



Decision of the Homeowners Housing Committee issued under Section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and the Homeowners Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP PF/14/0094

The Property: 0/1, 35 Montague Street, Glasgow, G4 9HU

The Parties: –

MGM Consultancy Ltd, registered under the Companies Acts and having its Registered Office, formerly at 16, Comely Park, Dunfermline KY12 7HU, and now at 16, Dollarbeg Park, Dollar, Clackmannanshire, FK14 7LK ("the homeowners")

and

Walker Sandford Property Management Ltd, registered under the Companies Acts, having its Registered Office at c/o Clements, Chartered Accountants, 39 St Vincent Street, Glasgow G1 2ER and having a place of business at St George's Buildings, 5 St Vincent Place, Glasgow G1 2DH ("the factors")

Committee Members:

David Preston (Chairman); and Mike Links (Surveyor Member).

Decision:

The Committee found that the factors had failed: to comply with the Code of Conduct for Property Factors; and to carry out the property factors' duties.

Background:

1. By application dated 26 June 2014 the homeowners applied to the Homeowners Housing Panel ("the Panel") to determine whether the factors had failed to comply

with the Code of Conduct and had failed to carry out the Property Factors' duties imposed by the Act.

2. The homeowners complained that the Factors had breached the Code of Conduct in respect of Sections: 1(1); 2.2; 2.5; 6.3; 7.2 and 7.3
3. The application was accompanied by written representations and the homeowners lodged various documents and copy correspondence in support of its application.
4. By Minute dated 18 September 2014 the President of the Panel intimated her decision to refer the application to the Committee.
5. Following service of the Notice of Referral on the parties, further representations and documents were received from the homeowners and representations were received from the factors and their agents HBJ Gately, Solicitors dated 10 April and 22 May both 2015.

Hearing:

6. A hearing took place at the offices of the Homeowners Housing Panel, Europa Building, 450 Argyle Street, Glasgow on 25 June and at Wellington House, Wellington Street, Glasgow on 17 September both 2015.
7. Present at the hearing were: Ms Markey representing the homeowners, who was accompanied on both occasions by Mr David Rowand, who did not give evidence; and Mr Douglas Brown on behalf of the factors, represented by Ms Antonia Grieve, Solicitor.
8. In addition to the written evidence submitted by the parties, oral evidence was given by: Ms Markey on behalf of the homeowners; and by Mr Douglas Brown, Mr Kenny McCulloch and Mr Paul McGonagle on behalf of the factors. Submissions were made by Ms Grieve on behalf of the factors, a written copy of which was provided to the tribunal.

Preliminary Matters

9. Ms Grieve had intimated prior to the hearing by email dated 22 June 2015 that she would object to Mr Rowand's evidence on the basis that no prior notification had been given in accordance with the Rules. In the event, Ms Markey indicated that she did not intend to lead evidence from him and that he was present as support for her.

Findings and Reasons

10. The homeowners owned the property at 0/1, 35 Montague Street Glasgow G4 9HU. It was a ground floor flat in a tenement block comprising eight flats. The homeowners did not occupy their flat but rented it out as student accommodation.
11. In or about August 2013 the homeowners found a damp issue within the bathroom, hall and a bedroom of their flat. They relocated their tenants and engaged contractors to rectify the problem.
12. During the course of the works, in early October 2013, the contractors, Aegis, discovered problems with the property which involved common areas of the tenement. In particular there were cracks in the left hand and right hand walls of the bathroom which affected the stability of the half landing. Aegis advised that they would not continue with the works to the bathroom until the structural issues had been investigated by a structural engineer.
13. The homeowners contacted Glenavon Insurance, who insured the building, to initiate and progress a claim for what they thought was subsidence. The insurers advised through the loss adjustor, that they would accept a claim in respect of problems with the solum, but rejected a claim in respect of the structural works. It was reported that the structural problem had arisen from a gradual deterioration of the half landing between the ground and first floor due to water ingress, likely caused by washing the stairs. The half landing needed to be strengthened as it was not stable.
14. The loss adjustor advised that the repairs to the half landing would normally be carried out from above by removing the concrete landing and installing a temporary scaffold platform. However, because the bathroom had been stripped back, access could be gained through the flat to strengthen the landing from below, which would avoid the installation of the temporary scaffold platform.

15. On 4 December 2013, having been given this information, as the problem related to a common part of the building, Ms Markey contacted the factors and spoke with a Lindsay Martin who advised that she was a trainee and that she would refer the matter to Mr Brown.
16. Ms Markey then emailed Ms Martin that day (Production 1, page 42) confirming the terms of the call and outlining in detail the problem which had come to light and the reasons for the urgency of the situation. That email explained that access to shore up/strengthen the half landing would normally be carried out from above, by installing a temporary scaffold platform, but in the circumstances it would be possible from underneath as their bathroom had been stripped back.
17. The following day (5 December 2013), Ms Markey spoke to Mr Brown, explained the situation to him again and told him of the urgency due to the fact that the flat could not be occupied until the work had been completed and that they had re-located their tenants. They discussed the process for having a common repair carried out. Ms Markey then sent professional indemnity details for Will, Rudd, Davidson to the factors.
18. Mr Brown advised that where the cost of the work was above a certain limit, all owners in the building would have to be consulted and agree and for that to happen at least two quotes would require to be obtained. However he subsequently altered that to a majority of owners being in agreement. He advised that the owners would be advance charged. However he would have to pass the information to the factors' surveyor to review and comment. If the surveyor thought the work was urgent, a budget cost estimate could be issued to speed things up.
19. There was a minor discrepancy between what Ms Markey understood the limit to be and what the factors worked to. However under cross-examination by Ms Grieve with reference to the factors' Written Statement of Services, Ms Markey acknowledged that structural works would be works which would cost in excess of £1000, albeit that at the time of that conversation, Ms Markey had not been provided with a copy of the Written Statement of Services.
20. Ms Markey acknowledged that Mr Brown told her that if she went ahead without the agreement of the other owners, the factors could not guarantee that the other owners would pay their shares of the cost.

21. Ms Markey and Mr Brown spoke again on 10 December 2013 when Mr Brown advised that the factors' surveyor could not attend until after the Christmas holiday period due to other work. Ms Markey advised him that, in view of the urgency, she had instructed a structural engineer to attend. Mr Brown told Ms Markey that if she could get a report before 13 December 2013 then the factors could do a budget cost estimate to be included with the invoice run. As it happened the information was not provided to the factors until 19 December 2013, which was too late for inclusion with the invoice run.
22. By email of 19 December 2013 (Production 1, page 32), Ms Markey sent the Will, Rudd, Davidson report to Mr McGonagle as she had been told that Mr Brown would be on holiday and that Mr McGonagle would deal with it in his absence. That was followed, on 23 December 2013 (Production 1, page 30) by the invoice for the report amounting to £1,248, inclusive of VAT.
23. Mr Brown was absent from work, either on holiday or on sick leave for, effectively from mid-December 2013 until February 2014.
24. On 20 January 2014 (Production 1, page 26), Claire McKay of Cairn Letting, on behalf of the homeowners, sent a copy of the quotation for the necessary work from Aegis in the sum of £3032 plus VAT (Production 1, page 49) to the factors. Mr McGonagle responded on 21 January 2014 (Production 1, page 25) to ask that he be provided with a copy of the report. He had no recollection of seeing the email of 23 December 2013 despite the homeowner sending it to him in Mr Brown's absence as she had been told to do. Ms Markey confirmed that, by that time, the homeowners were expecting that the factors would have sought the further necessary quotes for the work, or, at the least, made the other owners aware of the situation.
25. On 30 January 2014 the factors sent a copy of the Will, Rudd, Davidson report and the attendant invoice to the other proprietors (Production 1, page 18). A response dated 9 February 2014 was received from four of the other proprietors (Production 3) declining to pay for their share of the cost of the report. That letter was silent on the question of any agreement for the work identified in the report and referred only to the cost of the report itself. While it made reference to the engineer's report and the invoice therefor, it did not refer to the Aegis quote.

26. The factors sought quotations from a number of contractors by emails dated 30 January and 5 and 10 February 2014. Only one response was received dated 12 May 2014 (Production 12, page 23) in the sum of £7,368.00 plus VAT and the cost of wall tiling or floor covering.
27. On 10 February 2014 the homeowners instructed their contractors, Aegis, to proceed with the works on 19 February 2014, initially at their own expense in anticipation of recovering the other shares. This was intimated to the factors by email of 18 February 2014 by Claire McKay of Cairn Letting, on behalf of the homeowner (Production 9, page 36). That email indicated that the homeowners expected the factors to try and recoup shares from the other owners.
28. Further emails passed between the factors and the homeowners between 12 and 20 March 2014 (Production 9, pages 38-42) relating to the homeowners' wish that the factors should seek to recover the shares from the other owners. The factors adopted the position that a majority of the other owners had refused to pay for the works due to the overall cost and that the contractor was a favoured contractor of the homeowner.
29. During this exchange of emails, Mr Brown sent an email dated 20 March 2014 (Production 9, page 38) in which he stated "This is the last time I will respond on this matter as I have made the situation very clear already." Notwithstanding his understanding of how clear the situation had been made, Ms Markey, by email dated 20 March 2014 (Production 9, page 38) still sought clarification as to whether the other owners had seen a copy of the Aegis quote or whether another quote had been obtained. That email went unanswered by Mr Brown and he could not provide a reason for that in evidence.
30. No specific evidence was produced to the Committee as to Ms Markey's enquiries, although the email dated 13 March 2014 (Production 9, page 40) implied that the other owners had seen the Aegis quote as the cost of the work was said to be too high and that the contractor was thought to be favoured by the homeowner.

Assessment of Evidence

31. Having seen and heard the witnesses, the Committee preferred the evidence of Ms Markey as to what had occurred in telephone conversations between her and the factors and found that Mr Brown had implicitly agreed that the homeowners' engineer should attend and provide a report to avoid duplication. He had agreed to include

details of the engineer's report, if it were available in time, with the invoice run of 13 December 2013. He had asked for, and was provided with, professional indemnity details for Will, Rudd, Davidson.

32. Ms Grieve suggested that Ms Markey had been inconsistent in her evidence in relation to the telephone call 13 December 2013. The Committee had regard to this submission but was of the view that while there may have been some minor discrepancies, it was satisfied that the situation had been discussed fully with Mr Brown. The factors had been made fully aware of the homeowners' view that the matter was urgent. Mr Brown agreed that as Will, Rudd, Davidson had already been instructed, they could proceed to inspect and prepare a report. Whilst the question of whether the cost of such a report would be recoverable from the other owners appeared to have been left open, the Committee considered that it was not unreasonable for the homeowners to expect that the factors would make positive attempts to recover it from the others.
33. In the event the report from William, Rudd, Davidson was not provided to the factors until 19 December 2013 which was too late for the invoice run. However for various reasons the factors did not circulate it to the other owners until the letter of 30 January (Production1, page 18).
34. There was a clear difference between what the homeowners and factors regarded as "urgent". The homeowners' urgency was that until the work had been done, their flat was uninhabitable and as they had found it necessary to re-locate their tenants it was costing them money. On the other hand, the factors regarded the urgency as being related to the stability and safety of the building. The factors effectively paid no heed to the homeowners' view of the urgency. As professional factors the Committee would have expected them to have done so to the point of explaining to the homeowners what did and did not amount to "urgency".
35. Mr Brown then went on holiday which was followed by a period of absence due to illness effectively for the whole of January. Ms Markey said that he had told her to refer to Mr McGonagle in his absence (on holiday).
36. On 19 December 2013, Ms Markey emailed Mr McGonagle (Production 1, page 32) as she had been told to do in Mr Brown's absence. That position is supported by the

fact that the email was addressed to Mr McGonagle, with a cc for Mr Brown. However Mr McGonagle failed to even read the email or respond to it. At the hearing he had no recollection of having received either the email of 19 December 2013 (Production 1, page 32) or another of 23 December 2013 (Production 1, page 30) despite the fact that the homeowners had been told that he was dealing with it in Mr Brown's absence.

37. The Committee found that it was not unreasonable for the homeowners to expect that the factors would proceed to inform the other owners on the basis of Will, Rudd, Davidson's report following its receipt by them on 19 December 2013 and also seek quotes from contractors for the work as detailed in the report. The homeowners had also expected that the other owners would at least be told of the situation and given details of the Will, Rudd, Davidson report. At that time, there was no indicative price for the work and the only expense had been the cost of the report. The factors did none of those things.

38. Mr McGonagle, in evidence, freely admitted that he had not attended to the homeowners' matters in Mr Brown's absence but had simply left them for his return. It was not until 21 January 2014 that he did anything about it.

39. The Committee found Mr McGonagle's evidence to be particularly unsatisfactory. He said that he had no recollection of having received the emails of 19 or 23 December 2013 (Production 1, pages 30 and 32). He did accept, on sight of the read receipts, that he had received them. However he referred in each case to his perception "*at that time*" as having been that it was a matter which would be dealt with by Mr Brown on his return. Similarly, Mr McGonagle stated that his perception "*had changed*" on 21 January 2014, when Ms Markey re-sent a copy of the structural engineer's report and drawings. However if he had no recollection of having seen these emails, the Committee cannot understand how he could recall any perception he might have had.

40. Mr McGonagle said that Ms Markey must have been mistaken about having been told that the factors' surveyor would attend after the holiday period since the surveyor was retiring on Christmas Eve. However it was Mr Brown's evidence that their surveyor was unable to attend until after the holiday due to pressure of work. He made no mention of the surveyor's retirement plans. The factors' evidence was unsatisfactory in this regard.

41. It was only after 21 January 2014 that Mr McGonagle made any effort to address the matters to which the homeowners understood he would be attending throughout Mr Brown's absence.
42. Even then, Mr McGonagle took until 30 January 2014 before he issued a letter (Production 1, page 18) to the other owners enclosing a copy of the structural report and the invoice therefor. Mr McGonagle conceded in evidence that the letter was "terrible". The letter made no mention of the Aegis quotation, despite it having been provided to the factors on 20 January 2014, and referred only to the owners who had instructed the engineer's report having requested that they (the factors) endeavour to recover the costs of the report. The Committee considered that the letter was wholly inadequate. The letter failed to provide any explanation of the fact that the factors had been in receipt of the report since mid-December or the background to the problem which had come to light in the common parts of the property, or how it had come to light. It did not advise that the problem with the landing could be fixed without access through the homeowners' flat, but that as work was being done in the flat, the homeowners were willing to allow access to be more easily gained to carry out the repair work to the landing. It did not advise that in that event, the homeowners were anxious that the work be done as quickly as possible as they had re-located their tenants and wanted to get them back in quickly. It merely advised that "one of the owners..." had instructed an engineer's report and enclosed the report with drawings and the attendant invoice.
43. At no point did it appear that the factors had discussed with homeowners the possibility that they could carry on with the works in the flat and leave the common repair to be dealt with separately which would have allowed the homeowners to have their tenants return to the flat as soon as possible.
44. The Will, Rudd, Davidson report had been prepared on the basis that the work would be carried out with access being gained through the homeowners' flat rather than by access from above. The Committee considered that it was not unreasonable for the homeowners to expect the factors to deal with the matter of assisting them to recover the costs incurred in an efficient manner.
45. Following the letter of 30 January 2014 (Production 1, page 18) the factors received a response dated 9 February 2014 (Production 3) from four owners in the building which

stated: "This work was commissioned on behalf of the owner of flat 0/1 regarding dampness in their property. As the owner did not follow correct procedure before commissioning this report e.g. by having it authorised through you as our property manager then we are not liable." The basis of that letter was incorrect as the report related to the repairs to the common landing and not to dampness in the flat. The letter of 30 January 2014 made no mention of dampness. The factors took no steps to: correct that error; point out the true situation in which the homeowners had found themselves; advise the other owners that the work could be done without access through the homeowners' flat by the installation of a temporary scaffold platform. They simply took this letter as a refusal of these proprietors to cooperate.

46. The Committee considered that this amounted to totally inadequate communication with the homeowners about their options.
47. The Committee accepted that the factors did eventually seek tenders in respect of the work as detailed in the engineer's report but it was not satisfied that the factors' explanation for the delay between them having been supplied with the report and drawings on 19 December 2013 and seeking quotes on 30 January 2014 was satisfactory. It matters not that Mr McGonagle might have thought or expected Mr Brown to deal with it on his return. The homeowners had been told by the factors (Mr Brown) that Mr McGonagle would deal with it in Mr Brown's absence. Mr McGonagle's reason for the delay was that he was too busy with his own work to attend to it due to pressure of work and staff absence/shortages in the factors' office. These were matters for which the factors were entirely responsible.
48. The email from the homeowners dated 14 March 2014 (Production 9, page 39) made it clear that the homeowners had expected that after the factors received the report on 23 December 2013 they would have: obtained the other necessary quotes; and circulated them to the owners, along with the Aegis quotation. The factors did not begin to seek quotes until after 30 January 2014, despite the homeowners' urgent (to them) situation. The Committee accepted that this amounted to an unreasonable delay of approximately six weeks from receipt of sufficient information to commence the procedure, even taking account of the Christmas holiday period.
49. During the evidence, the factors' position with regard to the requirement for approval from the other proprietors changed from having been stated to be "all proprietors" as

discussed between Mr Brown and Ms Markey in December 2013 to being "majority approval of 5 proprietors" on the evidence of Mr Brown.

50. The Committee considered in detail Mr Brown's email of 13 March 2014 (Production 9, page 40) and drew the inference from it that a copy of the Aegis quote in the sum of £3032 plus VAT must have been sent to the other owners at some point, although nothing was provided to the Committee to indicate when that was. This was on the basis that the email refers to the "...overall cost of the work..." and to the fact that the other owners "... felt that this has been instructed to a favoured contractor of your letting agency...".
51. As far as the "overall cost" was concerned, the Committee noted that the Aegis quote of £3,032 plus VAT was considerably lower than the McCorquodale quote obtained by the factors in May 2014 of £7,368 plus VAT, after the work had been completed. The total cost of the work carried out by Aegis, including extras which had not been identified at the time of the quote, amounted to £6,588, including VAT. The Committee considered that the McCorquodale quote would likely have been increased by extras also, but even at that the overall costs of the work carried out by Aegis were lower than the McCorquodale quote.
52. Following receipt of the McCorquodale quote, the factors do not appear to have reverted to the other owners to advise that while they may have considered the Aegis quote to have been high, the actual cost of the work carried out by them to the common landing was lower than the only other quote which the factors were able to obtain.
53. In Ms Grieve's submissions she reminded the Committee that she had elicited from Ms Markey that the homeowners' priority was to move their tenants back in. Further Ms Markey had confirmed that although questions of structural repair had been raised, it had not been suggested at any time that the building was in danger of falling down if the work was not carried out.
54. In the view of the Committee it was incumbent upon the factors to explain what they regarded as "urgent work". It is not unreasonable for the homeowners to regard their inability to make use of their property for commercial letting purposes, as amounting to a matter of urgency.

55. The Committee accepted Ms Grieve's submission that it would have been unreasonable to expect the factors to do all that was necessary to: obtain estimates; inform other owners; obtain their agreement; ingather funds; and instruct works within the timescale perceived by the homeowners in this case, and that this could take over three months to achieve, even with co-operative owners. However the Committee was of the view that for the factors to have done nothing at all until 31 January 2014, having been provided with the Will, Rudd, Davidson report on 19 December 2013, even allowing for the holiday period, was unacceptable and amounted to a failure on their part.
56. The Committee was not satisfied that the homeowners had been fully advised of the necessary time required. Had they been so advised they would have had the option of proceeding at their own initial cost on a fully informed basis and at their own risk, or, alternatively completing their own work in their flat and leaving the common repair to be dealt with separately. As it was, the Committee found that the homeowners, while being aware of the difficulty, at least expected assistance from the factors in fully informing the other owners of the situation in which they found themselves.
57. The Committee also took account of Ms Grieve's submissions that the factors had not been aware that the work had been completed in March 2014, which was before the factors were in a position to circulate a second quote. It may be that the factors in that capacity were in difficulty about recovering other shares in terms of their procedures as outlined in the Written Statement of Services (a copy of which had not been made available to the homeowners until November 2014), they could reasonably have been expected to take steps to fully inform the other owners of the situation and assist the homeowners to recover the shares of the common repair, as they would be entitled to do under the terms of the title deeds and the Tenements (Scotland) Act 2004.
58. With regard to the specific complaints of the homeowners, the Committee finds as follows:

a. Section 1, paragraph 1, bullet 3

In her submissions, Ms Grieve accepted that there had been a failure on the part of the factors to provide the homeowners with a copy of the factors' Written Statement

of Services, but that the failure had been remedied by the provision of a copy in November 2014.

Accordingly the factors were in breach of Section 1, paragraph 1, bullet 3 of the Code of Conduct.

b. Section 2

The Committee was of the view that the whole issue of communication and consultation as narrated was an abject failure by the factors to meet the minimum standards of practice that might be expected of a registered property factor.

The factors did nothing on receipt of sufficient information to start the consultation process and obtain quotes for the necessary work for a period of six weeks and then sent a wholly inadequate letter which contained no explanation of the situation on which the other owners could make an informed decision. The letter failed to include a copy of the quotation from Aegis which was in the factors' possession. They did not respond to correct the inaccuracies in the response from the other owners.

On the eventual receipt of the quotation from McCorquodale in May 2014, even although the work had been completed, the factors did not revert to the other owners to explain that the cost of the work had been considerably less and that the other owners had benefitted to the extent of a stabilised landing through the actions of the homeowner. They made no attempt to assist the homeowners to recover the shares of the cost of the common repairs from the other owners.

Even although the homeowner may have acted in contravention of the factors' normal procedure, the common repair carried out to the half landing of which the homeowners as proprietors of the ground floor flat make no use, did benefit the other owners and it would not be unreasonable for the factors to assist the homeowner to recover shares for that cost from the other owners rather than wash their hands of it. This could be done by a full and proper explanation of the circumstances and with reference to the actual costs compared to the only other quote available.

The Committee was of the view that the correspondence with the homeowners and the other owners did nothing to reduce any misunderstandings and effectively contributed to a dispute between the homeowners and the other owners.

Section 2.2

The Committee did not find that the communication from the factors was in any way abusive or intimidating or threatening in the specific terms of the section. However the Committee consider that the email from Mr Brown of 20 March 2014 (Production 9, page 38) was entirely unprofessional in the circumstances and contravened Section 2 of the Code of Conduct which states: "Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes."

c. Section 2.5

In her submissions, Ms Grieve confirmed that the factors acknowledged in their written response (Production 2) that there had been failures to respond to specific correspondence, namely emails of 19 and 23 December 2013. Mr McGonagle had regarded these as a matter to be dealt with by Mr Brown, notwithstanding Mr Brown's prolonged absence and the fact that the homeowners had been told by Mr Brown before his departure that it would be dealt with by Mr McGonagle.

It was suggested to the Committee that Ms Markey failed to follow up the emails of 19 and 23 December 2013 with a telephone call to the factors. The Committee found such a suggestion to be indefensible. She had sent emails for which she had received read receipts and was therefore entitled to expect that the matter was in hand.

The internal difficulties faced by the factors in respect of holidays and absence were matters for which they were entirely responsible and no blame can, or should be attributed to the homeowners for such failures.

It was further suggested that Mr McGonagle took action following upon his receipt of the email of 21 January 2014. In the Committee's view the delay between the receipt of that email and the issuing of the letter to owners on 30 January 2013 was

unexplained, and in the circumstances amounted to an unacceptable delay in itself and in addition to the delay between 19 December 2013 and 21 January 2014.

It was also accepted on behalf of the factors that there had been failures to respond to emails dated 20 March 2014 and 24 June 2014, as acknowledged by Mr Brown.

Ms Grieve suggested that the breach of Section 2.5 had no bearing on the homeowners' ability to recover costs. That is not the point. The factors have a duty and responsibility to adhere to the Code, in which they singularly failed.

The Committee found that the factors were in breach of Section 2.5 of the Code of Conduct.

d. Section 6.3

The Committee found no relevance of this section to application.

Section 7

Mr Brown's position was that as he considered that he could be of no further assistance to Ms Markey given the position which they had reached, there was nothing further to be gained by dealing with the issue as a formal complaint and he therefore accepted that the factors had been in breach.

Ms Grieve submitted that this breach had been 'cured' by the fact that the homeowners had "found their way to the Home Owners Panel..". the Committee did not agree that the breach had been so remedied, although it was accepted that the effect of the breach had been remedied through the homeowners' efforts. The Code of Conduct was intended to avoid the need for homeowners to find their own way to the Panel.

The Committee found that the factors were in breach of Section 7 of the Code of Conduct

e. Factor's Duties:

The Committee was satisfied that the factors had failed to handle the situation faced by the homeowners in an efficient or professional manner. They had not responded adequately at the time of initial contact. Whilst Mr Brown had gone some way to explaining the process, it was apparent from the hearing that he expected the homeowners to be intimately familiar with the 30 pages plus appendices which comprise the Written Statement of Services, a copy of which he acknowledged had not been provided to the homeowner until November 2014. He had not specifically referred the homeowners to the relevant sections of the Written Statement. That was done by Ms Grieve in her cross examination.

Once the problem had been drawn to the factors' attention, the Committee considered that they should have sought to assist the homeowners directly by identifying appropriate options for them to be able to recover possession of their property as quickly as possible and should also have assisted them in more practical ways to recover shares of outlays incurred by them from the other proprietors.

The Committee found that the letter to other proprietors gave a wholly inadequate explanation of the situation in which the homeowners had found themselves and had failed entirely to address the fact that the common repair referred to was being facilitated by the co-operation of the homeowners even although it did not directly affect their property.

The Committee had no information about the likely costs of the work in the event that access was not available through the homeowners flat. However it would not be unreasonable to consider that the cost would have been considerably higher.

The Committee was impressed at the demeanour of Ms Markey throughout the process. Her written submissions were balanced and fair and the evidence she gave was clear and also balanced, notwithstanding the frustration that she undoubtedly experienced through the offhand manner adopted by the factors.

On the contrary the Committee found that the evidence of the witnesses called on behalf of the factors to be inconsistent, unsatisfactory and overly defensive. The witnesses sought to blame anybody and everybody else, including the homeowners. They were not prepared to accept their own shortcomings in their dealings with the homeowners. They seemed to display an attitude towards the homeowners through

their commercial use of the property that might not have been displayed to a resident owner. Mr McGonagle in particular sought to excuse his inactivity on pressure of work. The Committee considered that it was the responsibility of the factors to ensure that they were properly staffed to the extent that their professional services would not be compromised through staff absence on holiday or through illness.

59. Having decided that the factors had failed to comply with the terms of the Code of Conduct for Property Factors, and the property factors' duties, in terms of section 19 of the Act, the Committee decided to make a Property Factor Enforcement Order (PFEO) in terms of the attached Notice of Proposed PFEO.

60. In terms of section 19(2) of the Act, before making a PFEO, the Committee must give notice of their proposal to the factor and allow the parties to make representations to it.

Right of Appeal:

1. The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the 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>

David Preston

Chairman

13 November 2015

Date