



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

Hohp Ref: HOHP/PF/14/0129

Re: Property at 25 the Village, Archerfield, Dirleton, EH39 5HT ("the Property")

The Parties:-

Mr and Mrs van der Linde, 25 the Village, Archerfield, Dirleton, EH39 5HT ("the Homeowners")

Archerfield House Hotel Management Limited, Archerfield House, Golf Green, Dirleton, EH39 5HU ("the Factors")

**Certificate of Compliance with Property Factor Enforcement Order dated 18 July 2014
in terms of s 19(3) of the Property Factors (Scotland) Act 2011**

Committee Members:

Maurice O'Carroll (Chairman)
Andrew Taylor (Surveyor Member)

Decision of the Committee

The Homeowner Housing Committee, having determined that the Property Factor Enforcement Order ("PFEO") relating to the Property dated 14 April 2015, issued following a decision of the Committee dated 19 March 2015, has been complied with, certifies that the Respondent has complied with the PFEO.

Reasons for the decision

1. By decision of 19 March 2015, the Committee determined that the Factors had breached their duties in terms of s 19(1) of the 2011 Act in that they failed to comply with sections 1, 3, 6 and 7 of the Code of Conduct for Property Factors as required by s 14(5) of that Act, all as further specified in that decision. It also determined that the Factors had failed to carry out the property factors' duties. It issued a formal Notice of PFEO on the same date.
2. Having allowed the parties an opportunity to give representations to the Committee, and having received representations from the Factors on 2 April 2015, on 14 April 2015, the Committee issued a PFEO requiring the Respondent within 28 days of the date of the communication to:

- i. Provide a Written Statement of Services to the Homeowners which is compliant with the Code of Conduct in all respects and which incorporates a complaints procedure.
- ii. Open a separate bank account in the name of the Factors into which the following sums are separately paid and identifiable: Management charges payable by homeowners within the development known as the Archerfield Village Development.
- iii. Provide an explanation to the HOHP and the Homeowners as to why there is no reserve fund for sums accrued for major items of expenditure such as the roads within the said development, despite the assurances provided to residents at a meeting held on 30 June 2013 that such a fund in fact exists. Such an explanation should also include a statement as to the measures being put in place in order to produce such a fund with effect from the date of compliance with this PFEO, together with a statement as to what was done with the funds that the residents were told were accruing within the said reserve fund.
- iv. If applicable, open a separate bank account in the name of the Factors into which any floating funds paid by residents of the said development to the Factors upon purchase of a property are held in terms of the Deed of Conditions.
- v. Provide the Homeowners with full and transparent detailed accounts as described by Section 3 of the Code of Conduct and as narrated in the said decision showing all expenditure and receipts further to the Factors' maintenance of the Property at the said Archerfield Estate alone in respect of the present financial year and in all years thereafter.
- vi. Said detailed accounts are to be shown as separate and distinct from any other funds held by the Factors in respect of any other businesses which they operate. Said detailed accounts are to include validation of all cross-charges from whatever source (including, but not limited to the Estate Manager, administrative and invoicing services, insurance provision, security, vehicle costs, Flow Vac charges, repairs and landscaping) with such cross charges as occur to be made explicit, clear and transparent, and supported by time sheets, logs, diaries, invoice charges and any other relevant vouching of sums expended, and
- vii. Make payment to each of the Homeowners the sum of £250 in recognition of the inconvenience and distress that the Factors'

failures to comply with the terms of the Code of Practice and breaches of the Factor's duties have caused to the Homeowners..

3. By email dated 5 May, the Factors wrote to the Committee with a copy of its letter to the Applicant of the same date indicating that it had paid the £250 compensation in respect of distress and inconvenience to each of the Homeowners. The Factors also indicated that the remaining terms of the PFEO had also been complied with and provided it with *inter alia* its revised Written Statement of Services and accounting figures. It followed up that correspondence with a response to the compliance enquiry form on 21 May 2015 indicating that in its view the terms of the PFEO had been complied with.
4. By letter dated 24 May 2015, the Homeowners wrote to the Committee acknowledging receipt of the cheques in payment of the compensation ordered by the Committee. They, however, indicated that in their view some of the remaining parts of the PFEO had not been complied with, for the reasons stated in their letter. They also sought a variation of the PFEO.
5. In response to that letter, the Committee sent a letter to the Factors dated 11 June 2015 indicating that it did not consider that the parts of the PFEO concerned with transparency and accounting in relation to the Homeowners' funds had not been complied with. It did not, however, consider that a variation to the PFEO was necessary.
6. The Factors responded by letter dated 17 June 2015 providing further detail regarding accounting figures provided to the Homeowner's further to the PFEO in relation to expenditure of the Homeowner's funds and the allocation of the expenses in relation to common maintenance. The Committee was satisfied that the letter of 17 June 2015 addressed the concerns raised by it in its letter dated 11 June 2015.
7. The Committee is therefore satisfied that the Respondent has complied with the terms of the PFEO. It therefore issues this certificate of compliance. No further action is therefore required by the respondent in terms of the PFEO.

Right of Appeal

The parties' attention is drawn to the terms of s 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

- (1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee;
- (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date 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>

Signed

Chairperson

Date 25 June 2015