

- (b) The Applicant is the owner of the Property. She has been since at least 2011.
- (c) There is a deed of conditions for the development. It makes no provision for a Bannermill Residents' Association but provides for the appointment of a factor to manage the common parts of the development and collect monies for such purpose.
- (d) The Respondent was appointed to manage the common parts of the Bannermill development with effect from 1 July 2011. It was founded by its director Ms Carline Stevens to carry on such management as a business. At the time of appointment the Respondent provided the Applicant with a seven paragraph document headed "Terms and Conditions". During 2013 and 2014 the Respondent also carried on a letting agency business.
- (e) There is no formal Bannermill Residents' Association. In or about 2011 a group of homeowners had come together as a result of dissatisfaction with the then factor for the development, Trinity. Following the appointment of the Respondent, certain members of the group had formed a committee to liaise with Ms Stevens. The committee members were not elected by the homeowners as a whole. Matthew Henderson was invited to become a member. In the summer of 2013 the committee approved a constitution for a Residents' Association. They asked for the Respondent to intimate it to all homeowners. It is unclear whether the Respondent has done this.
- (f) Nevertheless some homeowners, and representatives such as Mr Hepburn, believed that there was a such an association and that all residents were its members. They understood that there was a bank account of such an association which was operated on behalf of it by the Respondent.
- (g) The Respondent became a registered property factor in terms of the Property Factors (Scotland) Act 2011 on or about 25 February 2013 under the number PF000207.
- (h) On or about 20 October 2012 the Respondent issued a letter to all homeowners enclosing -
- a pro forma document headed "Select Property Management Services (Aberdeen) Ltd - Terms of Business for Factoring Services". Section 1 of this pro forma document stated,

"These are the standard Terms of Business applicable to work to be carried out by Select . . . These Terms of Business supplement the Written Mandate of Appointment which incorporates these terms. In the event of any inconsistency between the Written Mandate of Appointment and these Terms of Business, the Written Mandate of Appointment will prevail. . .".

The pro forma document also included a written statement of services.

- (i) By an undated mandate signed during 2013 the Applicant appointed her father Mr Robert George Hepburn as her mandatory to act on her behalf in respect of her interest in the Property, including communication with the Respondent. At all material times from November 2013 and during the course of her application the Applicant has been represented by Mr Hepburn.
- (j) At all material times the Respondent has been represented by its director and Property Manager, Ms Carline Stevens. Until the termination of the factoring contract on 30 November 2014 Ms Stevens was based at the Factor's Office at Bannermill Place, Aberdeen. This was at the Bannermill development.
- (k) On 3 November 2013 the Applicant hand delivered a letter to the Respondent attaching three pages of questions under two separate headings, namely,
 - "AA. Block Buildings Insurance Policy Arranged by Select with Royal Sun Alliance"; and
 - "BB. Role and Activities of Select in the Factoring of the Bannermill Development."The letter sought a response by close of business on 7 November 2013.
- (l) On 15 November 2013 the Respondent's Property Manager, Carline Stevens responded to the Applicant's letter by e-mail. That e-mail contained replies to a number of the questions posed with the letter of 3 November 2013. In answer BB10 it purported to enclose a Statement of Accounts from the Respondent since the Respondent became factor for the development in the summer of 2011. The Statement of Account was not enclosed with the e-mail.
- (m) Between that date and 20 November 2013 Mr Hepburn e-mailed Ms Stevens to intimate that the Respondent had not intimated a response in accordance with the timescale stated in the letter of 3 November 2013.
- (n) By e-mail of 20 November 2013 to the Applicant, Ms Stevens stated among other matters,
 - "I have sent the email to you as I had advised before the expiration of the 10 business days to directly to you."She also refused to communicate with Mr Hepburn for the reason that he was not an owner and therefore not a client of the Respondent.
- (o) By e-mail of 24 November 2013 to Ms Stevens, Mr Hepburn objected to her refusal to communicate with him. He noted that the Statement of Account had not been enclosed with the e-mail of 15 November. He also attached a document setting out the original questions from 3

November and the answers given on 15 November and requested full answers by Friday 29 November 2013.

- (p) There being no response to the e-mail of 24 November 2013, Mr Hepburn wrote a letter of formal complaint dated 21 December 2013 to the Respondent.
- (q) In the letter of 21 December 2013 Mr Hepburn alleged a breach of "Property Factor duties" as set out in section 17(3) of the Property Factors (Scotland) Act 2011, but founded on the terms of sections 2.1 and 2.5 of the Code of Conduct for Property Factors. He asked for a detailed response to the letter of complaint and the e-mail of 24 November 2013 (which was attached as "Appendix A"). The response was sought by 9 January 2014.
- (r) In the meantime Mr Hepburn had joined some other flat owners in the development to form a "Bannermill Owners Action Group". The Group signed and hand-delivered a letter dated 22 December 2013 to Ms Stevens. This letter sought "full written responses" to a number of financial questions. These included the provision of a copy of the annual Statement of Accounts that the Respondent had prepared for the development since 1 July 2011. A response to each of the individual signatories was sought by 9 January 2014.
- (s) By e-mail dated 13 February 2014 timed at 17.24 hrs Ms Stevens responded to the Group's letter of 22 December 2013. This e-mail was subsequently referred to by Ms Stevens and Mr Hepburn as the "group communication". It was sent to Mr Hepburn among other members of the Group.
- (t) By e-mail dated 13 February 2014 timed at 20.21 hrs Ms Stevens responded to Mr Hepburn's letter of formal complaint of 21 December 2013. She enclosed his document from the e-mail of 24 November (referred to as "Appendix A") with further answers to the questions in that e-mail.
- (u) In her e-mail Ms Stevens also attached a purported 4 page "document" headed "Written Mandate of Appointment of Property Factor for the Bannermill Development Aberdeen AB24 5EG - Bannermill Development". On its first page the Respondent is stated as having been registered as a property factor in Scotland and the Respondent's property factor registration number is stated. This indicates its origin in 2013. On its last page (page 4) it purports to have been signed by Ann Schofield as a "member of the residents' committee for the Development" and Mrs Carline Stevens on 1 July 2011. Both signatures are witnessed.
- (v) On 26 February 2014 the Group sent an e-mail to Ms Stevens. In it they asked her to confirm when her accountant would have finished the preparation of the development's accounts and confirmation that

the full copy and not just the balance sheet would be forwarded as soon as they were available. They also asked for a meeting with Ms Stevens between 15 and 31 March 2014.

(w) By e-mail to Ms Stevens dated 28 February 2014 Mr Hepburn responded to her e-mail to him of 13 February with an attachment containing a consolidated version of:

- (i) the original questions from 3 November 2013;
- (ii) the Respondent's replies in Ms Stevens' e-mail of 15 November 2013 (incorrectly described as 20 November);
- (iii) the Respondent's responses of 13 February both in the group communication and in the separate e-mail to Mr Hepburn (in green text);
- (iv) his further responses to the Respondent's e-mails of 13 February 2014.

The responses numbered (i) to (iv) above each had a different colour, making the document a "multicoloured document". The multicoloured document concluded with Mr Hepburn also requesting a meeting with Ms Stevens.

(x) On 11 March 2014 the Group again e-mailed Ms Stevens asking for an indication of when the accounts would be ready and repeating the request for a meeting. By e-mail of 12 March 2014 to the Group Ms Stevens indicated that she would be chasing the accountants that day to see when the accounts could be expected to be finalised.

(y) No response to the e-mail of 11 March having been received, on 19 March 2014 the Group e-mailed Ms Stevens again asking for an indication of when the accounts would be received and of the identity of the firm preparing them. They also asked for copies of the Bannermill Residents Association bank statements from 1 January 2013.

(z) Mr Hepburn and another member of the Action Group, Mr Alastair Graham met with Ms Stevens at her office on 26 March 2014. What took place at that meeting is set out in Mr Graham's letter to Mr Hepburn dated 6 September 2014. In particular Ms Stevens advised that the accounts were not available as they were still with her accountant for preparation. She was unable to explain why she had written in her e-mail of 15 November 2013 that they were attached.

(aa) There was no further direct contact between Mr Hepburn, the Applicant and the Respondent in connection with the matters in the multicoloured document.

(bb) The Group wrote a letter of formal complaint dated 31 March 2014 which was hand-delivered to the Respondent. It founded on a failure to respond to the Group's communications of 22 December, 26 February and 19 March. The letter was also e-mailed to Ms Stevens.

(cc) In the letter of 31 March 2014 the Group alleged a breach of "Property Factor duties" as set out in section 17(5) of the Property Factors (Scotland) Act 2011, but founded on the terms of sections 2.1 and 2.5 of the Code of Conduct for Property Factors. They asked for a detailed response to the letter of complaint by 10 working days from its date.

(dd) By e-mail of 14 April 2014 to the Group, Ms Stevens acknowledged receipt of letter of 31 March and stated that she would give her responses on Monday 28 April 2014 upon her return to Aberdeen. However no further response was received.

3. On 16 June 2014 the Applicant, together with the other members of the Action Group each lodged applications to the HOHP complaining about the matters raised in their letter of complaint. In her application of that date (numbered HOHP/PF/14/0087) the Applicant was represented by another representative, Mr Alastair Graham.
4. In the present application to the HOHP the Applicant complained that the Respondent had failed to comply with the Code of Conduct for Property Factors in the following respects:

Communication and Consultation - Section 2.1 of the Code

Communication and Consultation – Section 2.5 of the Code

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. That decision was intimated to the Applicant and to the Respondent. The intimation of the Notice of Referral to the Respondent included a copy of the Applicant's application to the Panel including attachments to it.
6. Following intimation of the Notice of Referral, Mr Hepburn intimated by means of a form received by the Panel on 10 September 2014 that he wished to have the application dealt with at an oral hearing. With the form he included a letter of written representations dated 8 September 2014 with accompanying further documents. The Respondent's Property Manager Ms Stevens responded to the HOHP by e-mail dated 6 November 2014 with attached letter of 5 November 2014. The letter also contained written representations on behalf of the Respondent.
7. Given that the Applicant had requested an oral hearing and the difficult issues raised through her application a hearing was fixed to take place at The Credo Centre, 14-20 John Street, Aberdeen AB25 1BT for 19 December 2014 at 10.30 a.m. The date and times were intimated to the Applicant, Mr Hepburn and the Respondent's Ms Stevens.
8. Given the overlap of the complaint in the present case with that in the applications that had been made by the Action Group numbered

HOHP/PF/14/0084, 0085, 0086, 0087, 0088 (“the Action Group applications”), the same hearing was fixed to hear those applications also.

9. Following their nomination the Committee issued a direction to the parties dated 21 November 2014. It required the Applicant to provide certain documents and information relating to her representation by Mr Hepburn in the present application and by Mr Graham in the Action Group applications. It required the Respondent to produce the annual accounts which had allegedly been prepared by accountants in connection with the development, failing which a letter from the accountants providing information on when the accounts had been instructed, the date by which their completion could be expected and the reason for the delay in completion. In the direction the Committee required compliance with it by both parties by 28 November 2014.
10. By e-mail of 26 November 2014, Mr Hepburn asked for an extension of the date for compliance to allow the Applicant to meet with him and provide him with a signed power of attorney. The Committee agreed to extend the time for compliance by the Applicant to 2 December 2014. The Applicant complied with the Direction by that extended time limit.
11. By e-mail of 27 November 2014, Ms Stevens asked for an extension of the date for compliance by the Respondent with the direction. The reason was that the termination of the factoring on 30 November and removal of paperwork from the Respondent’s office at the development meant that there was insufficient time for compliance. The Committee agree to extend the time for compliance by the Respondent to 4 December 2014. There has been no compliance by the Respondent with the Direction.
12. By e-mail dated 17 December 2014 Ms Stevens on behalf of the Respondent provided a further written submission together with further documentation attached to the e-mail. This submission did not address the matters in the Direction. Instead it made a claim that there had been a campaign to discredit Ms Stevens by the members of the Action Group, including Mr Hepburn, in particular. It added nothing material to her previous written representations. The lodging of the further documentation was objected to at the hearing.
13. In her e-mail of 17 December Ms Stevens indicated that she would not attend the oral hearing that had been fixed. She also indicated that “other information” would follow. No such information has been received by the Panel from the Respondent.

The Hearing

14. The hearing took place on 19 December 2014 at 10.30 a.m. at the venue fixed for it. The Applicant’s representative attended the hearing. During the course of the hearing evidence was given by Mr Hepburn and Mr Matthew

Henderson. Mr Hepburn and Mr Graham made submissions. There was no appearance by any person on behalf of the Respondent.

15. There were a number of preliminary matters decided by the Committee. Firstly there were objections from Mr Hepburn and Mr Graham to the Committee having regard to certain documents attached to Ms Stevens' e-mail of 17 December 2014. These were based on the regulation that except as specified by the Committee a party must send to the Homeowner Housing Panel a list of any documents and copies of any documents that it wishes to rely upon no later than 7 days prior to any hearing (Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012, reg. 12).
16. Mr Graham objected to the statement from Joann Murray dated 4 December 2014. This related to a meeting of homeowners on 16 September 2014 which had been arranged by the Action Group in connection with the appointment of a new factor. It also contained some *ad hominem* remarks about Mr Hepburn and other members of the Group. It did not contain anything material to the issues in any of the applications before the Committee.
17. The Committee is entitled to allow a document to be lodged late if it is satisfied that there is good reason to do so. In addition the Committee must have regard to whether it is fair to allow it to be lodged late in all the circumstances. Given the immateriality of the statement the Committee were unable to see how fairness required the lodging of the statement. On the other hand it could see how the lodging of irrelevant material such as this could result in unfairness to the Applicants given the potential consequent wish of Mr Hepburn and possibly other members of the Group to defend the attack on their reputations. In these circumstances the Committee could see no good reason to allow Ms Murray's statement to be lodged late. It upheld Mr Graham's objection.
18. Mr Hepburn objected to both the statement from Ms Murray and also an e-mail from Sheila Reid to Ms Stevens dated 7 December 2014 being lodged. His submission on the statement mirrored the objection of Mr Graham and the Committee upheld it. With regard to the e-mail from Ms Reid, this was concerned with operation of the Steering Group for the appointment of a new factor and its relations with the Respondent's Ms Stevens. The Committee found this to be immaterial to the issues that it required to decide. In those circumstances fairness did not require the lodging of the e-mail and the Committee could see no good reason for its lodging late. It upheld Mr Hepburn's objection.
19. At the hearing Mr Graham made a motion himself for late lodging of the Land Certificate for 207 Links Road. He explained that the purpose of this was to allow him to found on the real burden on page D13 in his argument. In response to a query from the Committee he explained that it was intended to support the allegations of a breach of the Code and not to create a new ground of application based on breach of property factor's

duties in the Land Certificate. Mr Graham explained the omission to lodge was down to oversight and apologised to the Committee. There was no opposition from Mr Hepburn to this motion.

20. The Committee noted the purpose of the motion. It was aware, however that neither the motion nor reliance on the document had been intimated to the Respondent who was not present. If the document was lodged the Respondent would not have an opportunity to respond to any submission on its relevance. It was not suggested by Mr Graham that the Land Certificate was in any way essential to his submissions and that he would be materially prejudiced through not being able to rely on it. In these circumstances and weighing up fairness to both Applicants and Respondent the Committee concluded that there was no good reason to allow this document to be allowed to be lodged late. The Committee refused the motion.

Evidence led at the hearing

21. Mr Hepburn gave evidence and led the evidence of Mr Matthew J. Henderson.
22. Mr Hepburn indicated that in the autumn of 2014, during the last couple of months after the Respondent had resigned as factor, potential replacement factors who had spoken to the Respondent had disclosed that the Respondent had said that the accounts were a "mess" and that over £ 70,000 of owners' invoices had not been collected. He, Mr Hepburn, had obtained this information from Mr Henderson and Parkhill Property Management.
23. He explained that the Select report referred to in question BB8 was the minutes of the 18 July 2013 AGM. He noted that a meeting had taken place between him, Mr Graham and Ms Stevens in March 2014 as recorded in Mr Graham's letter to him of 8 September 2014. Mr Graham had come as a note-taker for the meeting and taken contemporaneous notes which he had used for the letter to him. As far as he, Mr Hepburn, was concerned Mr Graham's letter of 8 September 2014 was fully accurate.
24. With regard to the Bannermill Residents' Association Mr Hepburn explained that he, Mr Graham, Mr Henderson, Dr Adam, and Julie Thompson had all understood until recently that the Bannermill development was managed financially through the Bannermill Residents Association who had an account with Santander bank. This assumption had been accompanied by an assumption that payments would be made by Residents Association cheques. It had been based on the Welcome Pack which the Respondent had supplied to owners on appointment. Only recently had they become aware that there was no proper association with a bank account. Rather it appeared to be an account which Ms Stevens had opened herself with herself as the sole signatory.

25. There was no Bannermill Residents Association as such and there was no provision for it in the Deed of Conditions. The Deed did provide for a factor and that the factor would administer monies. In the early days there had been a Bannermill Residents Association Committee with Mr Graham and Mr Henderson as members but it had become inactive. He was unaware of any constitution.
26. He explained that he did not understand why Ms Stevens was so wary of giving the balance on the Residents Association account. Since the application he had realised that the insurance premium for the block insurance was not paid by cheque, standing order or direct debit from that account but from a bank account in the name of Select Property Management Services. This he discovered from a visit on 23 September 2014 to the insurance broker who had confirmed that insurance had always been in place despite the credit agreement for monthly payments by the Respondent being breached.
27. He had been approached by White Gardening Services who since about August or September 2011 had been providing gardening services. He had been told that the gardeners had not been paid since June 2014 and that they were considering claiming against the owners. The gardeners had commented that they always invoiced Select and were paid by Select.
28. From Steering Group member Joann Murray he had been informed that owners paid money into the Association's account but that this was only a holding account from which money was transferred into another account to pay the bills. He had been so informed at a public meeting or shortly after 6 November 2014. Apparently Ms Murray had been so informed by Ms Stevens in a telephone conversation a few days earlier.
29. Mr Matthew Henderson gave evidence. While he had not been on the Applicant's list of witnesses, Mr Graham had no objection to him giving evidence. He stated that he had spoken to a man from Parkhill Property Management who were interested in taking on the factoring. He was told that the accounts of Select were "in a mess" and that for commercial reasons he could not divulge more. He did not mention any figures.
30. With regard to the Residents Association back in 2010 a group of 11 owners had come together with a view to replacing the then factor with someone new. In May/June 2011 they had decided to appoint a new company whose owner Ms Stevens had been employed by the then factor Trinity. Following the appointment of Select, the group had formed a committee which then met with Ms Stevens. Select had been formed in June 2011 and took charge on 1 July 2011.
31. Ms Stevens also had a letting business but as far as Mr Henderson was aware the Bannermill development was Select's sole factoring business. He had been invited to join the committee in 2012. He had been asked to develop a constitution. Eventually the constitution was approved by the committee on 29 August 2013. They asked the factor to notify all owners

of the constitution in advance of a public meeting on 14 November 2013 to allow it to be approved. About 25 persons turned up on that occasion but Ms Stevens had failed to confirm the extent of notification despite having been requested to do so.

32. The Committee had no difficulty in accepting the evidence of Mr Hepburn and Mr Henderson as credible and reliable.

Reasons

33. The complaint of the Applicant was that the Respondent was in breach of its duty under sections 2.1 and 2.5 of the Code. These provide,
- “Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:
- 2.1 You must not provide information which is misleading or false.
- ...
- 2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).”

Section 1 of the Code provides, in section 1.1a,

“The written statement should set out:

... *D. Communication Arrangements*

m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail”

34. In October 2012, the Respondent issued to the homeowners in the development including the Applicant a document headed “Terms of Business for Factoring Services” which included within it a “Written Statement of Services.”. This written statement provided in section D as follows:
- “b. In relation to any enquiries received by letter or email, we will endeavour to respond within 10 business days of receipt of the correspondence from the relevant Homeowner.”
35. While the written statement included only an undertaking to “endeavour” to respond within 10 business days, there was no complaint of a breach of section 1.1a Dm of the Code.
36. Taking the Code and the Respondent’s written statement of services together the Respondent’s obligation under section 2.5 was to answer enquiries and complaints as quickly and fully as possible, and to keep homeowners informed if it required additional time to respond beyond 10 business days of receipt of the correspondence from the homeowner.

Communication and Consultation

37. The Applicant's complaint of breaches of sections 2.1 and 2.5 of the Code relate to the Respondent's responses or alleged failures to respond to a number of the questions and requests posed in the 3 November 2013 letter. Each question or request that the Applicant relies upon has to be considered in turn in order to assess whether there has been a breach of section 2.1 or 2.5 of the Code.

Question AA3

38. Question AA3 was "Select have advised you obtained 2 quotes for the current insurance policy. Please provide full comparative details of those 2 quotes and the reason why you chose to place the insurance with Royal Sun Alliance (RSA) through brokers Central Insurance (CIS) ?".
39. Section 5.6 of the Code makes it clear that on request a factor must be able to show how and why it appointed an insurance provider. Question AA3 was therefore an entirely reasonable one for the Respondent to answer.
40. The Respondent's responses are in the red and green text in the multicoloured document. They do not contain full comparative details of the two quotes. It is not clear who the insurer was that provided the other quote. Nor is there any explanation of the reason why RSA was preferred to the other insurer. The last paragraph of the green text is quite unclear and on one reading might be read as relating to the reason for the use of CIS as brokers rather than the preference of RSA over the other, unidentified, insurer. Nor was any explanation given by Ms Stevens at the meeting of 26 March 2014.
41. Even now it is not possible to discern an answer to question AA3. In these circumstances there was a clear breach of section 2.5 in relation to question AA3.
42. The Committee takes the view that the green and red text in answer to question AA3 simply failed to answer the question. In that sense it was not false nor misleading. There was no breach of section 2.1 of the Code in that text.

Question BB5

43. Question BB5 was, "In July 2011 Select asked all Bannermill owners to contribute £ 200 towards a factor's float and in October 2012 asked for a further £ 100 - making £ 300 in total . . . Please advise: -
the total factor's float monies collected;
the total number of Bannermill owners who have not yet contributed the full £ 300 requested ?
44. Question BB5 was in essence repeated in the Action Group's letter of 21 December 2013 albeit with the total factor's float monies collected sought

up to 31 October 2013. The Respondent answered this question in the group communication of 13 February 2014. Given that the Respondent was aware of the question by about 4 November 2013, this did not amount to response given as quickly as possible. There was therefore a breach of section 2.5.

45. Furthermore the Respondent's answer followed upon an initial response that the figures could not be confirmed because the accounts were at the time - 15 November 2013 - being reviewed by an accountant. Given that no accounts have been produced at all and no indication has been given by the Respondent of the accountant actually instructed by it, despite being directed by the Committee to do so, the Committee is driven to conclude that this initial response was false and misleading. There was therefore a breach of section 2.1.

Question BB7

46. Question BB7 was "Please advise the current balance in the Bannermill Residents Association bank account as at 30 September 2013 - or a date around that time ?".
47. The Respondent's response on 15 November 2013 was "Unable to provide due to Santander security department advice.". On 22 December the Action Group asked for the balance in the account as at or around 30 October 2013. In the group communication the Respondent stated that as at 30 October 2013 there was a balance of £ 3990.90. The provision of such answer undermines the reason for not replying on 15 November. It also underlines that no answer has ever been given to question BB7 (relating to 30 September) albeit there has been ample opportunity to give it. There has therefore been a breach of section 2.5.
48. Given that there was no difficulty in giving the balance as at 30 October in the group communication, the response of 15 November 2013 was false or at least misleading. The same can be said with greater force to Ms Stevens' response to Mr Hepburn on 13 February 2014. Despite having given the figure for the end of October in the group communication just under 3 hours earlier, Ms Stevens responded to Mr Hepburn by refusing to give the September figure on the basis that she had spoken to advisers who had agreed with the alleged Santander security department. These two responses from Ms Stevens were in the view of the Committee false or at least misleading. There was in those responses a breach of section 2.1 of the Code.

Question BB8

49. Question BB8 was "At the 18 July 2013 [sic] Select reported that "a balance of approximately £ 45,000 was outstanding by the development". Does that mean Bannermill owners are £ 45,000 overdue with their half-yearly payments ?

50. On 15 November 2013 the Respondent answered question BB8 in the negative. In his e-mail of 24 November 2013 Mr Hepburn responded by asking why the Respondent had reported such a balance to be outstanding. This supplementary question was in substance the same as question 4 asked subsequently by the Action Group in their December 2013 letter.
51. In the group communication of 13 February 2014, the Respondent answered this supplementary question by saying "The amount due *is* equal to the services provided to the development, invoiced for but not yet received in payments from owners." (committee's emphasis).
52. As Mr Hepburn observed in orange text in the multicoloured document, this answer appeared to be at odds with the negative answer of 15 November 2013. Mr Hepburn asked for an explanation of this but none has been forthcoming.
53. The Committee observes first, that question BB8 does appear to have been answered and that within 10 working days of being put in the letter of 3 November. That being the case there was no breach of section 2.5 in connection with that question. However Mr Hepburn's request in the multicoloured document for an explanation of the apparently contradictory answers has not been responded to. The Committee finds this highly unsatisfactory and at odds with the spirit and letter of section 2.5. It finds there to have been a breach of section 2.5 in that respect.
54. It also follows that either the answer on 15 November 2013 or the group communication answer on 13 February 2014 was false or at least misleading. The group communication answer also disclosed a balance "outstanding by the development" of £ 32,913.23 at the end of October 2013. That seems consistent with the report in July 2013 that approximately £ 45,000 was outstanding by the development indicating that Bannermill owners were due that amount to the development. On that basis the Committee concludes that it was more likely than not that the answer on 15 November 2013 of "No" was false or at least misleading and in breach of section 2.1.

Request BB10

55. Request BB10 was, "Please provide a copy of all annual Statements of Account Select have prepared for the Bannermill development since Select became the factor in the summer of 2011.".
56. The Respondent wrote on 15 November 2013, "Document attached.". No such document was attached. Mr Hepburn wrote on 24 November 2013, "NO SUCH DOCUMENTS WERE ATTACHED PLEASE PROVIDE URGENTLY.". On 13 February 2013 Ms Stevens wrote, in the group communication,
 "I have sent all of the Development accounts to be independently verified by a local accountancy company. I have interpreted from your

statement [in the Action Group's letter of 22 December 2013] that you feel the accounts should be prepared by an accountant and not us and as such I have acted upon it. Once they have been verified I will supply each of you with a copy. I appreciate your patience waiting for the accounts; I had hoped they would have been verified by today's date."

Later on the same day, Ms Stevens wrote to Mr Hepburn that,

". . . I have sent all of the accounts to be independently verified to avoid any issues, disappointments or failings you may experience from our account preparation."

57. Despite all of the delay in producing the accounts, at the meeting in March 2014 no explanation was given by Ms Stevens for the further delay, nor for having failed to attach the accounts to her e-mail of 15 November 2013. Nor did she provide the accounts.
58. The Committee finds it astonishing that the accounts have never been produced. It deprecates the failure of the Respondent to comply with the Committee's direction of 21 November 2014. A factor should be aware that it is an agent of its principals (clients) who are the homeowners who have appointed the factor to act on their behalf. It has always been the common law of Scotland that an agent must account to its principal for its financial dealings with the principal's assets, which of course include the principal's money. This is a type of property factor's duty which is covered by section 17(5) of the Property Factors (Scotland) Act 2011, albeit that no complaint was made of a breach of that common law duty. Added to that, financial transparency is one of the principal objects of the 2011 Act. It is reflected in section 3 of the Code. On any view the failure to produce accounts as requested, amounts to a serious breach of section 2.5 of the Code.
59. Matters do not end there however. Ms Stevens purported to attach the accounts to her e-mail of 15 November 2013. No such accounts were attached. While it is not uncommon for the writer of an e-mail to forget to attach a document, when the matter is raised with the writer the expected response is to attach the document with an apology. In this case despite the requests of Mr Hepburn in his communications of 24 November 2013 and 28 February 2014 and the meeting in March 2014, no apology has been given for the failure and no explanation has been given for the failure to attach the accounts.
60. A similar pattern can be seen with regard to the excuses that the accounts were being prepared (or verified?) by a separate firm of accountants. This excuse was first made on 15 November in relation to question BB5, although not in relation to the request for the accounts themselves. It was then repeated in the group communication and e-mail to Mr Hepburn on 13 February. It was further repeated in e-mails to the Action Group during February and March and at the meeting in March. One would have expected that by the time of the Committee's direction in November 2014 the accounts would have been available. After all, on one view the accountants had been preparing them since on or before November 2013. Yet there was no response by the Respondent to the information sought

by the Committee in its Direction of 21 November 2014. Nor has there been any apology for a failure to respond. In these circumstances the Committee is unable to take at face value the truthfulness of these excuses.

61. Accordingly the Committee find that the purported enclosure of the accounts in the 15 November e-mail was false and misleading and also that the subsequent excuses as to non-production of accounts given by Ms Stevens were false and misleading. In both of these respects there was a breach of section 2.1 of the Code.

Request BB11

62. Request BB11 was, "Please provide a copy of the Contract Select and presumably the Bannermill Residents Association entered into in the summer of 2011 appointing Select as the Factor for the Bannermill development."
63. The response on 15 November 2013 was "Contract issued with documentation in email to all owners dated 20/10/2012." but with no document attached. On 13 February 2014 Ms Stevens attached a document to her e-mail to Mr Hepburn. That attachment comprised the Written Mandate of Appointment document bearing a date in July 2011 together with the pro forma document with the written statement of services.
64. At the hearing Mr Hepburn submitted that the Written Mandate document was a "fraudulent document". He noted that while the document bore to have been signed on 1 July 2011, on the first page the Respondent was described as a registered property factor with its number which is something that could not have existed in July 2011. He surmised that pages 1 to 3 of the document had been substituted. The Committee is persuaded by this submission. On any view the pages 1 and 4 are inconsistent.
65. In these circumstances the Respondent, acting through Ms Stevens, has not only not responded to the Applicant's reasonable request but has also in response provided information which is misleading or false. There has therefore been a serious breach of sections 2.1 and 2.5 of the Code in respect of request BB 11.

Remedies

66. Under section 20(1) of the 2011 Act, if the property factor has failed to comply with the Code of Conduct under section 14, the Committee has power to order a property factor to execute such action as it considers necessary.

67. The Applicant has requested an order that the questions unanswered and the requests unfulfilled be answered and fulfilled. The Committee propose to make such an order.
68. The Applicant has also requested that the Respondent be asked to apologise to her and to her representative and father for the breaches of the Code. The Committee propose to make such an order. Given the Respondent's lack of clear communication, the Committee proposes specific wording for the apology.
69. Mr Hepburn indicated that he did not insist on the second and third remedies originally sought by him.
70. Details of the proposed order are contained in the Notice of Proposal accompanying this decision.

Decision and Notice of Proposal

71. Unfortunately the wording of section 19 of the 2011 Act is not as clear as it might be. This is a decision under section 19(1)(a) and (b). Given that the Committee has decided that it will make a property factor enforcement order, this decision is accompanied by a Notice of Proposal under section 19(2)(a).

Opportunity for Representations and Rights of Appeal

72. The Applicant and Respondent are invited to make representations to the Committee on this decision and the proposal. The parties must make such representations in writing to the Homeowner Housing Panel by no later than 14 days after the notification to them of the Notice of Proposal and this decision.
73. The opportunity to make representations is not an opportunity to present fresh evidence, such as additional documents. Bearing in mind that the parties have already had an oral hearing, should the parties wish a further oral hearing they should include with their written representations a request for such a hearing giving specific reasons as to why written representations would be inadequate.
74. Following the making of representations or the expiry of the period for making them, the Committee will be entitled to review this decision. If it remains satisfied after taking account of any representations that the Respondent has failed to comply with the Code of Conduct it must make a property factor enforcement order. Both parties will then have a right to appeal on a point of law against the whole or any part of such final decision and enforcement order.
75. In the meantime and in any event, the parties are given a right of appeal on a point of law against this decision on the breach of the Code by means

of a summary application to the Sheriff made within 21 days beginning with the date when this decision is "made". All rights of appeal are under section 22(1) of the Act.

Signed Date: 6 March 2015

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David Bartos, Chairperson