



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011

Hohp ref:HOHP/PF/15/0014

M/D, 104 Park Road, Kelvinbridge, Glasgow, G4 9HB and B/2, 102 Park Road, Glasgow, G4 9HB ('the Property')

The Parties:

Ms Catherine Murphy residing at 104, Park Road, Kelvinbridge, Glasgow, G4 9HB ('the homeowner')

Charing Cross Housing Association, 31, Ashley Street, Glasgow, G3 6DR ('the factor')

Committee members:

Jacqui Taylor (Chairperson) and Andrew Taylor (Surveyor Member).

Decision of the Committee

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors, as required by section 14 of the 2011 Act determined that, in relation to the Homeowner's application, the factor has failed to comply with Sections 2.1 and 4.9 of the Code of Conduct and has complied with The Property Factor's duties.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 1st November 2012.
2. By application dated 10th February 2015 the Homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the factor had failed to comply with:-
 2. 1: The following sections of the Property Factor Code of Conduct ('The Code'):
 - Section 1: Written Statement of Services.
Sections E, F, G and K.
 - Section 2: Communications and Consultation.
Sections 2.1 and 2.2.
 - Section 3: Financial Obligations.
Sections 3.1, 3.3 and 3.4.
 - Section 4: Debt Recovery.
Sections 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9.
 - Section 5: Insurance.
Sections 5.1, 5.2, 5.3, 5.4, 5.7 and 5.8.
 - Section 6: Carrying Out Repairs and Maintenance.
Sections 6.5, 6.7, 6.8 and 6.9.
 - Section 7: Complaints Resolution.
Sections 7.1, 7.2 and 7.3.
 - 2.2: The Property Factor's duties.
3. The application had been notified to the Factor.
4. By Minute of Decision by the President dated 17th September 2015 the President of the Panel intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 16th February 2015 to 12th June 2015) to a Homeowner Housing Committee ('The Committee').
5. The Factor returned the completed the HOHP response form indicating that they did not want the application to be considered at an oral hearing and they provided written representations.

The Homeowner also returned the completed the HOHP response form indicating that she did not want the application to be considered at an oral hearing and she provided written representations.

The Committee agreed that the application should proceed on the basis of the written representations alone.

6. The Homeowner lodged additional written representations on 23rd November 2015, two days before the intimated hearing. As the Factor had not been given an opportunity to consider these additional representations and also as they were lodged within seven days of the intimated hearing the Committee determined that they would not consider these additional written representations.

7. Details of the application were provided in a separate letter from the Homeowner dated 23rd March 2015. The Factors response was detailed in their letter dated 12th May 2015. Subsequent written representations were provided after these letters.

8. The Committee met to consider the parties' written representations on 25th November 2015 at The Europa Building, 450 Argyle Street, Glasgow, G2 8LH. The parties did not attend.

The Committee considered the documents provided.

The details of the application, the Factor's responses and the Committee's decisions are as follows:

Section 1: Written Statement of Services

Section 1 of The Code states that the Property Factor must provide a Written Statement of Service and specifies the details that should be included.

C. Financial and Charging Arrangements

e) The Written Statement of Service must set out the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee.

The Homeowner's Complaint:

Statement of Core Services management fee was charged at 19.24% and not 9.62% as provided for in the Lands Tribunal Decision dated 2nd July 2009. Her solicitors proposed a change in charging arrangements for May 2012 invoices. The Factor's solicitors advised the Factor to withdraw the working arrangement as they did not have confirmation that the property had been split. She did not recall receiving correspondence from the Factor regarding this.

The Factor's response:

The Statement of Core Services states that the Association charges a Management Fee that is a flat rate and the insurance premium is charged per flat/ house.

Additional insurance premium charged on 14th May 2012. The homeowner emailed the Factors on 12th March 2012 advising that she thought that despite her factoring arrears and failure to pay the premium she should be included on the block policy. The factors responded on 13th March 2012 advising that the homeowner's outstanding balance of £720.93 must be cleared before the Association could reinstate the cover. The factors also advised the homeowners that as she had split the property into two separate properties with effect from

1st April 2012 they would be treated as two separate properties and that factoring fees and buildings insurance would be charged on each property from that date. We were subsequently advised by our solicitors that as we had received no legal confirmation that the properties had been split we should only issue one factors account. Therefore the accounts for the basement property were cancelled and one invoice was issued up to and including the May 2014 invoice.

Both November 2014 invoices do not show the insurance and management fees set at 19.24%. No insurance premium is charged and the management fee is charged at £65- which is 50% of the annual charge.

Decision

This head of complaint is not upheld.

The Statement of Core Services was included with the Homeowner's application. Section 1.C (e) of The Code requires the management fee to be set out together with the process for reviewing and increasing or decreasing the fees. The Fees charged are set out on page 6 of the Statement of Core services. It explains that a management fee is charged. The fee is a flat rate fee that is reviewed annually by the Factors and it is split over two invoices in May and November each year. It also explains that the fee is calculated by reviewing the cost of staffing and the corresponding proportion of office overheads and adjusting them in line with their annual budget. Owners are notified by letter in April each year of any increase.

f) The Written Statement of Service must set out the management fee charged, including what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion, this should be stated.

The Homeowner's complaint:

The financial and charging arrangements in the Statement of Core Services dated February 2014 refers to the percentage share per dwelling in line with the Deed of Conditions set at 19.24% for 104 Park Road. It did not (1) alter or modify the Statement in line with the variations made by the Land Tribunal set at 9.62% (2) add the additional dwelling at 102 Park Road and (3) did not increase the number of dwelling houses to nine.

The Factor's response:

The Statement of Core Services states that common repairs will be apportioned as per the title deeds. The title deeds for 102 Park Road show that the percentage for 104 Park Road is 19.24%. The written statement for the property advises that as of 27th September 2011, 104 Park Road, MD, was legally split to form two flats, with respective shares of 9.62% per property. The Association suggested in a letter to the homeowner's solicitor dated 7th January 2009, that the 19.24% share for 104 Park Road be divided equally between the two subdivided properties, giving a share of 9.62% each. The letter also stated that this could only be a working agreement, and advising that the homeowner would have to make a change to the title deeds to make the arrangement permanent. The homeowner only provided legal confirmation of the split in June 2014, when she brought the Lands Tribunal document into the office.

Decision

This head of complaint is not upheld.

As explained above the Statement of Core Services states that the management fee is a flat rate fee per owner and the share of common repairs will be apportioned as per the Title Deeds. These provisions comply with the requirements of the Code. Neither the written Statement of Service for this particular Property, the Land Certificate for this Property or the Deed of Conditions were produced by the parties. The Committee are unable to determine if the allocation of common charges detailed in the written Statement of Service for this Property is correct as it has not been produced.

g) The Written Statement of Service must include confirmation that you have a debt recovery procedure which is available on request, and may also be available online.

The Homeowner's complaint:

The Debt Recovery Procedure outlined in the Statement of Core Services does not include any arrears management and implementation of arrears policy or pre legal action and recovery procedures.

The Factor's response:

The Factor's debt recovery procedure is clearly set out in the Statement of Core services. There is no requirement for a quorum of members to meet and agree legal action. The decision to take legal action is made by the Technical Services Manager, following discussion with the Maintenance and Factoring Officer. The Factors do have a factoring arrears policy. The Factor's advised the homeowner in a letter dated 18th February 2015 that they do not provide debt management services.

The Factor's do not accept that the homeowner's accounts have been badly managed or that the debt recovery procedure is inadequate.

Decision

This head of complaint is not upheld.

The Statement of Core Services details the Debt Recovery procedure on page 7. However The Code does not require the Factor to provide an arrears management policy.

k) The Written Statement of Service must include details of how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable.

The Homeowner's complaint:

I was not given choices regarding collection of payments, timescales and methods. The letter from the Factor dated 19th December 2013 made no reference to the small claim action. I feel that the letter was false and misleading by not telling me that the court action was ongoing I was left with no options to defend the case.

The Factor's response:

The Factor confirmed that the Homeowner was making payments to her account, although the payments were insufficient to clear the account. No payments were made from 23rd August 2013 until 1st December 2014. Only one small payment has been received thereafter on 27th February 2015.

The Factor provided details of payments made, the arrears on the Homeowner's account and the small claims action for payment.

The Factor issued the November 2013 invoice on 15th November 2013, accompanied by a letter advising the account should be settled within 28 days. As this didn't happen, a reminder was issued on 19th December 2013. The Homeowner should have known from the invoice that the outstanding amount was £673.16, including arrears of £398.95.

Decision

This head of complaint is not upheld.

The paragraph in the Statement of Core Services headed 'Factoring Invoices' on pages 6 and 7 explains when invoices are issued, the charges that will appear on the invoices, the position regarding the factoring deposit and states that the method of payment will be specified on the particular invoices. The Statement of Core Services complies with section 1.C(k) of The Code.

Section 2: Communications and Consultation.**2.1: The Factor must not provide information which is misleading or false.****2.1 A: The Homeowner's complaint:**

The Factor provided false information in their letter dated 19th December 2013 as they failed to inform her of the correct legal position of her accounts.

The Factor's response:

Denied, with reference to point K above.

Decision

This head of complaint is not upheld.

The Factor's letter dated 19th December 2013 was a standard letter advising the Homeowner of the balance of her account. It is noted that the court decree for payment was granted on 6th December 2013 and was extracted on 23rd December 2013. There is no evidence of when the Factors knew of the terms of the court decree but given that it was extracted on 23rd December 2013 it is unlikely that they would have known its terms on 19th December 2013. The next letter sent by the Factors was dated 14th January 2014. That letter updates the account position and clarifies the position regarding the legal expenses.

2.1 B: The Homeowner's complaint:

Louise Wilson provided false and misleading information to the Factor's solicitors Kelly & Co. Kelly & Co should not have accepted Louise Wilson's findings without having clarity of the legal facts and confirmation of methods used in her investigation and statement.

The Factor's response:

Denied: Louise merely made enquiries of the Council regarding the council tax status of the basement flat. Kelly & Co's letter to the homeowner dated 21st May 2014 simply stated the position as known.

Decision

This head of complaint is not upheld.

The Homeowner has not explained what aspects of the documents she considers to be false and misleading.

2.1 C: The Homeowner's complaint:

Louise Wilson produced a document claiming she had contacted Glasgow City Council on 14th May 2014 but refused to provide evidence of the telephone call or written or faxed correspondence regarding the information in a subject access request dated 20th October 2014. This is a breach of the data protection law.

The Factor's response:

Louise provided a file note of a telephone conversation on 14th May 2014 where she was advised the basement property was not registered for council tax. There is no further evidence of the call.

Decision

This heads of complaint is not upheld.

The Homeowner has not explained what aspects of the documents she considers to be false and misleading. Further it is not for the Committee to determine if there has been a breach of the data protection provisions.

2.1 D: The Homeowner's complaint:

Louise Wilson sent an email to Councilor Martin McElroy claiming that the homeowner had refused to pay her factoring accounts for some time and that she had debt of £1888.93. She breached her data protection and lied to Councilor McElroy about the amounts owed and should have informed him the debt was in dispute.

The Factor's response:

Louise responded to Councilor McElroy after receiving an email from him on 1st September 2014 enclosing a complaint from the Homeowner regarding the association. Louise simply responded to the complaint advising on the position with the Homeowner's account at that time.

Decision

This head of complaint is not upheld.

The Homeowner is alleging a breach of the Data Protection provisions. This is not a matter for the HOHP. She also alleges that the wrong information was provided to Councilor McElroy as the Factors should have explained that the account was in dispute. However the alleged inaccuracies have not been explained.

2.1 E: The Homeowner's complaint:

The Factor instructed sheriff officers to collect more money than had been included in the Court Decree. She received a letter dated 14th January 2014 stating that the sums due are £855.54. The Factor misrepresented the facts by implicating to me that you had instructed the sheriff officer to collect £855.54.

The Factor's response:

The extract for payment was for £443.95 plus expenses of £182.38 and interest of £10.80 plus the Sheriff Officer's fee of £50.05, totaling £687.18.

Decision

This head of complaint is upheld.

The Factor's letter dated 14th January 2014 states:

'Outstanding factoring account: £673.16

Decree for expenses: £182.38

We are now in receipt of the extract for payment issued by the court and would confirm that we have been awarded expenses of £182.38 in relation to this account.

I would ask that you settle your outstanding account plus expenses (£855.54 in total) by'

The Factor acknowledges the decree is for the sum of £687.18, but their letter dated 14th January 2014 requires payment of the sum of £855.54 and infers that this is the amount due in terms of the court decree.

The Committee determine that the terms of the letter dated 14th January 2014 is misleading.

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that they may take legal action).

2.2 A: The Homeowner's complaint:

Julie McConnon and Louise Wilson consistently threatened and harassed and bullied me sending me letters dated 26th February 2015, 18th February 215, 29th January 2015, 20th January 2015, 13th January 2015 and 8th January 2015 which threatened legal action against me.

The Factor's response:

It is not accepted that the Homeowner was constantly harassed and bullied. The Factor has explained the details of their letters. They explained that they made every effort to resolve the Homeowner's accounts by suggesting that she seek advice from a third party, by offering to meet her on 17th February 2015, which meeting she did not attend, by sending a letter dated 18th February 2015 clearly explaining the charges on her November 2014 invoice and enclosing standing order forms to spread the cost of future bills. The letter also requested full payment of her outstanding accounts.

Decision

This head of complaint is not upheld.

The Committee determined that the threat of raising court proceedings for recovery of arrears contained in the correspondence was not abusive or intimidating.

2.2 B: The Homeowner's complaint:

The letter from the Factor's agent dated 21st May 2014 was abusive and threatening.

The Factor's response:

Denied- The letter states the results of advice received from Glasgow City Council concerning the Homeowner's council tax liability and also advises that even if the factoring bills were split between the two properties she would be liable as owner of both.

Decision

This head of complaint is not upheld.

The Committee determined that the letter from Kelly & Co dated 21st May 2014 is not intimidating, it is stating the facts as they are.

2.2 C: The Homeowner's complaint:

The two sheriff officers were confrontational, aggressively forceful and very intimidating when they called on me on 30th January 2014.

The Factor's response:

The Homeowner's allegation that she did not know that she had a debt until 14th January 2014 is not accepted under reference to the Factor's response at section K above, which details the correspondence that was issued. It is not accepted that the homeowner was threatened and harassed. It is not accepted that the Factors caused the homeowner extreme financial hardship. She is the owner of a main door tenement flat which she sub divided and is responsible for the factoring costs relating to these properties.

Decision

This head of complaint is not upheld.

No supporting evidence was produced of the meeting with the Sheriff Officers. The Homeowner should take up any complaints she has regarding the behavior of the Sheriff Officers direct with their company.

Section 3: Financial Obligation.

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

The Homeowner's complaint:

In written correspondence by Louise Wilson she states that the variations on the title deeds will be implemented 6 months after 1st October 2011 and she sent me an invoice for £150 for 102 Park Road and for 104 Park Road an invoice for £308.83 on 14th May 2012. The financial and charging arrangement changes were not provided to me within three months as stated in the Property Factors Code of Conduct.

The Factors did not communicate with me or provide me with an adjusted termination notice of change in percentage for common charges burdened against 104 Park Road. Nor provide me with all financial information that relates to the separate dwelling at 102 Park Road, burdened by the same Deed of Conditions, laid out in the Title Conditions Scotland Act.

The November 2015 accounts for 104 Park Road/ 102 Park Road were not accompanied with any correspondence or communication regarding the change to percentage and common charges within three months as stated within the Property Factors Code of Conduct.

In their statement of core services the Factors claim that there are eight properties within 100-104 Park Road. Yet I have paid buildings insurance for two separate dwellings bringing the number of dwellings to nine. I have asked in a Subject Access request for financial details of the block insurance and the date the premium was added for 102 Park Road to the insurance policy. I was refused access to these details and further clarification was ignored. I have not received all financial information that relates to my accounts.

The Factor's response:

Correspondence was received from Dallas McMillan on 15th September 2011 advising that the Homeowner could not pay the outstanding debt of £727 but that she was putting the property on the market and would sign a mandate stating that the outstanding balance would be paid from the proceeds. The Factor agreed to accept deferment of payment of the debt for six months with effect from 1st October 2011. This only applied to the outstanding debt and all future accounts were to be paid within 28 days of account issue. It was also part of the agreement that the homeowner would set up a monthly standing order for £20 with the first payment being paid in November 2011.

The Factor agreed to split the accounts for six months with effect from 1st October 2011 or until the flat was sold, whichever came first. In November 2011 only one account was issued for the main door flat which included the carry forward debt of £727.

In May 2012 (covering the period 1 October 2011 to 31 March 2012) the Homeowner was therefore invoiced for £150 for the insurance for the basement flat for the period 28/4/12-27/4/13 and £308.83 for the main door flat.

Section 3.1 does not apply to the situation of the Homeowner as the property has not changed ownership.

With regard to the change in percentage for common charges for 104 Park Road, the Association wrote to Dallas McMillan on 7th January 2009 suggesting the percentage of 19.24 be split equally between the two flats- ie 9.62% each. This would be a working arrangement as the Deed of Conditions would need to be amended to make the change permanent. You did not provide written evidence that the Deed had been changed until June 2014. In November 2012, May and November 2013, May 2014 only one account was issued for the main door flat as the Association had no legal evidence that you had split the properties and changed the title deeds. The Lands Tribunal document you provided approving the split of the properties gives the revised percentages as 9.62% per property and states that this would take effect upon completion of the subdivision of the subjects. The Factor was never advised of the completion date for the works. The date shown on the Glasgow City Council Assessor's website as the effective date that the basement property was registered for council tax is 27th September. The Homeowner did not dispute this date at court when this evidence was produced.

The Written Statement for 102 Park Road (not the Statement of Core Services) shows that there were eight properties and notes that on 27th September 2011 that 104 Park Road was subdivided and gives new percentages for your two properties. The Homeowner has been charged insurance on both properties since revised accounts were issued in June 2014 following receipt of the above Lands Tribunal document. In the court action late last year, as part of the negotiations, it was agreed that from November 2014, the insurance premium would be paid as a flat rate charge.

Decision

This head of complaint is not upheld.

Section 3.1 of the Code does not apply to the situation explained by the Homeowner. It only applies where the Homeowner terminates the factoring arrangement.

3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection and copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

The Homeowner's complaint:

The Factor has withheld a detailed financial breakdown of legal charges and a description of the activities and works carried out which they charged me for. The Factor refused to give me this information in their letter dated 23rd October 2014.

Factor's response:

It is correct that the Factors declined to provide you with a detailed financial breakdown of the legal charges this was because the third party did not wish us to disclose this information.

Decision

This head of complaint is not upheld.

It is not clear from the terms of the application what legal charges are being referred to.

3.4 You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on sale of the property).

The Homeowner's complaint:

No procedure was used by the Factor to split the share of charges equally between the completed conversion and the forming of the two separate dwellings at 100- 104 Park Road between May 2012 and March 2015.

The Factor's response:

Refer to 3.1 above.

Decision

This head of complaint is not upheld.

This section of the Code relates to advance payments and floats and is not relevant to the Homeowner's complaint.

SECTION 4: DEBT RECOVERY

4.1 You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.

The Homeowner's complaint:

The debt recovery procedure outlined in the statement of core services offered her no resolution regarding disputed debts and accounts. There is no mention in the statement of how much arrears will lead to legal recovery, sequestration and bankruptcy proceedings. There is no alternative arrears management procedures and information, timescales for paying arrears, responsibilities of the factor regarding arrears and the responsibility of the homeowner regarding arrears.

Factor's response:

The Factors repeatedly advised you to take out standing orders as a method of spreading the cost of your factoring charges. You have only done this for a short period of time.

The Factors issue correspondence with every invoice which clearly states that accounts are payable within 28 days of issue and our factoring arrears procedure clearly outlines what action will be taken should payment not be made.

Regarding a request for time to pay the Homeowner's account, she emailed Louise on 26th January 2015 asking that John Mann deal with her account and stating she would like to propose a payment plan to John. Louise advised her by letter dated 29th January 2015 that she and not John was the staff officer dealing with factoring accounts and she would continue to do so. She suggested involving a third party and a meeting was arranged for 17th February 2015. The Homeowner did not attend the meeting. A letter was sent to her giving her a full explanation of the details of her accounts and suggesting that she set up standing orders. The Homeowner sent an email dated 27th February 2015 advising that she would pay £18.12 towards each factoring account which she paid. No further indication has been received as to when the balance would be paid.

Decision

This head of complaint is not upheld.

The requirement of the Code is to have a clear written procedure for debt recovery. This is contained in the Factor's Statement of Core Services. There is no requirement in this section of the Code for a statement of how much arrears will lead to legal recovery, sequestration and bankruptcy proceedings. Also there is no requirement in the Code for alternative arrears management procedures and information, timescales for paying arrears or for detailing responsibilities of the Factor regarding arrears and the responsibility of the homeowner regarding arrears.

4.1A The Homeowner's Complaint:

On 26th February 2015 Julie McConnon hand delivered a letter to my home with no communication she would be visiting my home, I do not think she had the right to turn up at my door without informing me first. Reference is made to various letters threatening legal action.

Decision

This head of complaint is not upheld.

This section of the Code is not relevant to the Homeowner's complaint.

4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive.

The Homeowner's Complaint:

The Factor states in their statement of core services they impose charges for late payments at 2%. In the charge for payment of money dated 23rd December 2014 there was 8% added as interest.

Factor's response:

The 8% is set by the Court and not the Factors.

Decision

This head of complaint is not upheld.

The charge of 8% interest was contained in the Court decree dated 6th December 2013.

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

The Homeowner's Complaint:

Factoring managers should report to all homeowners in the block when they have made an overcharge and provide a written notice to all homeowners when they have failed in their duty as Factors.

The Factor's response:

The Factors do write to homeowners if an overcharge has been made.

Decision

This head of complaint is not upheld.

This section of the Code is not relevant to the Homeowner's complaint.

4.5 You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely written reminders to inform individual homeowners of any amounts outstanding.

The Homeowner's Complaint:

Monitoring of arrears due from me was not regularly monitored by the Factors. If my account had been monitored It would have been seen that I consistently made payments to my account until 28th August 2013 when a standing order did not go through due to a bank error. On 3rd October 2013 the Factors lodged a small claim action against me and I had no further communication regarding my account until 19th December 2013 when I received a letter from the Factors which made no reference to the court action, it made no reference to the hearing date on 6th December 2013 and did not account for £45 made on 23rd August 2013. This payment has still not been accounted for.

The Factor's response:

Monitoring of owners factoring accounts is undertaken by staff, not Committee. I would refer you to section K above which deals with the comments you make. The payment of £45 has been accounted for and is noted in section K above.

Decision

This head of complaint is not upheld.

The parties have provided evidence of regular letters being sent to the Homeowner and also regular invoices. The Factors have complied with their obligations under this section of the Code.

4.6 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).

The Homeowner's Complaint:

The Factors should inform other householders when their tenants are in rent arrears and therefore not paying their contribution to the factoring charges. They must keep us informed of debt recovery problems of other householders (subject to the limitations of data protection legislation).

Factor's response:

Tenants rent accounts are private to them and the association and for Data Protection reasons cannot be discussed with other parties. If owners are in debt to the Association, we would make other owners in the close aware of this if the factoring service was jeopardized by the debt.

Decision

This head of complaint is not upheld.

The Homeowner confirmed in her letter dated 22nd May 2015 that she accepted the Factor's response.

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

The Homeowner's Complaint:

The Factors did/ are not taking reasonable steps to recover unpaid charges from me, the Factors took excessive and extreme steps that was disproportionate and excessive for the sum they claimed I owed and my history of regular payments.

The Factor's response:

It is not accepted that the Factors have been unreasonable in its dealings with the Homeowner. The Factor has followed their procedures. Regarding the stability of the account I refer you to our comments in section K above. Regarding Tenant arrears please see 4.6 above.

Decision

This head of complaint is not upheld.

This section of the Code is not relevant to the Homeowner's complaint as it relates to charging other owners in the situation when an owner does not pay their account.

4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.

The Homeowner's Complaint:

The Factors took and continue to threaten me with legal action without taking reasonable steps to resolve the arrears and accounting issues and dispute.

The Factor's response:

Threats of legal action- refer to section 2.2a above

Decision

This head of complaint is not upheld.

The Factors sent the Homeowner numerous warning letters.

4.9 When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.

4.9a The Homeowner's Complaint:

Due to an error in the bank system the standing order payment that should have been paid in September 2013 did not go through. On 3rd October 2013 the Factor lodged a small claim action against her. She received no further information from the Factor regarding her account until 19th December 2013 when she received a letter from the Factor which made no reference to the court hearing date. The Homeowner feels that this is false and misleading as the letter omitted to mention the ongoing court action. Had she been notified of the court action she would have lodged a minute for recall.

Factor's response:

Cancellation of standing order- you are referred to section K above.

Decision

This head of complaint is not upheld.

This section of the Code is not relevant to the Homeowner's complaint.

4.9b The Homeowner's Complaint:

It is the Homeowner's sworn testimony that she had no knowledge or intimation of the court case until she received a letter from the Factors dated 14th January 2014 advising her that they held a court decree in the sum of £673.16 plus expenses of £182.38. The Factor misrepresented the facts contained in the charge for payment which was for £443.95 plus £182.38. She was refused access to all legal charges applied to my accounts which would verify the sums claimed.

Factor's response:

Regarding the letter of 14th January 2014, I refer you to section k above. Regarding the legal charges I refer you to 3.3 above.

Decision

This head of complaint is upheld.

As previously stated the Factor's letter dated 14th January 2014 states:

'Outstanding factoring account: £673.16

Decree for expenses: £182.38

We are now in receipt of the extract for payment issued by the court and would confirm that we have been awarded expenses of £182.38 in relation to this account.

I would ask that you settle your outstanding account plus expenses (£855.54 in total) by'

The Factor acknowledges the decree is for the sum of £687.18, but their letter dated 14th January 2014 requires payment of the sum of £855.54 and infers that this is the amount due in terms of the court decree.

The Committee determine that the terms of the letter dated 14th January 2014 misrepresents the correct legal position.

SECTION 5: INSURANCE

5.1 You must have, and maintain, adequate professional indemnity insurance, unless you are a social sector property factor, who can demonstrate equivalent protections through another route.

The Homeowner's Complaint:

The Factors refused access to give me information regarding public liability insurance and withheld information of any equivalent insurance protection they hold.

Factor's response:

The Factors provided the homeowner with a copy.

Decision

This head of complaint is not upheld as a copy of the policy has been provided.

5.2 You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.

The Homeowner's Complaint:

In the statement of core services the Factors show the percentage of the insurance premium due by me to be 19.24%. They have charged me this amount since May 2010. The account for 102 Park Road shows the percentage share of 9.62% which is not reflected in their statement of core services dated February 2014.

Factor's response:

The insurance is charged at a flat rate per flat- not a percentage as per the Deed of Conditions. The Written Statement dated February 2014 shows 104 park Road as 19.24% as we did not receive the Tribunal document confirming the split until June 2014. The document has been updated to reflect this.

Decision

This head of complaint is not upheld.

The Statement of Core Services explains the required insurance details.

5.3 You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance.

The Homeowner's Complaint:

In the Statement of Core Services it says that no administration fee will be charged for dealing with insurance but also fails to mention that the factoring officer receives remuneration in the form of overtime for her time spent managing cyclical contracts which is added to the homeowner's accounts. This remuneration should be made clear on the Statement of Core Services.

Factor's response:

Owners are only charged the Management fee for Association services. No other fee is charged, except on larger major repairs when any additional charge is notified to owners and agreed in advance.

Decision

This head of complaint is not upheld.

This section of the Code is not relevant to the Homeowner's complaint as it relates to insurance arrangements. The remuneration of the factoring officer is not relevant to this section of the code.

5.4 If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), you must supply all information that they reasonably require in order to be able to do so.

The Homeowner's Complaint:

The Factors refused me access to insurance details which I wanted to inspect for changes to variations and dwellings as well as other concerns regarding insurance.

Factor's response:

I would refer you to section 5.1 above.

Decision

This head of complaint is not upheld.

The procedure for submitting insurance claims is detailed in the Statement of Core Services. The alleged refusal of the Factors to provide insurance details is not a breach of this section of the code.

5.7 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you may make a reasonable charge for providing this, subject to notifying the homeowner of this charge in advance.

The Homeowner's Complaint:

When looking for clarification on insurance details the factors requested a payment of £25 for the information. This charge is excessive and very unreasonable.

Factor's response:

The only time the Homeowner has been requested for a payment of £25 was in Louise's letter dated 20th January 2015 as she had requested copies of all the invoices relating to the November 2014 accounts out with the 14 day free period. This charge covers staff time, photocopying costs etc and is reasonable.

Decision

This head of complaint is not upheld.

This section of the Code concerns documentation relating to a tendering process and does not relate to charging for insurance details.

5.8 If your agreement with homeowners includes arranging buildings insurance You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.

The Homeowner's Complaint:

The Factors make no provision for revaluation for the purpose of building insurance at the completion of the renovation when the property was split into two separate dwellings. It is her understanding that as she is being charged 19.24 % per flat the premium should be reduced for all other owners. The Factors did not inform me of this revaluation.

Factor's response:

The insurance cost is charged at a flat rate per flat not as a percentage according to the title deeds. This was fully explained to the Homeowner and her representative at the meeting held in their offices on 10th November 2014 and this arrangement was part of the court settlement agreed by both parties.

Decision

This head of complaint is not upheld.

This section of the Code requires the Factors to advise the homeowners how often property revaluations will take place. The Statement of Core Services states that the value is assessed annually. This section of the Code does not relate to revaluation following renovation of the Property.

SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

6.5 You must ensure that all contractors appointed by you have public liability insurance.

The Homeowner's Complaint:

Refused to assure the Homeowner that all contractors appointed have public liability insurance and refused to provide clarification and information on public liability insurance details.

Factor's response:

The Factor could not find a request from her regarding contractors' public liability insurance. The Factor would confirm that all contractors working for the Association do have such insurance. Regarding clarification and information on public liability insurance they would refer the Homeowner to section 5.1 above.

Decision

This head of complaint is not upheld.

The Factor has confirmed that they have public liability insurance for all contractors.

6.7 You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.

The Homeowner's Complaint:

In the Statement of Core Services the Factors do not make it clear that for managing cyclical contracts the factoring officer receives remuneration in the form of overtime which is charged to the homeowners via the management fee. Homeowners should be informed of the amount of overtime hours claimed either in a written letter or published in their newsletter.

Factor's response:

Factoring officers' remuneration- I would refer you to section 5.3 above.

Decision

This head of complaint is not upheld.

This section of the Code requires the Factor to disclose commission received from a contractor they appoint. The Homeowners complaint relates to overtime received by the factoring officer and does not relate to commission received from a contractor.

6.8 You must disclose to homeowners, in writing, any financial or other interests that you have with any contractors appointed.

The Homeowner's Complaint:

The Factors did not disclose to her any financial agreement of charges between contractors and management of accounts.

Factor's response:

The Factor has not seen any request from the Homeowner regarding financial agreement of charges between contractors and managing contracts. For her information, contractors provide the Association with proposed rates for day to day works and these are approved by the Committee in February each year. For larger works, there is a competitive quotation/ tendering process in place and owners are supplied with this information.

Decision

This head of complaint is not upheld.

The Committee accepts the Factor's response.

6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

The Homeowner's Complaint:

The Factors made no attempt to remedy the ongoing complaint she has raised with the cleaning contractor on 4 different occasions. The Factors confirmed to her in a letter that none of the homeowners had signed a mandate to authorize stair cleaning at 102 Park Road. As there are nine properties in the building, 4 of which are owned by the Factors and 5 are owned independently, she does not think the Factors should have instructed the contract for close cleaning. As the owner of the basement property she has complained to the contractor verbally every week about cleaning the basement stairs with filthy dirty water and leaves filthy black watermarks running down the walls and stairs. The basement stairs are disgraceful and she wants to clean the stairs herself. The yearly cost for close cleaning added to her accounts is excessive and the basement stairs are simply disgraceful.

Factor's response:

The Factor refers the Homeowner to their letter of 26th February 2015 concerning the correspondence relating to the commencement and charging of the close cleaning contract. Complaints about the cleaning should be made to the association rather than the contractor as they cannot action complaints which aren't made to them. Your comments have been passed to the contractor concerned.

Decision

This head of complaint is not upheld.

In view of the parties responses it is clear that this matter is ongoing.

SECTION 7: COMPLAINTS RESOLUTION

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

The Homeowner's Complaint:

The Factors are unreasonably delaying resolving the issues in my factoring accounts.

When she first wrote to the Factors regarding a charge for payment of money being issued against her in my absence at court the Factors informed her in writing the court would deal with her complaint now the action is withdrawn from the court and the Factors have issued November 2014 invoices she is just dumbfounded that her complaint regarding variations and charges is being ignored again.

Factor's response:

The case was not withdrawn from court. The Sheriff asked both parties to meet to resolve the various issues. The meeting was held on 10th November 2014 further to which settlement was

agreed between our legal representative and the Homeowner's third party representative. Payment of the agreed outstanding amount was paid on 1st December 2014. The November invoices were fully explained to the Homeowner by letter dated 18th February 2015- all charges were at 9.62% apart from the management fee (which was agreed as part of the court settlement would be paid on a unit basis from November 2014 invoices) and close cleaning (See section 2.2a 26 February Julie McConnon above).

Decision

This head of complaint is not upheld.

This section of the Code requires the Factors to have a written complaints procedure. The Statement of Core Services states that the Factors have a complaints procedure and is available on request or via the web site. Therefore this section of The Code has been complied with.

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

The Homeowner's Complaint:

The final decision letter the Homeowner received from the Factors affirmed all answers to her complaints had been dealt with appropriately by the Factors and the court process. As the case was never brought to trial the issues of my complaints and serious concerns have never been discussed, addressed or resolved.

Factor's response:

See 7.1 above.

Decision

This head of complaint is not upheld.

The Committee are surprised that the Factors did not deal with the homeowner's concerns through their complaints procedure. However the Homeowner's complaint that her complaints and serious concerns have never been resolved are not a breach of this section of the Code.

7.3 Unless explicitly provided for in the property titles or contractual documentation, you must not charge for handling complaints.

The Homeowner's Complaint:

Due to lack of accountability, transparency and communication regarding the title deeds and variations the Factors charged me £10 for a subject access request she had to request in order for her to establish the nature of the financial and legal activity in her accounts. The Homeowner feels based on the problems she has had with her accounts that the Factors should have provided this information for free.

Factor's response:

The Homeowner requested an extensive number of documents and a £10 charge is more than reasonable for the information provided.

Decision

This head of complaint is not upheld.

The charge made by the Factor's was not a charge for handling a complaint but a charge for providing duplicate documentation.

Failure To Carry Out Factor's Duties

Throughout the Homeowner's application and subsequent written representations the Homeowner claims:-

1. The Factors have mismanaged her account following the division of her Property.

It seems to the Committee that this matter has now been resolved. The Committee considers that both parties were slow to resolve this matter and with the benefit of hindsight both parties could have been more proactive in resolving this matter. The Committee acknowledge that it is unusual for a property to be divided in this way and do not consider that the Factors have failed to carry out their duties regarding this matter.

2. She was never given an opportunity to pay up the arrears on her account.

The Committee acknowledge that there is no specific duty on the Factors to provide a facility to homeowners to enable them to pay up arrears on their accounts.

However the Committee do consider that there could have been better dialogue between the parties regarding the arrears.

Property Factor Enforcement Notice

In all of the circumstances narrated above, the Committee finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act to comply with the requirements of the Code of Conduct in respect of sections 2.1 and 4.9.

The Committee therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Committee to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Committee.

The Committee proposes to make the following Order:

'The factor must pay the homeowner £50 for the inconvenience she had suffered from their own funds and at no cost to the owners.

The said sums to be paid within 28 days.'

