Decision of the Homeowner Housing Committee

(Hereinafter referred to as "the Committee")

Under the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/13/0250

Re : Property at 75 Gairdoch Street, Bainsford, Falkirk FK2 7SD ("the Property")

The Parties:-

Janice Leary, care of her agent Alex Walker, AJ Properties, Office 2033, Livingston, West Lothian, EH54 0DE ("the Applicant")

Falkirk Council, Dawson Area Office, Dawson Centre, David's Loan, Bainsford FK2 7RG ("the Respondent")

The Committee comprised:-

David Bartos - Chairperson
Mike Links - Surveyor member
Jean Thomson - Housing member

Background:-

1. By application received on 30 July 2013, the Applicant applied to the Homeowner Housing Panel ("HOHP") for a determination that the Respondent had failed to ensure compliance with the Property Factor Code of Conduct as required by section 14(5) of the Property Factors (Scotland) Act 2011 ("the 2011 Act").

Findings of Fact

2. Having considered all the evidence, the Committee found the following facts to be established:-

   (a) The Property is a first floor flat house which is part of a block of 6 flats numbered 71 to 81 (odd numbers only) Gairdoch Street, Bainsford, Falkirk.

(b) The Applicant is the owner of the Property. The Respondent is the owner of the remaining five flats in the block. The Applicant has been owner since 20 February 2007. Her title is registered in the Land Register of Scotland under title number STG45651. Her title is as set out in a Land Certificate for the Property updated to 4 March 2007. She does not reside at the Property.

(c) The Respondent became a registered property factor in terms of the Property Factors (Scotland) Act 2011 on 7 December 2012.

(d) The Property includes a right of property in common with the other proprietors of the block to the outside walls, gables, chimneyheads (excluding cans), foundations, rhones, and rainwater conductors of the building.

(e) The Property is is burdened by real burdens in a Feu Disposition ("the Deed") registered in the Land Register of Scotland on 11 September 2003. Its terms are set out in the Burdens Section of the Land Certificate. In the Deed, the Applicant is referred to as "the Feuars" and the Respondent is referred to as "the Superiors". In the Deed clause (Eighth) provides, among other things,

> "The Feuars shall be bound to bear a proportionate share of the burden of maintaining . . . all things mutual or common to the said dwellinghouse and any other subjects . . . such proportionate share shall, failing agreement amongst the proprietors concerned be determined by the Superiors . . . Declaring that in the event of a majority of the proprietors of the said block considering it necessary to have repairs or renewals carried out to any common or mutual parts of the said block, whether in terms of this clause or in terms of any other clauses herein referring to such repairs or renewals hereinafter specified, they shall be entitled to effect said repairs or renewals and obtain from the proprietor or proprietors of the said dwellinghouses having an interest in the said common or mutual parts his, her or their share of the cost of such works whether such proprietor or proprietors have consented or not to such work . . ."

(f) As landlords of one of the flats in the block the Respondent received an enquiry from a tenant about potential water penetration. The Respondent instructed a report on the roughcast on the outside walls of the block. The report confirmed that roughcast on the block had become detached, had evidence of patch repairs throughout and was generally in a poor to fair condition.

(g) By letter of 3 April 2013 the Respondent wrote to the Applicant's agent advising that areas of roughcast had become detached from the walls of the block and were allowing water penetration and that it wished to undertake replacement of the roughcast for the block. In its letter the Respondent enclosed a copy of the technical appraisal report

which had been commissioned by the Respondent and an estimate of the cost of such works. The letter also intimated the intention of the Respondent to have decision (a "scheme decision") taken under the Tenements (Scotland) Act 2004 to approve the works. It enclosed a voting form to allow the Applicant to vote in favour or against the making of a scheme decision approving the Respondent's proposals. The letter included intimation that failure by the Applicant to respond by 19th April 2013 would be taken as an abstention from voting. The Applicant's agent was informed that it was intended to begin the work in May/June 2013.

(h) By letter of 18 April 2013 the Applicant's agent Mr Walker responded to the Respondent seeking more information. By letter of 24 April 2013 the Respondent responded by referring to the letter of 3 April. The Respondent also informed the Applicant that the cost of the work was broken down as far as possible for reasons of "commercial sensitivity" and the cost was for the works to be undertaken by the Respondent's "Building Maintenance Division" under a "Best Value" which "ensures the cost provided is competitive". It invited Mr Walker to obtain his own estimate from another contractor provided that the works were priced to the same specification.

(i) By letter of 1 May 2013 Mr Walker made a complaint to the Respondent. His complaint was that there was no payment plan in place to allow private landlords time to pay up, there had been inadquate notice of the works; the breakdown of costs was inadequate; no tendering process had been carried out; no independent survey had been carried out verifying that the work was necessary. It also intimated objection to the work being carried out. The letter of 9 May 2013 from the Respondent responded by asserting that the Applicant should seek her own advice on obtaining funding, and that sufficient notice had been given. Otherwise in substance it repeated the earlier letters.

(j) Shortly before 2 July 2013 the Respondent collected the votes from the proprietors of flats in the block including itself and the Applicant and on the basis that it, as owner of five flats voted in favour of the proposal, a decision was made to approve the proposal.

(k) By letter of 2 July 2013 to the Applicant's agents the Respondent intimated the result of the voting and asserted "this decision is now binding with no right of appeal under the terms of the title deed for number 75 Gairdoch Street". It did not refer to the right to apply to the sheriff under the Tenements (Scotland) Act 2004 for annulment of the decision. It intimated that the works would begin commencing 5 August 2013 and would last approximately 4 weeks.

(l) By e-mail of 23 July 2013 Mr Walker complained to the Respondent and intimated that he would be making a complaint to the Homeowner Housing Panel. He thereafter applied to the Panel. By letter of 19

August 2013 Mr Walker wrote to the Respondent informing them that he believed that it had failed to carry out its property factor duties in terms of section 17(5) of the 2011 Act. In the letter he claimed that the duties were:

- To give proper notice of the work
- To give a breakdown of costs
- To provide independent surveys or structural engineeer's report
- To provide independent quotes
- To provide a proper complaints procedure

and re-interated his previous complaints. By letter of 5 August 2013 the Respondent's Head of Housing Services wrote to the Mr Walker contending that it does not act as a factor in relation to the block and re-stating the Respondent's position. The letter referred to an earlier alleged letter from the Respondent dated 14 June 2013 in which the Respondent had been informed of his right to apply to the sheriff.

(m) By letter of 3 September 2013 the Respondent's Senior Neighbourhood Officer wrote to the Mr Walker repeating the position that the Respondent does not act as a factor in relation to the block and re-stating the Respondent's position and again referring to an earlier letter from the Respondent dated 14 June 2013. It referred Mr Walker to the Scottish Public Services Ombudsman if he remained dissatisfied.

(n) By letter of 3 September 2013 the Respondent intimated to Mr Walker that the work would commence on 5 September 2013. The work was duly carried out. At the time of the hearing the invoice for the work was due to be sent to the Applicant.

(o) The Respondent insures only its own properties in the block. It has a renewal programme for door entry systems of blocks where it owns properties in general. If an owner of the Applicant's block contacted the Respondent regarding a defect in the door entry system the Respondent would organise the repair and make charge the private owner her flat's share. The Respondent would charge the private owner her flat's share of any replacement lightbulbs for common lighting in the block. If the Respondent was contacted by a private owner in relation to other common repairs such as guttering the Respondent would invite the owner to decide whether they would wish to arrange a contractor or whether they would wish the Respondent to arrange the works. If it was the former, then the Respondent would pay its flats' shares and if the latter the Respondent would organise the work either through its own Building Maintenance Division or through hiring an outside contractor.

The Application

3. In his application to the HOHP the Applicant complained that the Respondent had failed to comply with the Code of Conduct in the following respects:

> Written Statement of Services - "Sections: There is None."
> Communications and Consultation - "Sections: Pay it or Else We Will Sue"
> Financial Obligations - Sections: None
> Carrying out repairs and maintenance - Sections: We are doing it & That's It
> Complaints resolution - Sections: It does not work

She did not include any complaint in relation to a failure to carry out Property Factor's duties. As resolution she sought 3 quotations from different companies, a survey and an opportunity to pay the money and better communication. The Applicant has not sought to amend her application to bring in the matters mentioned in Mr Walker's letter of 19 August 2013.

4. Following submission of the Application the Applicant intimated to the Respondent by e-mail of 28 October 2013 further detail on why he contended that the HOHP committee had jurisdiction to consider his complaint at all and on the breaches of the Code of Conduct complained of.

5. The President of the Private Rented Housing Panel decided under section 18(1) of the 2011 Act to refer the application to a Homeowner Housing Committee. Following intimation of the Notice of Referral, Mr Walker intimated that he wished to have an oral hearing. The Respondent intimated that it wished to have the complaint decided on the basis of written representations. Given the difficulty of the issue of jurisdiction raised by the Respondent and Mr Walker's request, the Committee decided to hold an oral hearing.

6. In the light of the written representations received from the Respondent and Mr Walker the Committee issued a direction to the parties dated 23 January 2014. In the direction the Committee directed both parties to make written representations on whether the Respondent manages the common parts of the block and therefore whether the Applicant is a "homeowner" as defined in section 10(5) of the 2011 Act. The Respondent by letter of 5 February 2014 to the HOHP responded to the direction with further representations.

The Hearing

7. The hearing took place at the Europa Building, 450 Argyle Street, Glasgow G2 8LH on 4 April 2014 at 10.30 a.m. The date and times were intimated

to Mr Walker, and the Respondent by letter sent on or about 13 March 2014. Mr Walker did not attend the hearing. The Respondent was represented by its solicitor Mr Peter Gilmour who made submissions. Stephen Murphy, Senior Property Co-ordinator of Housing of the Respondent and Jean Hendry, Neighbourhood Co-ordinator gave evidence.

8. Mr Murphy spoke to the work that the Respondent had carried out to the outside walls of the block, and to the practice of the Respondent in relation to repairs to the block in general. He also spoke to the Respondent's charging practice. Ms Hendry also spoke to the charging practice and to the intimation of the vote by means of her letter of 2 July 2013.

9. Both Ms Hendry and Mr Murphy spoke to being confident that a letter dated 14 June 2013 had been sent to the Applicant or Mr Walker informing them of the right to apply for annulment of the decision voted upon. However Mrs Hendry was unable to explain why there was no reference to letter of 14 June in her letter of 2 July which purported to intimate the decision and apologised for the delay in intimation.

10. The Committee has no difficulty in accepting the evidence of both Ms Hendry and Mr Murphy except in relation to the sending of the letter of 14 June. Firstly the letter of 14 June has not been produced despite the production of correspondence both before and after that date. It was not suggested that papers had been lost. Secondly, it is strange why no reference to the letter of 14 June was made in the letter of 2 July. On a plain reading of the letter of 2 July it purports to be the first intimation of the outcome of the vote and the decision. It is difficult to see why Ms Hendry would be apologising for the delay if she had been aware, as one would expect, given her principal role in communicating with Mr Walker, of the letter of 14 June. In these circumstances the Committee are not prepared to accept that a letter of 14 June intimating the right to apply to the sheriff was sent to the Applicant or Mr Walker.

Jurisdiction - The Submissions

11. The principal issue for the Committee was whether it had jurisdiction to hear the complaint. Jurisdiction is given to the Committee by virtue of a number of provisions of the 2011 Act. The starting point is section 17(1) which provides,

> "(1) a homeowner may apply to the homeowner housing panel for determination of whether a property factor has failed -
>
> (a) to carry out property factor's duties,
>
> (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty")"

The Committee can only consider an application from a "homeowner". A "homeowner" is defined in section 10(5) which provides,

> "In this Act, "homeowner" means -

(a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
(b) an owner of residential property adjoining or neighbouring land which is -
(i) managed or maintained by a property factor, and
(ii) available for use by the owner."

A "property factor" is defined in section 2(1). For present purposes that provides,

"In this Act, "property factor" means -
(a) a person who, in the course of that person's business, manages the common parts of land owned by two or more persons and used to any extent for residential purposes,
(b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned -
(i) by two or more other persons, or
(ii) by the local authority or housing association and one or more other person, . . .
. . . (d) a local authority or housing association which manages or maintains land which is available for use by -
(i) the owners of two or more adjoining or neighbouring residential properties, or (ii)
the local authority or housing association and the owners of any one or more such properties,
but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of management or maintenance of that land."

Section 3 provides that a person who is, or intends to become a property factor "may" apply to the Scottish Ministers for entry in the register of property factors. However section 12 provides that, subject to certain exceptions, "a person who operates as a "property factor" while unregistered is guilty of an offence.

While the statutory wording refers to "land" there is no dispute that it was intended to cover buildings and other heritable (immoveable) property also.

12. The submission for the Respondent was that where the word "manages" is used in the above definitions, it must be interpreted as "manages in accordance with a subsisting prior agreement". It was submitted that if one manages land for another, one would expect such management to have been commissioned by that other, normally by means of a factoring agreement. The mere carrying out of works does not *ipso facto* involve management. This was said to be particularly the case where as here the Respondent was merely operating the provisions of clause (Eighth) of the Deed as a majority of the proprietors of the block.

13. The Respondent's solicitor submitted that at the very least there had to be a course of conduct of work over a period of time from which it could be inferred clearly that a "factoring-type role" had been agreed to. Without it the requirement in section 10(5) for a homeowner that he owned common parts that were "managed" by a property factor, could not be satisfied and the Committee therefore lacked jurisdiction to consider the complaint. Here there was merely a one-off repair instructed by a local authority in its capacity as proprietors of a majority of the flats in the block as authorised by clause (Eighth) of the Deed. That could not amount to "management" in terms of the definitions in either section 10(5) or section 2(1)(b) of the Act, both of which must apply to give the Committee jurisdiction. As stated in the Respondent's letter of 5 February 2014, the term "management" implies oversight, provision of services and arrangements of an ongoing and recurring character.

14. In addition the Respondent's solicitor submitted that given that in s.2(1)(d) it is stated that a local authority which "manages or maintains" land can be a property factor but in s.2(1)(b) - which would be relevant in the current case - it is provided merely that a local authority "manages" common parts can be a property factor, the inference is that it was not intended that a local authority that merely maintained common parts should be a property factor under s.2(1)(b). The works in this case were at highest mere maintenance of the block and did not involve management.

15. While neither the Applicant nor Mr Walker appeared at the hearing, which was unfortunate, in Mr Walker's e-mail to the HOHP of 17 October 2013, copied to the Respondent by e-mail of 28 October 2013, he made it clear that he was founding the Committee's jurisdiction on the Respondent being a factor through the work done to the block being the "managing" of the common parts in terms of section 2(1)(b) of the Act.

Jurisdiction - Reasons

16. The starting point for the Committee on this issue is the statutory provision which gives it jurisdiction to consider the application. That provision is section 17(1). In terms of section 17(1) the HOHP, as represented by this Committee must have before it an application by a "homeowner". "Homeowner" is defined in section 10(5) as set out above. In the present case the Applicant claims he is a homeowner in terms of paragraph (a) of section 10(5). For that to be satisfied an owner must own land the common parts of which are "managed" by a "property factor".

17. The expression "property factor" is itself defined in section 2(1) as noted above. Other than in identifying a "property factor" requires to be managing in the course of his business if he is not a local authority or housing association (and in excluding certain persons), the definition in section 2(1) does not expand upon the requirement to "manage" the common parts of the land owned in part by the owner.

18. The word "manage" is capable of more than one meaning. It can involve greater or lesser degrees of control of the thing being managed. Management can involve acts of maintenance. There might appear to be some force in the Respondent's additional submission set out above. However the additional submission cannot be decisive. It is difficult to see that a person whom an owner or owners have hired to provide ongoing maintenance of common parts owned by them is not a "property factor" in terms of the Act, but that one who is hired to provide maintenance of land not so owned is. Rather, the word "manage" is key to the whole Act. It must be interpreted in the context of the Act as a whole and not merely in relation to other parts of section 2.

19. The Act has two substantive parts. Part 1 sets up a compulsory registration scheme the purpose of which is to ensure that the persons who require to be registered ensure compliance with a property factor code of conduct ("the Code of Conduct") which sets out minimum standards of practice for such persons. The persons who require to be registered are "property factors" in terms of section 2. Part 2 of the Act sets up the Homeowner Housing Panel which is to determine applications by homeowners complaining of breaches of the Code of Conduct (where it applies) or "property factor's duties" as these are defined in section 17(5). It is interesting to note that the definition in section 17(5)(a) defines such duties as being "in relation to the management of the common parts".

20. Looking at Part 1 of the Act, section 3 provides for a person who is, or *intends to become*, a property factor to apply for registration. Once registered such an applicant becomes a "registered property factor" as that expression is used in the Act. However section 3 makes it clear that a registered property factor need never have actually become a "property factor" in terms of the section 2(1) definition. This is reinforced in section 3(2) which provides that an application for registration must specify "(e) any dwellinghouses, flats, or land in relation to which the person acts *or expects to act* as property factor" (Committee's emphasis).

21. In passing it is worth noting that a person continues to be registered even if he ceases to act as a factor for properties where he did so at the time of registration. Equally there is no requirement on a registered property factor to notify the register of any new property that he has begun to manage.

22. Section 12(1) provides that,

> "Except where subsection (2) or (3) applies, a person who operates as a property factor while unregistered is guilty of an offence."

In section 12(1) "operates" must be interpreted as having the same meaning as "acting" in section 12(4) which provides a defence, and "acts" in section 3(2)(e) relating to registration. To adopt any different approach would undermine the central criminal deterrence which underpins the effectiveness of the Code of Conduct.

23. Neither section 3, nor section 12, nor section 2 draw any distinction between private persons and local authorities and housing associations as

to what conduct amounts to "management" of the common parts which requires registration in order to prevent the commission of a criminal offence.

24. Taking the Applicant's contention to its logical conclusion, if a private contractor is hired by one owner or owners acting together to carry out a one-off repair to a common outside wall, the contractor would require to register under section 3 in order to avoid an offence under section 12 since that one-off repair would amount to "management" of the common parts. The Committee cannot think that the Scottish Parliament intended that such conduct would require registration in order to avoid the criminal offence. Such an interpretation of "management" would be absurd. It is a principle of statutory interpretation that when presented with a number of possible meanings the one which gives leads to absurdity should be avoided.

25. The Bill which led to the 2011 Act was a private member's bill introduced by Patricia Ferguson MSP. In the Policy Memorandum, for the Bill, published by the Scottish Parliament and prepared on behalf of Ms Ferguson by the Govan Law Centre, the primary objective of the bill was stated to be "to create a statutory framework which would protect Scottish homeowners who *contract* with property factors." (paragraph 2). In paragraph 10 of the policy Memorandum, it is noted that,

> "The management of shared repair and maintenance responsibilities is often administered by property factors. Property factors undertake *a range* of management tasks" examples of which are then listed (Committee's emphases).

This underlines that the aim was to regulate persons who contracted with homeowners to provide a range of administrative tasks over a period of time, whether such persons were private providers, local authorities or housing associations. It was aimed to cover persons who were contractually obliged to provide a range of such activities. It was not aimed at persons whether tradesmen, building contractors or others performing such roles providing one-off repairs with no responsibilities outwith those individual instructions.

26. The interpretation of "manage" and "management" set out above has been reflected in the Code of Conduct made under the Scottish Ministers and laid before and approved by the Scottish Parliament all under section 14(1) to (4) of the Act. This Code came into force on the same day as the substantive provisions of 2011 Act, namely 1 October 2012 having been laid for approval by the Scottish Parliament on 30 April 2012 and thereafter approved by resolution of the Scottish Parliament. The Code itself followed a consultation carried out by the Scottish Government on a draft Code which was based on core standards prepared for a voluntary accreditation scheme for property and land managers that the Scottish Government consulted on in 2010. It can be seen that the Code and the Act were part of the same legislative exercise. As such the Code can cast light on the meaning and scope of the Act.

27. In Section 1 the Code of Conduct requires the production of a written statement of services with a statement of the basis of any authority to act, the "core service" that the factor is to provide, and the types of services and works which may be required in the overall maintenance of the common parts in addition to the core service. The written statement also requires to set out the management fee charged, any arrangements towards a floating fund and clear information on how to change or terminate "the service arrangement". Section 2.4 of the Code requires the provision of a consultation procedure with a group of homeowners and their written approval before providing work or services beyond the "core service". Section 3.3 of the Code requires the provision of at least an annual detailed financial breakdown of charges made and a description of activities charged for. Section 3.5b requires local authorities or registered social landlords to account for homeowners' floating funds separately from their own funds.

28. The content of the Code, therefore reinforces the view that where a person carries out repairs to common parts merely on a one-off *ad hoc* basis he or it does not "manage" those common parts in the sense of sections 10(5) or 2(1) of the Act and is not required to register under the Act.

29. In the present case the Respondent was also prepared to change the common lighting system and to carry out door entry repairs as and when required. However such work is instructed *ad hoc* by the private home owner or if not instructed by them then is initiated by the Respondent *ad hoc* for its own interest. Such work by a private contractor can hardly be "management" giving rise to the registration and criminal consequences set out above and the Committee is unable to see why the position is any different with regard to "management" for a local authority or housing association.

30. Moreover the carrying out of two, three or however many *ad hoc* repairs to common parts will not make a contractor require to register. Rather what is needed for "management" and therefore a duty to register, is an agreement with the service provider (which may or may not be contained in the title deeds) giving a power or duty to provide a range of activities for the upkeep of the common parts.

31. Applying the above approach to the facts of the current case the Committee concludes that the Respondent was not "managing" the common parts of the block in terms of a proper interpretation of section 10(5) of the Act. That being the case the Applicant was not a "homeowner" in terms of the Act and was not entitled to make his application under section 17(1). In these circumstances the Committee are not entitled to consider his application for lack of jurisdiction and they dismiss it.

32. The Committee has considerable sympathy with the position of the Applicant, particularly in relation to confusing way in which the nature of the Respondent's decision was explained to him and the possible failure to explain to him of his right to apply to the sheriff for annulment of the

decision under the Tenements (Scotland) Act 2004. However the Committee is obliged to apply the 2011 Act according to its proper understanding of its meaning. If the intention of the Scottish Parliament had been to require *ad hoc* acts of local authorities such as that being complained about to be covered by the Act, or to deem such persons to be factors if they owned the majority of flats in a block, then such provision could have been made. No doubt it could have in turn been reflected in the Code. However that was not the apparent aim of the Act and no distinction is made in the Act between acts of local authorities and private service providers.

33. While the Committee dismisses the application for lack of jurisdiction it was addressed at the hearing on the individual complaints of breach of the Code set out in the application and it is fair to deal with these in case this matter should go further.

Written Statement of Service

34. The first complaint was that there was no written statement of service. The Respondent's solicitor accepted that none had been issued. He submitted that it was difficult to see what should be in such a statement. This was because there was no arrangement between the Applicant and the Respondent as to the provision of services. The Respondent's solicitor contrasted the position with the situation with "multi-owner" flats where he produced a generic specimen written statement of service.

35. Given the absence of management of the common parts in terms of the Act as set out above, there does not appear to be any arrangement between Applicant and Respondent as is required by section 1 of the Code to be the foundation of the written statement of services. For example there is no "core service". In these circumstances the Committee is unable to see how the Respondent could be required to provide a written statement of services in compliance with the Code. The first complaint would fall to be rejected.

36. However the Committee is also unable to see the contrast being drawn by the Respondent's solicitor between the current block and "multi-owner" flats. Here there are two owners, at present, of the flats. It is difficult to see any reason in principle to distinguish between this situation and the multi-flat situation if in both cases there was no agreement in place between the Applicant and Respondent allowing the Respondent to manage the common parts.

Communication and Consultation

37. The second complaint did not identify the part of Section 2 of the Code being complained of. It merely said, "Pay it or Else We Will Sue". The Respondent's solicitor submitted that there had been no breach of Section 2. In the application form Mr Walker did not make it clear which part of

section 2 he was relying upon. Section 2.4, which requires consultation with a group of homeowners and the obtaining of their written approval before providing work or services not covered by charges for the core service. It is not for the Committee to identify what is or is not within a core service when there is no evidence of an arrangement or agreement in place between the service provider and the owner under which services were provided. It may be that the work that was carried out would not be covered by any core service provided and paid for by owners, in any agreement between the owners and the service provider. However without an agreement the Committee cannot identify the core service, and cannot find a failure to consult and a breach of section 2.4.

38. However as noted the letter of 2 July 2013 from the Respondent to the Applicant's agents was misleading in that the ability to apply to the sheriff for annulment could be seen as a type of appeal and not mention was made of it in the letter. Such a communication could be seen as a breach of section 2.1. Had the Committee found that it had jurisdiction, it would have upheld the complaint on that section.

Financial Obligations

39. The third complaint does not identify the part of Section 3 of the Code being complained of. There is no basis to find a breach. The Respondent's solicitor indicated to the Committee that the Respondent would be prepared to look at an offer by the Applicant to pay in instalments. However in the absence of any breach of Section 3 it is not for the Committee to make any order in that respect.

Carrying out Repairs and Maintenance

40. The fourth complaint relates to Section 6 of the Code. The applicaiton says merely "We are doing it and that's it". No part of section 6 is indicated as having been breached. Section 6.3 provides,

> "On request you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff."

Had this duty been owed by the Respondent to the Applicant, it would have been breached. While the Respondent indicated to Mr Walker that it had decided to use in-house staff in the form of the Respondent's Building Maintenance Division under the Best Value policy to ensure that the cost was competitive, the Respondent did not indicate why it was decided not to carry out a competitive tendering exercise at all.

Complaints Resolution

41. The fifth complaint also fails to identify the part of Section 7 being breached with the observation that "It does <u>not</u> work". The Committee did not receive any evidence on this and is unable to find any breach.

Decision

42. In the circumstances set out above, the application, not being a homeowner's application under section 17(1) of the 2011 Act, is dismissed. The decision was unanimous.

Rights of Appeal

43. The parties are given a right of appeal on a point of law against this decision by means of a summary application to the Sheriff made within 21 days beginning with the day on which this decision is "made". All rights of appeal are under section 22(1) of the Act.

Signed ....Date: 21 May 2014

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David Bartos, Chairperson