set out above, the committee determines that the property factor has not failed to comply with section 2.4 of the code.

Duties complaints

52. **a) Section 2.7 of the WSS:** There are three aspects to this section. Firstly, it states that the property factor will only use approved and authorised contractors for any repair work (the committee again notes here the reference to repairs only, but assumes this is also intended to apply to maintenance works). It does not say by whom the contractors should be 'approved and authorised', but the inference is that it is the property factor. Secondly, it states that the property factor will always endeavour to obtain the best possible value for its customers. Thirdly, it states that multiple quotations will be arranged by the property factor, where appropriate.

53. Mr Main told the committee that he had instructed the property factor's usual landscaping contractor to carry out the planting works, and had also instructed a contractor which he had used previously for the balcony cleaning works. He said that this was the property factor's normal practice where there were additional works at a cost below the level of delegated authority.

54. He said that the landscaping contractor used provided a very competitive cost, and that he firmly believed that this contractor provided the best value for money for homeowners. Ms Bole stated that she had put a number of contracts out to tender for landscaping works in other developments, and had found that this contractor consistently provided the most comprehensive quotations at the best cost.

55. While the homeowner was clearly unhappy with the work done by the contractor, and thought it did not constitute value for money, Mr Main told the committee that no other homeowners within the development had expressed concerns about this. He said that in fact, a number of owners had told him they were very happy with the work which had been done.
56. In light of the above, the committee concludes that, on the balance of probabilities, and on the basis of all the evidence before it, the property factor used contractors which it had approved and authorised, and that it had endeavoured to obtain value for money for the works done. While little evidence was led in relation to the contractor for the balcony cleaning works, the property factor appears to have followed a similar process here to that followed for the planting works.
57. With regard to whether multiple quotations should have been obtained for the works, the committee notes that section 2.7 states that this will be done where appropriate. When asked by the committee who decided when it was 'appropriate' to arrange multiple quotations, Mr Main advised that he had taken the decision that this was not appropriate here, because the works fell below the delegated level of authority. The committee finds, on the basis of the evidence before it, that the property factor has not failed to comply with this third aspect of section 2.7.
58. The committee therefore determines that the property factor has not failed to carry out its duties in terms of section 2.7 of the WSS.
59. **b) Section 4.4.3 of the WSS:** whether this section had been breached was dependent on whether the works constituted 'alterations or enhancements', as the homeowner argued. Ms Bole stated that 'alterations or enhancements' referred to something new which was not currently part of the service, giving the installation of a common satellite dish as an example.
60. It appeared to the committee from the wording and position of section 4.4.3 that it was intended to refer to works instigated by homeowners. The section appears under the heading 'Response times' and is situated immediately after paragraphs on routine repairs and emergency repairs. It also makes reference to approval being sought 'before a request is made to James Gibb', and states 'Once approved and requested, the response times for normal repairs will apply.' This implies that the homeowner/s who wish the work to be done must secure the approval of a majority of owners before approaching the property factor to have the work done. The committee was satisfied that this was not the situation here. While Mr Main acknowledged that a small number of owners had asked him to organise replanting works,

he said that he had already had a clear view that the work needed to be done, and had therefore authorised this.

61. The committee takes the view, as stated above, that the works constitute renewal/reinstatement and cleansing, all of which fall within the definition of 'maintenance' in the Deed of Conditions. They are not therefore alterations or enhancements. The committee notes that, in any case, section 4.4.3 appears to relate to works which are instigated by homeowners. There was accordingly no requirement to consult homeowners about the works under this section. The committee therefore determines that the property factor has not failed to carry out its duties under section 4.4.3 of the WSS.

Observations by the committee

62. While the committee does not find that the property factor has failed in its duties in terms of the specific complaints made by the homeowner, it does consider that there are a number of areas where there is room for improvement in the wording of the property factor's WSS, its communication with homeowners and its processes. The committee hopes that the property factor will take these observations on board in the future, in relation to both the development in question, and the other developments which it manages.

63. Firstly, as set out in more detail in the section on preliminary issues above, there appears to be a lack of clarity as to how the property factor's complaints procedure operates. The committee notes that its representatives did not seem to be entirely clear on this at the hearing. The procedure must be clear, and should be set out clearly in the WSS. The committee notes that Mr Main suggested that the procedure had four stages, and observes that a complaints process should be simple, timely, and efficient, with as few stages as possible. It should be objective, impartial and fair, and clear reasons should be given for the decision.¹ The committee also notes that property factors are obliged to follow section 7.2 of the code, which the homeowner referred to in his email correspondence with the property factor, but did not include in his application.

64. There are also a number of areas where both homeowners and the property factor would benefit from amendments to the WSS to clarify matters. Firstly, the WSS and development schedule should clearly state, where appropriate, that the delegated authority level applies to both repairs and

¹ Further information about good practice in complaints handling can be found at:
https://hohp.scotland.gov.uk/sites/default/files/news_attachments/Good%20Practice%20in%20Complaint%20Handling%20Presentation.pdf

maintenance. Secondly, for the avoidance of doubt, the property factor should amend the development schedule to its WSS to include reference to the common balcony. Thirdly, section 2.7 should make clear that 1) 'approved and authorised contractors' means contractors approved and authorised by the property factor and 2) that works will only be put out to tender where they are over the delegated authority limit and/or specify any other circumstances in which this is considered to be appropriate. Finally, it may be helpful to ensure that it is made clearer in section 4.4.3 that this refers to alterations or enhancements which are instigated by homeowners.

65. The committee also observes that, while there is no requirement to *consult* homeowners in advance of instructing works where the value falls below the level of delegated authority, it would be good practice to make them aware that the works are to be done, together with the likely costs. Mr Main appeared to acknowledge this in his email to the homeowner of 14 December 2015, apologising for not having advised the costs in advance.
66. Finally, the committee notes that, at the hearing, both parties indicated their willingness to work together to improve communication and processes in the future. It appeared that some discussions had already taken place, and that it had already been agreed that the property factor would in future go out to tender for regular maintenance works. Ms Bole also indicated that the property factor was willing to assist the homeowner with establishing a Homeowners' Association, which he said he wished to pursue, but had found difficult due to the large number of flats in the development which are rented out. The committee hopes that these ongoing discussions will help to improve communications between the parties in the future.

Right of appeal

67. The parties' attention is drawn to the terms of section 22 of the 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 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.

Chairperson Signature

Date...19/7/16...