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

HOHP reference: HOHP/LM/13/0066

Re: 6/1 Coxfield and play area and land at Coxfield, Edinburgh ('the property')

The Parties:

Mr Ian Graham, 6/1 Coxfield, Edinburgh, EH11 2SY ('the homeowner')

James Gibb Residential Factors, 4 Atholl Place, Edinburgh, EH3 8HT ('the 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)

Robert Buchan (Surveyor member)

David Hughes Hallett (Housing member)

Decision of the committee

The factor has failed to comply with its duties under section 14 of the Property Factors (Scotland) Act) in respect of section 1.1a C (e) and 2.1 of the code of conduct for property factors. The factor has not failed to comply with its duties under sections 3 or 4.6 of the code of conduct for property factors. The factor has not failed to comply with its duties as defined in section 17 (5) of the Act.

The committee's decision is unanimous.

Background

1. By application dated 20 April 2013, the homeowner applied to the Homeowner Housing Panel ('the panel') to determine whether the factor had failed to comply with its duties under the Property Factors (Scotland) Act 2011. In his application, the homeowner alleged that the factor had failed to comply with the following sections of the code of conduct for property factors ('the code'): 1.1a C (e) (written statement of services); 2.1 (communication and consultation); Section 3 (financial obligations); and 4.6 (debt recovery). The homeowner also alleged that the factor had failed to comply with the property factor's duties as defined in section 17(5) of the Act.

2. By letter dated 4 September 2013, the President of the panel sent a notice of referral to both parties, intimating her decision to refer the application to a panel committee for determination. Written representations were requested by 18 September 2013. Written representations were submitted by the homeowner to the committee before that date. A letter was received by the committee from Nic Mayall, the Operations Director for the factor, indicating that the factor did not intend to send further written representations, as it believed that the written correspondence already submitted to the panel made its position clear. Further correspondence was subsequently received from the homeowner relating to issues which were not referred to in the original application.

3. Both parties were notified by a letter from the panel dated 24 September that a hearing was to be held on 13 November 2013. The hearing date was subsequently postponed until 18 December 2013 due to a bereavement.

4. A direction was issued by the committee on 11 November 2013. This stated that the committee would consider the complaints set out in: 1) the homeowner's application to the homeowner housing panel dated 22 April 2013 and 2) the homeowner's written representations of 11 September 2013. The direction stated that should the homeowner wish to raise any additional complaints under section 17(1) of the Property Factors (Scotland) Act 2011, this must be done by means of a separate application to the panel.

5. The direction also required the factor to provide to the committee within 21 days: 1) a copy of the constitution and rules of the Queenspark (Coxfield) Residents' Association; 2) written evidence of the appointment by a majority of homeowners of the factor as the factor for the Queenspark (Coxfield) Development dated 28 May 2000 and 3) a copy of the factor's final written statement of services as agreed by the Queenspark (Coxfield) Residents' Association. Finally, the parties were required to provide to the committee within 21 days further details of their case, including any legal authority which they intended to rely on regarding the complaint about the modification/removal of screen walls within the development, with reference to the relevant provisions contained in the title deeds for the property, and in particular the requirement for written consent by the developer in relation to such works.

6. Both parties complied with the direction within the timescale set by the committee. A letter dated 21 November 2013 was received from the factor, enclosing the documentation requested and setting out its position in relation to the complaint regarding modification/removal of screen walls within the development. A letter from the homeowner was received on 26 November, setting out his position with regard to the latter.

Hearing

7. A hearing took place before the committee at Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HD on 18 December 2013. The homeowner represented himself. He gave evidence and called no witnesses. The factor was represented by Mr Nic Mayall, Operations Director and Mr David McCallister, Property Manager, who gave evidence on its behalf.

Findings in fact

8. The committee finds the following facts to be established:

- The homeowner is the owner of 6/1 Coxfield, Edinburgh, EH11 2SY. This property is situated within the Queenspark (Coxfield) development, Gorgie Road, Edinburgh.
- The factor is the property factor responsible for the management of the communal areas of the said Queenspark (Coxfield) development. The factor was appointed as property factor for the development by the residents' association on 17 February 2000, in terms of the Feu Disposition by Barratt Edinburgh Limited in favour of Malcolm Ritchie McDonald recorded in the General Register of Sasines for the County of Midlothian on 26 August 1986 ('the Feu Disposition')
- The factor's duties in relation to the communal areas of the development are set out in:
    - the Feu Disposition
    - the factor's Written Statement of Services for the development dated April 2013.
- The factor became a registered property factor on 23 November 2012. Its duty under section 14 (5) of the Act to comply with the code arose from that date.
- The homeowner pursued his complaints through the factor's formal complaints process, which ended with a letter from the factor dated 28 March 2013, advising that the factor believed it had attempted to resolve the complaints. The homeowner wrote by email to the factor on 16 April 2013, notifying the factor of the reasons why he considered it had failed in its duties under section 14 and its duties as defined in section 17(5) of the Act, and stating his intention to make an application to the panel. The factor replied on 23 April 2013, stating that it had nothing to add to its letter of 28 March 2013.
- The homeowner's concerns have not been resolved to his satisfaction.

The complaints made by the homeowner

9. The homeowner made four separate complaints about the factor, as set out in detail in his initial application, his subsequent correspondence with the panel,

his written representations to the committee and his oral submission at the hearing. Each of these complaints is discussed below.

1. Management fee

10. This complaint related to an increase in the management fee charged to owners in the development. The homeowner stated that he became aware of this when he received a quarterly invoice from the factor dated 2 March 2013, showing a fee increase which had taken effect from 28 November 2012. The annual fee had been increased from £55 + VAT to £75 +VAT, which he stated was an increase of 36%. The homeowner made clear at the hearing that his complaint was not about the size of the increase itself, but about the lack of prior communication about the increase, and the lack of explanation as to the reasons for it.

11. Firstly, he felt that the increase had not been clearly communicated to owners. The last time the fee was increased, by 16%, was in October 2010. At that time, the factor had written to owners two months in advance, advising them of the forthcoming increase, and stating the reasons for that increase. He said that on this occasion there was no advance warning of this significant increase. He had received a copy of the factor's Spring 2013 newsletter, sent to all homeowners in developments managed the factor, which stated: *'Some of you may have noticed a small increase in your management fee this quarter. We have applied a minimal increase (roughly £2 per quarter) to those customers in developments that have had static fees for a number of years. We have ensured, though, that increases have been kept to a minimum in order that we continue to deliver excellent value for money whilst still receiving a revenue that is commensurate with our costs.'*

12. The homeowner pointed out that in the case of his own development, the increase was in fact substantially more than this, at £5 per quarter. He said that he had received no prior communication of the increase aside from the newsletter. He also complained that the increase was retrospective, as it was backdated to November 2012. He also complained that no reason was given for the increase. He believed that this was more than just an inflationary increase, and that the factors had tried to 'slip the increase through' without alerting owners. He believed that the increase should have been mentioned at the meeting of the residents' association for the development which took place on 31 January 2013 ('the residents' association meeting').

13. The homeowner alleged that there had been a breach of section 2.1 of the code, which states: *'You must not provide information which is misleading or false.'* He had also argued in his application that the factor had failed to comply with its duties under section 1.1a C.(e) of the code, which states: '[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.' He also argued that the factor had failed to comply with section 3 of the code: financial obligations. His application did not specify which part of section 3 was referred to, but he stated at the hearing that there was no breakdown of charges on the invoices sent, to show how these were made up, in terms of section 3.3 of the code. Finally, he alleged that the factor had failed to comply with its duty under paragraph 6.1.1 of its written statement of services regarding 'general communications'.

14. In his oral evidence, Mr Mayall conceded that the increase in the management fee for the development appeared significant when viewed as a percentage, but said that the uprated fee remained at a low level in comparison with fees in other developments managed by the factor. He pointed out that the last increase had been in May 2010. The factor had previously indicated in correspondence with the homeowner that its average development fee was around £120+VAT per property, and that it considered £75+VAT to be a very competitive fee level. He stated that the factor's policy was to review its management fees in February of each year, which meant that it did not know what the management fees for the development would be for the coming year at the time of the residents' association meeting. This was why the increase was not mentioned at the meeting.

15. He accepted that the factor had not previously had a robust fee review process, but that following recent management changes, it was intended that in future the fee would be reviewed on an annual basis, as set out in paragraph 5.1.1 of the written statement of services. He stated that homeowners had been alerted to the increase in the Spring newsletter. While he accepted that the fee for the Coxfield development was more than the £2 figure stated, he argued that the newsletter did not say that this would be the level of increase for all of the developments managed by the factor. He said that including information about the increase in the newsletter was simpler than sending letters out to 4000 homeowners, and avoided incurring extra costs for homeowners. He said that no other homeowners had raised concerns about the level of the fee increase; the homeowner alleged that this was because no-one else had noticed it due to the way it was introduced.

16. Regarding the homeowner's concern that the fee had been applied retrospectively, Mr Mayall stated that the factor's accounting procedures are set up in such a way that the management fee is always charged quarterly in arrears. In relation to the alleged breach of section 1.1a C.(e) of the code, he stated that the factor did in fact set out this information at section 5.1 of its written statement of services. Mr Mayall also stated that the quarterly invoices sent out to homeowners were compliant with section 3.3 of the code,

providing a detailed financial breakdown of charges made and the work charged for.

17. On the basis of all the evidence before it, the committee took the view that the factor had failed to comply with its duty under section 2.1 of the code. The committee concluded that the information provided in its newsletter was misleading in relation to this particular development. The newsletter had stated that the increase would be minimal and roughly £2 per quarter, whereas in relation to the Coxfield development, the increase of £5 per quarter was significantly more than this. While the committee accepted the factor's contention that the absolute fee remained relatively low in comparison with other developments, the factor should have done more to highlight the size of the increase to the homeowners in this particular development. This could have been done by making specific reference to the charges for the development in the newsletter, for example, without the need for individual letters.

18. The committee also determined that the factor had failed to comply with its duty under section 1.1a C (e) of the code. Section 5.1 of the factor's written statement of services states:

5.1 Management fees

5.1.1 An annual factoring management fee of £75.00 will apply to each homeowner in the Queenspark (Coxfield) development. This fee is correct at the date of publication of this Statement of Services and will be reviewed on an annual basis.

5.1.2 The fee is determined by the scope of services provided and the size of the development and may change if the scope is altered.

5.1.3 Fees for newly acquired developments will remain stable for a period of two years unless the scope of services significantly differs from that originally agreed.

The committee considered that, while this did clearly set out the management fee charged, insufficient detail was provided on the fee structure and the processes for reviewing and increasing or decreasing this fee. While section 5.1.1 stated that the fee would be reviewed on an annual basis, there was no further information as to the process by which this review would be undertaken, or precisely when it would be undertaken. It was not made clear that the fee was charged quarterly in arrears, or how and when advance notice of any change in the fee was to be given to homeowners.

19. With regard to the factor's alleged failure to comply with its duty under paragraph 6.1.1 of its written statement of services, the committee noted that this paragraph was essentially a general statement about the importance of good communications between the factor and homeowner. The committee therefore concluded that there had been no breach of any duty in this regard. In relation to the alleged breach of section 3.3, the quarterly account seen by committee showed a full breakdown, itemising each item of expenditure. The committee was therefore satisfied that the factor had complied with this duty under the code.

2. *Proprietor debt*

20. At the residents' association meeting, the factor reported that there were a number of homeowners in the development who were in debt. The minutes of the meeting record that the factor highlighted that one homeowner owed almost £2000, and that their debt had been accumulating since 2006. Mr Graham believed that the homeowners in the development had not been kept sufficiently informed about this. He stated that homeowners had not been made aware of this debt accumulating prior to the meeting. He pointed out that, while 'proprietor debt' was included on the meeting agenda which was sent to all proprietors on 11 January 2013, it was not among the issues highlighted as requiring a vote in the covering letter sent out with the agenda. He argued that the issue should have been highlighted to homeowners, particularly as those present at the meeting were asked to vote on whether the debt should be distributed among the other owners or whether it should be allowed to accumulate until it reached the level of £3000, at which point the factor could apply to the court to have the debtor sequestrated.

21. He argued that as only 15 of the 93 owners in the development were present at the meeting (plus 22 proxies), only a minority of owners participated in the vote on this issue. He argued that the majority of the owners were unaware of this debt and had no say in how it was dealt with, because they were not present at the meeting. He felt this issue should have been brought to the attention of owners at a much earlier stage. The minutes record that the meeting decided unanimously in favour of sequestration of the debtor, although the homeowner maintains that he abstained from voting on this issue, as he was unhappy about the way in which the vote was approached.

22. The homeowner alleged that the factor had failed to comply with section 4.6 of the code, which states: *You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of data protection legislation).*

23. The committee noted that the minutes of the meeting state that the factor always mentions proprietor debt at association meetings or AGMs, and asked the factor why this debt had not previously been brought to the attention of the homeowners. Mr Mayall advised that resident's association meetings had not been well attended in the past, and that the last meeting prior to the residents' 2013 association meeting was in 2005. Following that meeting, the decision had been taken not to hold further meetings meantime, and there had been no major works carried out within the development since the 2005 last meeting. The factor had decided to call a meeting to try to re-establish the resident's association which had become dormant, as there were a number of issues about which they needed to secure the agreement of the homeowners. They had therefore written to all of the homeowners in the development inviting them to a meeting. They received more than 20 positive responses, and a meeting was fixed for 31 January 2013.

24. Mr McCallister pointed out that the meeting was quorate in terms of the regulations of the residents' association, which state that 20 members of the association present in person or by proxy form a quorum. The regulations also state that questions arising at association meetings are determined by a majority of the votes of those present. He advised that the factor had obtained a court decree against the debtor in question, and had unsuccessfully attempted to arrest their wages. The factor was therefore considering sequestration when the debt reached the appropriate level, and asked the meeting to vote on this issue.

25. Mr McCallister acknowledged that although the debt issue was mentioned in the agenda, no information about this had been provided to homeowners before the meeting. The existence of the debt had not been reported previously as there had been no residents' association meetings, and homeowners had not been made aware of this by other means, such as a letter. He advised that all homeowners should be aware of it now, as the minutes of the meeting had been sent to all homeowners in the development. He said that it would have been easier for the factor just to distribute the debt among the other owners than to pursue sequestration. The factor felt that this was unfair to the other owners, however, and had therefore indicated at the meeting that sequestration was its preferred option. He also confirmed that it was the factor's intention to hold annual meetings of the association in future.

26. The committee took the view that there had not been a failure to comply with section 4.6 of the code. The duty under that section had arisen on 23 November 2012, when the factor became a registered property factor. The factor had raised the issue at the residents' association meeting just over two months later. While the issue was not specifically highlighted in the covering letter sent to owners with the meeting agenda, it was nevertheless clearly

included on the agenda, and had been discussed at the meeting, and the next steps to be taken had been agreed. The minutes of the meeting documenting the decision made had also been sent to all homeowners. The factor had not therefore failed to keep homeowners informed about the debt recovery problems since the duty arose.

27. The committee observes, however, that it was unfortunate that the debt had accumulated to such a level prior to the duty arising under the code, and noted that in future there was an intention to hold annual meetings at which any outstanding proprietor debt would be discussed. The committee also observes that it may be helpful to highlight such issues more clearly in future, perhaps in a covering letter sent out with future meeting agendas, and that the factor has a duty under section 4.6 of the code to keep homeowners informed about this issue, regardless of whether or not a residents' association meeting is to be held.

3. Cash float increase

28. This complaint related to the announcement by the factor at the resident's association meeting that the cash float for homeowners in the development was to be increased from £75 to £100. The homeowner clearly stated that his complaint related to the reason given by the factor for the increase in its report at the meeting, rather than the level of the increase itself. The minutes of that meeting record: '*Your float level has been £75 from the time we took on your development in May 2000. In the past 12 and a half years, life has changed, inflation has taken effect, VAT has risen and we now cannot afford to run your development on the existing level of float.*'

29. The homeowner believed that the main reason for the increase was in fact the proprietor debt, not inflation. The minutes of the meeting record that the float increase was the first item discussed in relation to the factor's report, and that the vote on sequestration came later. The homeowner, who was present at the meeting, stated that, the announcement of the float increase had in fact come immediately after the vote on the proprietor debt. He believed that had the owners voted in favour of splitting the debt among themselves at a cost of £21 each, the factor would not have asked for a £25 increase in the float, and that this sum was therefore being asked for to offset this debt.

30. He argued that the cost of services such as gardening had not increased, and that in general the running costs for the development are very low, and that there could therefore be no other reason for the increase. He alleged that the information given by the factor was false or misleading and that it had therefore failed to comply with its duty under section 2.1 of the code. He also alleged that the factor had failed to comply with section 3 of the code in

respect of the overriding objective of clarity and transparency in all accounting procedures.

31. Mr McCallister stated that the minutes were an accurate record of the meeting, and that the float increase was announced prior to the vote on the proprietor debt. The minutes also record that immediately prior to that vote, he had told the meeting that if there was a vote for sequestration, this would be another reason why the existing float needed to increase. He stated that there was quite clearly a link between the outstanding debt and the float increase, and that the factor had not tried to claim otherwise. Mr Mayall advised that the float would have been increased regardless of the proprietor debt, although debt was one of a number of items covered by the float. He stated that all sites have a degree of debt, and that this is factored into the float payments requested. He pointed out that the £75 level had been in place since 2000, and that the costs of repairs etc. had risen since that time. Moreover, quarterly bills for the development could vary significantly, depending on the work done during the relevant period.

32. The committee concluded that the homeowner had not proved that the factor had provided information that was misleading regarding the reason given for the float increase. It appeared to the committee on the basis of all the evidence that the factor had consistently stated that inflation and proprietor debt were both factors in relation to the increase. While the homeowner clearly believed that the minutes did not accurately reflect the order of discussion at the meeting, the committee did not consider that he had provided sufficient proof that this was the case. The committee was satisfied in any case that, even if the vote on proprietor debt had come first, the factor had made clear at the meeting, and in the minutes which were then circulated to all homeowners, that the debt was a factor in the increase. The factor had not therefore failed in its duties under section 2.1 of the code. For the same reasons the committee found that that the factor had not failed to comply with section 3 of the code regarding the overriding objective of clarity and transparency in all accounting procedures in relation to this complaint.

4. Modification/removal of screen walls

33. This complaint related to the factor's proposal to remove /part remove two low level brick walls at the rear of the development, which was discussed at the resident's association meeting. The factor had highlighted this issue to all owners in the covering letter of 11 January sent with the meeting agenda, which stated: *'At the rear (south side) of the development there are a series of low level brick walls that do not seem to provide much benefit, but do inhibit cherry picker/hoist access to the building. We suggest part removal of these walls to allow an approx. 3 metre gap to allow a hoist into this area.'*

34. The minutes of the meeting record that twenty owners voted in favour of the works, either in person or by proxy, while two voted against. The homeowner contended that the factor's statement that the walls 'do not seem to provide much benefit' was seriously misleading, and did not allow for objective voting at the meeting. He stated that these walls provided significant benefits to the development as a whole, as they screened a children's play area at the rear from the adjoining car park. His concern was that this play area was no longer safe, as cars could drive through the gap which had been created. He said that the factors should have highlighted this to the owners, and was of the view that had more homeowners realised the significance of these walls, they may have voted and/or attended the meeting. He also disputed that the walls required to be knocked down to allow for mastic repairs to be carried out as the factor had stated at the meeting, as this work had subsequently been carried out without the need for hoist access. He therefore alleged that the factor had failed in its duties under section 2.1 of the code.

35. The homeowner also argued that the factor had failed in its duties under section 17 (5) to manage the common areas of the development because it had failed to make reference to the title deeds for the development. He argued that the factor was not entitled to instruct the removal of these walls, as there were clear provisions in the title deeds (at burdens clause (sixth) of the Feu Disposition) which stated that no alterations were to be made to *'divisional walls or fences or retaining walls or screen walls'* erected by the developer without the developer's consent. He contended that the walls were screen walls, and that they could not therefore be altered without the developer's consent. He also argued in his written representations that the factor's authority to act, as set out in the written statement of services, did not allow it to authorise these works.

36. It was clear from his application, written representations and oral evidence that the homeowner was concerned that the works would lead to contract vehicles and potentially other vehicles entering the play area. The work had now been carried out, involving the removal of one wall and the part removal of another, allowing a 3 metre gap for hoist vehicles to pass through. Collapsible bollards had been installed, and the committee had sight of a photograph of these. The homeowner had concerns as to how these bollards would be managed, and who would have access to the keys.

37. Mr Mayall stated that homeowners living in the development would be clear which walls were being referred to from the description given in the agenda covering letter. He also pointed out that the issue had been highlighted in the agenda covering letter, and a photograph of the walls showing the proposed changes had been circulated at the meeting. He stated that what had once been a 'play area' was now concreted over, that the play equipment had been

removed in 2002, and that children did not play there now. With regard to the mastic repair, he stated that this had simply been given as an example, and that the changes had been made in order to make a variety of future maintenance jobs, such as an upcoming external painting project, easier. He said that carrying out the work was a common sense approach, and argued that in carrying out the work, the factor was in fact fulfilling its duties of maintenance and repair in terms of the title deeds and the written statement of services. He noted that the decision to go ahead with the works was made by the owners themselves, rather than the factor.

38. He pointed out that access to the former play area was still restricted by the bollards, and said that the work had not made any fundamental changes to the development. He confirmed that homeowners would be informed in advance if contract vehicles required access through the gap where works were planned, although this may not be possible in an emergency. The factor did not anticipate a lot of traffic through the gap.

39. With regard to the alleged failure to comply with the factor's duties under section 17(5), the factor's position was that it had obtained the necessary consent for the works. In its written representations in response to the committee's direction, the factor stated that the rights of the original superior (i.e. the developer, Barratt Edinburgh Limited) had been extinguished as a result of the operation of the Abolition of Feudal Tenure (Scotland) Act 2000 and/or the Title Conditions (Scotland) Act 2003. It argued that the homeowners on the development now have the authority to make such decisions regarding enforcement of real burdens, and that their consent to the works was obtained at a lawfully convened and quorate residents' association meeting. Further, the factor argued that the question as to whether the right of a superior to enforce a real burden has been extinguished was a matter outwith the jurisdiction of the panel and should be considered by the Lands Tribunal for Scotland.

40. The committee finds that the factor had not failed in its duty under section 2.1 of the code. The committee noted that the proposal had been highlighted in the meeting agenda covering letter, and accepted that the homeowners on the development would have been aware of which walls were being referred to. While the homeowner was clearly unhappy about the way in which the proposal was communicated, there was no evidence that any other owners in the development shared this concern, and the committee concluded that the information provided to homeowners was not misleading or false.

41. With regard to the alleged failure to comply with the factor's duties under section 17 (5), the committee finds that the factor did not fail to comply with its duties to manage the common areas of the development. When asked by the

committee, Mr Mayall confirmed that the factor had taken 'informal' legal advice on the legal position in relation to the prohibition in the title deeds on alteration of screen walls. The effect of the abolition of feudal tenure on the requirement to obtain consent from the superior before works are done is a complex question of property law. This does not fall within the jurisdiction of the panel, and the committee takes the view that this is an issue which would require to be considered by the Lands Tribunal.

42. The committee finds that the factor complied with its duties under the title deeds. Burdens clause (Tenth) of the Feu Disposition states that the factor is responsible on behalf of the residents' association for instructing common repairs and maintenance of tenements within the development and has *"power to order to be executed any common or mutual operations maintenance or repairs renewal decoration and other operations to the common property or any parts thereof"*. The committee takes the view that the works carried out by the factor fall within the scope of this power, and that any right of veto which an individual proprietor may have is qualified by this power. The factor put the issue to a vote of a meeting of the residents' association convened in accordance with the regulations, and a majority vote at a quorate meeting was achieved.

Decision

43. The factor has failed to comply with its duties under section 14 of the Property Factors (Scotland) Act) in respect of section 1.1a C (e) and 2.1 of the code of conduct for property factors. The factor has not failed to comply with its duties under sections 3 or 4.6 of the code of conduct for property factors. The factor has not failed to comply with its duties as defined in section 17 (5) of the Act.

44. As the committee is satisfied that the property factor has failed to comply with its section 14 duty, the committee proposes to make a property factor enforcement order. In terms of section 19 (2) of the Act, where the committee proposes to make such an order, it must, before doing so, give notice of its proposal to the factor, and must allow the parties an opportunity to make representations to the committee.

45. The intimation of this decision to the parties should be taken as notice for the purposes of section 19 (2). The parties are hereby given notice that any written representations which they wish to make under section 19 (2) (b) must reach the panel's office no later than 14 days after the date this decision is intimated to them. If no representations are received within that timescale, the committee will proceed to make a property enforcement order without seeking further representations from the parties. Failure to comply with a property

factor enforcement order without reasonable excuse constitutes an offence under section 24 of the Act.

46. The committee proposes to make the following Property Factor Enforcement Order:

Within 28 days of the date of communication to the factor of the property factor enforcement order, the factor must:

1. Issue a formal written apology to the applicant in respect of the respondent's failure to comply with its duties under sections 1.1a C (e) and 2.1 of the code.

2. Amend section 5.1 (management fees) of its written statement of services as follows:

- Provide further information as to the process by which the annual review of the fee will be undertaken and at what date in the year
- State that proper advance notice will be given to homeowners of any forthcoming increase in the fee before it takes effect, how much notice will be given, and how this notice will be communicated.
- Make clear that the management fee is charged quarterly in arrears.

Right of appeal

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.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

http://hohp.scotland.gov.uk/prhp/2649.325.346.html

Sarah O'Neill

Chairperson Signature Date.....7/2/18.....