



HOHP REF: HOHP/PF/13/0238

Application to Homeowner Housing Panel ("HOHP"): 11 Oliphant Way, Kirkcaldy, KY2 6TF.

The Parties:-

Matt Reid, 11 Oliphant Way, Kirkcaldy, KY2 6TF ("the homeowner")

Greenbelt Group Limited, McCafferty House, 99 Firhill Road, Glasgow, G20 7BE ("the factors")

Decision by a committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011.

Committee Members

Simone Sweeney (Chair) Helen Barclay (Housing Member) Richard Burnett (Surveyor Member)

Decision

The committee determines:

That the complaints which form the basis of this application do not create a failure on the part of the factors to comply with the Code of Conduct ("the Code") in terms of Section 14 of the Property Factors (Scotland) Act 2011 ("the Act") and that there has been no evidence led of any failure on the part of the homeowner to comply with the property factor's duties set down at Section 17 of the Act.

This decision is unanimous.

Background

1. By application of 30th June 2013, the homeowner applied to the HOHP for a determination on whether the respondent had failed to; (i) comply with the sections 1.1 (b) 2.1, 2.4, 2.5, 3.3, 4.2, 6.1,6.3,6.4,6.6, 7.1 and 7.2 of the Code imposed by Section 14 of the Act and; (ii) failed to carry out the property factor's duties in terms of Section 17 of the Act by firstly, failing to provide a breakdown of charges, produce documents and information (including the factors' complaints procedure) requested by the homeowner, overcharging for services allegedly not carried out by the factors.
2. By notice of referral dated 23rd December 2013, the President of the HOHP referred the homeowner's application to a committee of the HOHP ("the committee") for determination.
3. By direction of 24th March 2014, the committee allowed the factors' request for a Direction in terms of Regulation 13 (1) (d) (i) of the Homeowner Housing Panel

(Applications and Decisions) Regulations 2012 ("the Regulations"). The committee, inter alia, restricted the complaints at section 7(A) of the homeowner's application of 30th June 2013 in respect of the alleged failures of the factors to comply with the Code. The committee restricted the terms of the application to sections 1.1(b) 2.1, 2.5, 3.3, 4.2, 6.4, 7.1 and 7.2 together with the alleged failures of the factors to carry out the property factor's duties at sections 7 (B) 8 and 9 of the application.

4. Following sundry procedure, at a hearing at the George House, Edinburgh, on Friday 20th February 2015, the committee heard evidence from the factors only. The homeowner had sent a letter, dated 19th February 2015 to the HOHP to advise that he would not be personally present or represented at the hearing but wished it to proceed in his absence. In light of the content of the letter, and there being no opposition by the factors, who had received intimation of the letter, that the application be heard in the homeowner's absence, the committee proceeded with the hearing on 20th February 2015.
5. The committee heard from the factors' representative and legal and compliance manager, Ms Quinn, the factors' head of operational services, Janice McQuillan and representative of the factors' contractor, Norrie McDonald.

Preliminary issues

6. Prior to proceedings, the committee's clerk had made the factors' representative aware of four Scottish Government personnel who intended to observe the hearing a part of a training exercise. At commencement of proceedings, Ms Quinn raised a preliminary issue. It was submitted that the factors were prejudiced by the presence of the observers from the Scottish Government. No specification was provided as to how the factors might be prejudiced by the observers hearing proceedings. Ms Quinn, when questioned, confirmed she accepted that, in terms of regulation 17 (2) of the Regulations,

"A hearing must be held in public unless the committee, on an application by any party or on their own cause, decide that it is necessary to do otherwise to ensure a fair hearing."

7. Ms Quinn submitted that the factors had received no fair notice from HOHP that there would be observers at the hearing and that this meant that the factors were not on an equal footing. Again, no specification was provided as to why this was so. Ms Quinn confirmed that she was making a formal application to the committee to exclude the observers from the hearing which failing she wished to know the names and designations of the Scottish Government personnel. Ms Quinn accepted that there was no regulation which required the HOHP to provide fair notice of any observers to a hearing. During a brief adjournment the observers confirmed to the committee's clerk that they were agreeable to providing their names and job titles to the committee to share with the factors' representative. The committee refused the factors' application to exclude the observers from the hearing. The committee was not satisfied that any reason had been provided by the factors' representative as to how the factors would be prejudiced by the presence of the observers or that their presence would in any way prevent a fair hearing. In the absence of same, the committee was satisfied that the hearing must be held in public in terms of regulation 17 (2). Having received the observers' authority to do so, the committee provided the factors' representative with their names and designations.

8. The chair referred to the letter of 19th February 2015 from the homeowner and to regulation 18 of the Regulations. Regulation 18 (1) (b) sets out that

Subject to paragraph (2), the committee may make a decision under section 19(1), 21(1) or 23(1) of the Act (including any preliminary issue) without an oral hearing if-

(b) the committee consider that, having regard to the nature of the issues raised in the proceedings, sufficient evidence is available to enable them to come to a decision; and

(c) to do so will not, in the view of the committee, be contrary to the interests of the parties.

9. Having received the factors' evidence and written answers to the application and in light of the homeowner was absent, the chair confirmed that the committee was satisfied that sufficient evidence was available to enable the committee to reach a decision without the need for the oral hearing to proceed and that this would not be contrary to the interests of either party. However, should the factors wish to make oral representations to support their answers they were free to do so. Ms Quinn confirmed that she would wish to make oral representations and would like the committee to hear additional information from Ms McQuillan and Mr McDonald.

Submissions of the factors

(i) Responses to alleged breaches of the Code

Section 1.1(b)

Section 1.1 (b) of the code:

"1.1b Alternative standards for situations where the land is owned by a land maintenance company or a party other than the group of homeowners

The written statement should set out:

A. Authority to Act

- a. a statement of the legal basis of the arrangement between you and the homeowner;*
- b. a description of the use and location of the area of land to be maintained, including a map where possible (this information must be kept up-to-date);*

B. Services Provided

- c. The services that you will provide. This will include the minimum service delivery standards that can be expected and the target times for taking action in response to requests for both routine and emergency repairs. Any work or services which are a requirement of the property titles should also be stated;*

C. Financial and Charging Arrangements

- d. how many properties contribute towards maintenance costs for the area of land maintained;*
- e. confirmation that you have a debt recovery procedure which is available on request,*

and may also be available online (see Section 4: Debt recovery);
f. any arrangements relating to payment towards a floating fund, confirming the amount, payment and repayment (at change of ownership or termination of service);
g. any arrangements for funds for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);
h. any services or works that may incur additional fees and charges, including when or how they may arise (this may take the form of a "menu" of services) and details of how these fees and charges are calculated and notified;
i. how often you will bill homeowners and by what method they will receive their bills;
j. 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 (see Section 4: Debt recovery);

D. Communication Arrangements

k. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied after completing your in-house complaints handling procedure (see Section 7: Complaints resolution);
l. the timescales within which you will respond to enquiries and complaints received by letter or e-mail;
m. your procedures and timescales for response when dealing with telephone enquiries;

E. Declaration of Interest

n. a declaration of any financial or other interests (for example, ownership) in the land to be managed;

F. How to End the Arrangement

o. clear information on how to change or terminate the service arrangement between you and the homeowner, including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination."

10. In respect of the first complaint, that the factors had failed to provide a statement of services, the factors' representative, Ms Quinn, advised the committee that in January 2013, the factors had sent a written statement of services to all residents at the Chapel Hall development ("the development") in Kirkcaldy in which the homeowner's property is located.
11. Under cover of letter of 16th January 2013, the homeowner was issued the written statement of services, the factors' customer care charter and factoring bill by first class post. The factoring bill was in respect of the period, 1st January 2013 to 31st December 2013. The bill was paid by the homeowner.
12. Ms Quinn referred the committee to items 43-46 inclusive of the factors' inventory of productions which she claimed to show the relevant papers issued.
13. Ms Quinn advised that the first request, in writing, from the homeowner for a copy of the written statement of services had been on 23rd August 2013 (item 23 in the factors' inventory). Prior to that the homeowner had made requests for written service level agreements which are quite different and which there is no obligation on the factors to provide to a homeowner. These requests had been made by email.

14. Notwithstanding the fact that the factors had already complied with their obligations in terms of the code by issuing the document on 16th January 2013, a further copy of the written statement of services and customer care charter had already been posted to the homeowner on 21st August 2013 (item 22 of the inventory). Finally, on 17th January 2014, a further letter had been sent to the homeowner containing a third copy of the written statement of services.
15. It was Ms Quinn's submission that the factors have never refused any request from the homeowner to provide the written statement of services.
16. Ms Quinn conceded that the homeowner claims to have never received the letters of 16th January or 21st August 2013. Ms Quinn confirming that it did not occur to the factors to send the statement of services to the homeowner electronically despite the fact that this was the homeowner's commonly used method of communication.
17. Further, in respect of the allegation of a breach of 1.1(b) of the code, Ms Quinn submitted that the factors do not hold or collect floating funds for services provided on the development for specific projects or cyclical maintenance.
18. The bill intimated to the homeowner on 16th January 2013 provided a financial breakdown of charges and expenditure.
19. Ms Quinn submitted that everything which the factors had provided to the homeowner satisfied the obligations on the factors in terms of section 1.1(b).

Section 2.1

20. The homeowner had alleged that the factors had breached section 2.1 of the code. Section 2.1 reads,
"You must not provide information which is misleading or false."
21. Ms Quinn submitted that the homeowner had failed to provide any evidence in support of this allegation specifically in terms of the code. In the absence of same, Ms Quinn submitted that the factors had complied with the terms of section 2.1 of the code.

Section 2.5

22. Section 2.5 places a duty on the factor to respond to enquiries and complaints received by letter or email within prompt timescales. Further it states,
"Overall your aim should be to deal with enquiries and complaints as quickly and as 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 of services (Section 1 refers)."
23. Ms Quinn was of the view that in this complaint, the homeowner was referring, again, to the written statement of services which the homeowner claimed to have never received. She confirmed that the letter of 16th January 2013 had been addressed to the address of the homeowner's property.
24. The homeowner's request for a written statement of services by letter of 23rd August had already been satisfied in the factors' letter of 21st August 2013. The homeowner had claimed to have never received this letter. Ms Quinn submitted that there had also been an allegation by the homeowner that the factors had never replied to his

letter of 11th February 2013. Ms Quinn conceded that the evidence suggests that there appeared to have been problems for both parties in correspondence not being received.

25. Advising that the factors had sought the advice of the Scottish Government as to how the statement of services should be intimated. The advice had been that this should be sent by ordinary post and submitting that it would have been unreasonable to expect a company of the size of the factors to send all residents copy documents by recorded delivery. Further there was always the chance that a recipient may not collect a recorded delivery letter. Ms Quinn talked the committee through the processes which the factors had in place for dealing with mail. In her submission, the factors had complied with the requirements of section 2.5.

Section 3.3

26. The homeowner alleged a breach of section 3.3 of the code by the factors, which reads,

"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 or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance."

27. Ms Quinn believed that this related to a request by the homeowner for clarification of various charges. Whilst there is no requirement on the factors to provide anything before October 2012 in terms of the provisions of the Act and the date of the factors' registration with the Scottish Government, the factors had provided the homeowner with information of charges for the period, 1st January 2012 to 31st December 2013. Ms Quinn referred the committee to item number 42 of the factors' inventory referred to, above, providing copy invoices for the period 1st January 2012 to 31st December 2013, which were intimated to the homeowner with the letter of 16th January 2013. In addition, the factors had provided copies of inspection reports.
28. Ms Quinn submitted that the factors had provided more than was required of them in terms of section 3.3 of the code.

Section 4.2

29. The homeowner alleged a breach of section 4.2 of the code. Section 4.2 reads, as follows:

"If a case relating to a disputed debt is accepted for investigation by the homeowner housing panel and referred to a homeowner housing committee, you must not apply any interest or late payment charges in respect of the disputed items during the period that the committee is considering the case."

30. In response, Ms Quinn confirmed that the factors have a debt recovery procedure, which is confirmed in the written statement of services. The committee was directed to item number 51 of the factors' inventory which showed the debt recovery procedure and advised that this was available also on the factors' website. Ms Quinn confirmed that the homeowner had not been specifically directed to the website. Ms Quinn conceded to the committee that much of the communication between the

homeowner and the factors had been in the form of emails and that, at the very least, it had been open to the factors to direct the homeowner to the website should he wish to see the debt recovery procedure.

31. Ms Quinn accepted that the homeowner had brought to the factors' attention a late payment charge incurred during the course of his on-going complaint with them. Ms Quinn submitted that the factors had acted upon this by removing the charge of £25.79. Ms Quinn drew to the attention of the committee a letter from the homeowner, dated 17th September 2013 in which he acknowledged receipt of the payment. The letter formed item number 33 on the factors' inventory.

Section 6.4

32. The homeowner had alleged a breach of section 6.4 of the code by the factors. Section 6.4 reads, as follows:

"6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works."

33. Ms Quinn denied any breach on the part of the factors of this section of the code. In her submission, the factors have no floating funds or any cyclical maintenance programme.

Sections 7.1 and 7.2

34. The final parts of the code which the homeowner had alleged to have been breached by the factors were sections 7.1 and 7.2:

"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 follow. This procedure must include how you will handle complaints against contractors."

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 include details of how the homeowner may apply to the homeowner housing panel."

35. Ms Quinn submitted that the factors have in place a complaints resolution procedure. It was contained within the factors' customer care charter sent to the homeowner under cover of letter of 16th January 2014. Ms Quinn directing the committee to production number 52 on the factors' inventory of productions which was a copy of the charter. Ms Quinn advised that the factors' complaints procedure is available on its website and had been communicated to the homeowner in the written statement of services in which it also appears. Ms Quinn confirmed that this was the same letter which contained the written statement of services and the homeowner's annual bill which was paid. In Ms Quinn's submission, the homeowner must have received the other attachments to that letter which included the factors' written statement of services as required by section 1.1 of the code and the complaints charter which Ms Quinn submitted satisfied the factors' obligations at section 7.2.

36. With regards to section 7.2, Ms Quinn referred the committee to item number 42 on the factors' inventory. This was a letter from the factors' Managing Director to the homeowner in respect of his complaint. The letter indicated that should the

homeowner remain dissatisfied with the response of the factors, he should direct the matter to the HOHP.

(ii) Responses to alleged breaches of the property factors' duties.

37. At section 7B of his application, the homeowner set out his complaint of alleged failures on the part of the factors to carry out the Property Factor's duties in terms of the Act. The homeowner stated that,

"I have asked Greenbelt to explain charges and asked for various documents which they refuse to show me. Please see copies of my letters to Greenbelt explaining my concerns."

The homeowner continued,

"Overcharging for services not carried out. ie. grass not cut in over 6 mths, alleged planting of trees and shrubs which have not been done and supervisory charges."

And,

"I have asked for specific answers as to planting of trees and dates of the so called storm which they allege damaged trees as we can't recall any storm of that nature. Also we have considered above £52.00 charge for supervisory inspection we consider are not done."

I have asked Greenbelt about additional charges to my account while I am in discussions with them but they have refused to remove these charges."

38. In response, Ms Quinn submitted that the committee had no locus to review charges in terms of the Act and could not make any order on any complaints of the homeowner of charging for supervisory inspections. Moreover there had been no evidence produced by the homeowner to support this allegation.
39. Ms Quinn referred to the specific reference of the homeowner that, *"we can't recall any storm of that nature"* and drew to the attention of the committee the list of websites noted in the factors' letter of 14th April 2014. These websites provided information of the weather conditions in the development in which the property is situated on 2nd January 2012.
40. Ms Quinn submitted that the costs of the planting of trees to which the homeowner makes reference occurred prior to 1st October 2012 when the Act came into force and that there is no evidence provided by the homeowner of any on-going failure of the factors to carry out the property factor's duties after 1st October 2012.
41. Ms Quinn invited her witness, Janice McQuillan, to speak to the allegations of overcharging and services having not been carried out.

Evidence of Janice McQuillan

42. Ms McQuillan confirmed that she was employed by the factors as head of operational services. She submitted that twelve trees were damaged as a result of a storm on 2nd January 2012. The trees were located in a common area close to the homeowner's property. Ms McQuillan advised that there had been no structural or human damage as a result of the storm but that the smaller trees had been snapped or forced out of the ground by the weather conditions. In the normal course of events the re-planting season would take place between the months, November to March. However, in light

of the storm, the factors' operations manager had arranged for new trees to be planted as a 'one off' in February 2012 at a cost of £1,275. The works were not part of a list of routine services. The cost of the homeowner's contribution was 73p. The committee was directed to the relevant records within the factors' inventory. The work was undertaken by McLeod Landscaping on 21st February 2012 and the invoice paid by the factors in March 2012.

43. Ms McQuillan advised that gap planting of shrubs had also been carried out, separate to the replacement of the storm damaged trees during the planting seasons of November to March 2011 -2012 and 2012 -2013. Ms McQuillan advised that the charge to the homeowner had been £4.93. She submitted that a copy of the invoice for the re-planting had been requested by the homeowner who had expressed concerns that the re-planting had never gone ahead. In error the factors had sent to the homeowner a copy of the purchase order but this was rectified and the homeowner received a copy of the invoice, photographs of the area of re-planted trees and details of the weather information on 2nd January 2012. The factors did not know what else they could have done to prove to the homeowner that the works had in fact gone ahead.
44. When asked by Mr Burnett, if the factors operations manager had ever taken the homeowner to the area where the trees were actually planted and identified them to the homeowner, it was confirmed that this had not taken place at any time.
45. Ms McQuillan went onto explain that the factors have in place a rigorous system for monitoring the performance of their contractors. Any works which are undertaken, including the re-planting of the trees, would have been inspected and photographs obtained. It was submitted that this was all explained to the homeowner under cover of letter of 16th January 2014 which the factors invited the committee to accept had been received by the homeowner.

Evidence of Norrie McLeod

46. With regards to the allegation that the grass had not been cut, Ms Quinn accepted that the homeowner had made a complaint to the factors in the grass cutting season of April 2013. The complaints had been in the form of emails. The complaint had been that an area of grass on the side of a path adjacent to his property had not been cut as part of the factors' routine maintenance programme.
47. In terms of the breakdown of costs, Ms Quinn advised the committee that the costs of routine maintenance of grass, shrubs, hedges etc. are set out within the written statement of services. The costs are not specific to grass cutting, alone. Costs are divided over a 12 month period. The monthly charge to the homeowner is £1.61.
48. Ms Quinn invited witness, Norrie McLeod to address the committee. Mr McLeod confirmed that his firm, McLeod Landscaping, had contracted with the factors carry out grass cutting at the common parts of the development in which the property was located.
49. Mr McLeod referred to the photographs submitted by both the homeowner in support of his application and also by the factors in their inventory (production numbers, 2 and 11). The photographs reveal an area of grass close to the property surrounded by barriers. Mr Norrie submitted that the area had been cordoned off by the local authority as there were concerns about the structure of the gable wall of a neighbouring property. Mr McLeod submitted that the area was approximately 20

square metres in total. Grass cutting would usually take place between the months April to October. Because the area had been cordoned off and deemed unsafe by the local authority, Mr McLeod's firm did not cut this area between April and July 2013. Mr McLeod submitted that five cuttings were missed at the area. It was estimated that the cost of these missed grass cuttings equated to 4p per household. Mr McLeod confirmed that he was notified by the factors that the homeowner had submitted complaints. Notwithstanding the safety implications, Mr McLeod removed the barriers and cut the grass at the area in July 2013 in an effort to satisfy the homeowner's concerns and resolve the complaint.

50. Mr McLeod disputed any suggestion that the factors had failed in their property factor's duties by failing to cut the grass. In evidence, Mr McLeod submitted that there are 232 other residents in the estate in which the property is located. Had the factors failed in their duties to cut grass in the development over the summer months then, in his submission, it is likely that the factors would have been inundated with complaints and there was no suggestion that this was the case.

Resolution

51. The chair put to the factors the homeowner's written representations at the final part of section 7 of his application where it is stated that, to resolve the problem, the homeowner would like,

"Fees to be reduced due to insufficient work carried out levied against charges made and compensation for all the time, stress and worry to try and resolve these matters with an uncooperative company."

52. Ms Quinn referred the committee again to inventory number 42 of the factors' inventory. She submitted that fees charged had not been unreasonable and that the factors had made efforts to resolve this matter with the homeowner around thirteen months ago. An offer had been made of (i) £100 of gardening vouchers, in recognition of any stress endured in this matter and (ii) a credit to the homeowner's factoring account of £53.15 being the cost of the homeowner's annual management charge. The offer was made on a non-admission of liability basis, on the understanding that the terms of the agreement remained confidential, that the application to the HOHP be withdrawn and that acceptance was confirmed in writing by 27th January 2014. The offer was never accepted by the homeowner.

Closing submissions

53. In conclusion, Ms Quinn invited the committee to accept that the factors had complied with the code and the property factor's duties. They had offered to meet with the homeowner to discuss his complaints but this offer was never accepted. Letters had been issued in which the factors had set out their processes for managing, maintaining and supervising the development in which the property is located. The factors had provided the homeowner with an apology thirteen months ago together with an offer of compensation. Ms Quinn submitted that no Property Factor Enforcement Order should be issued in the circumstances.

Findings in Fact

54. The homeowner was the heritable proprietor of the property at, 11 Oliphant Way, Kirkcaldy, KY2 6TF ("the property") at the date of the application. The homeowner sold the property on 7th November 2014.

55. That the property is situated within the Chapel Level development. There are around 233 properties within the development.
56. That the factors are responsible for arranging and administering repair and maintenance of the common parts of the development in which the property is located.
57. That the factors had become a registered Scottish property factor on 1st November 2012, the factors' duty to comply with the code arises from that date.
58. That the factors issued letters to the homeowner dated 16th January 2013, 21st August 2013 and 17th January 2014; that these letters were each addressed to the property which forms the basis of this application; and that each of these letters refers to a copy of the factors' written statement of services being attached. The letters form item numbers 43-46, 22 and 26 of the factors' inventory of productions, respectively.
59. That the factors' written statement of services forms number 43 of the factor's inventory. The content of the statement satisfies the requirement of section 1.1(b) of the code.
60. The bill issued to the homeowner by the factors under cover of letter of 16th January 2013 was in respect of the period 1st January to 31st December 2013 and provided a breakdown of factoring charges to the homeowner for the previous period, 1st January to 31st January 2012.
61. That the bill dated 16th January 2013 was paid to the factors, in full and on time by the homeowner.
62. That the bill setting out the sums due was only ever intimated to the homeowner by letter of 16th January 2013. In addition to the bill, the letter contained a copy written statement of services and a copy of the factors' customer charter. The committee is satisfied that, given that the bill was received and paid on time, on the balance of probabilities, it is reasonable to assume that the homeowner received the factors' letter of 16th January 2013 containing the written statement of services with that letter.
63. That no specification or evidence has been submitted by the homeowner to support any allegation of a breach of section 2.1 of the code by the factors and in the absence of same, the committee cannot find any breach of section 2.1 of the code by the factors
64. That the homeowner wrote to the factors on 23rd August 2013 requesting a copy of the written statement of services in terms of the code.
65. That the written statement of services had been provided with the factors' letter to the homeowner of 21st August 2013 (and 16th January 2013) which the applicant claims to have never received.
66. That there appears to have been correspondence issued by each party which was not received by the other but notwithstanding that, the evidence suggests that the factors have in place a process for handling incoming and outgoing mail.

67. Any requirement on the factors to provide financial information in terms of section 3.3 of the code occurs from the date of the factors' registration with the Scottish Government being 1st November 2012.

68. That the factors provided financial information to the homeowner in response to his requests, some of which preceded the date of registration. The factors issued the homeowner with the factors' charges for the period 1st January 2012 to 31st December 2012, a copy of which the homeowner submitted to HOHP in support of his application.

69. That the factors have a debt recovery procedure in place which is referred to in their written statement of services and available on their website. A copy of the debt recovery procedure forms production 51 of the factors' inventory. Within the written statement of services (which was sent to the homeowner on three occasions) it is stated that,

"Debt Recovery procedure: This is available on request."

70. That the factors applied a late payment charge of £25.79 against the homeowner during the course of his dispute with the factors.

71. That the homeowner requested that this late payment charge be removed and acknowledged the factors having done same under cover of his letter of 17th September 2013.

72. That there was a breach of section 4.2 of the code by the factors in their applying a late payment charge against the homeowner. This breach was cured by the charge being removed when requested.

73. That there is no evidence of the factors having a cyclical maintenance programme and therefore there is no evidence of a breach of section 6.4 of the code.

74. That the factors have in place a complaints resolution procedure set out in the factors' customer care charter and in the factors' written statement of services.

75. That this was sent to the homeowner under cover of letter of 16th January 2013, 21st August 2013 and 17th January 2013.

76. That the factors' managing director issued a letter to the homeowner dated 24th January 2014.

77. That item number 42A of the factors' inventory is a letter from the factors' to the homeowner dated 24th January 2014, issued after the homeowner had submitted a complaint to the HOHP.

78. That the letter contains an apology to the homeowner which reads,

"We are very sorry to hear of your complaint and restate our offer of a face to face meeting with you in our office to give you the opportunity to resolve your complaint as part of our Customer Care Charter."

79. That the letter contains an offer of settlement from the factors to the homeowner, which was refused.

80. That, with regards to the complaints of the factors overcharging, the committee has no jurisdiction in terms of the Act to deal with disputes around charging.

81. That, with regards to the complaints of the factors charging for supervisory inspections, the homeowner has failed to provide evidence to support this allegation. In any event, the committee has no jurisdiction in terms of the Act to deal with disputes around charging.

82. That the homeowner complained to the factors about grass having not been cut in a common area of the development situated close to his property by email of 5th June 2013. The email reads,

"Further to our conversation yesterday please find attached the photographic evidence that the pathway beside my house has remained untouched for at least the past six months....I require a reply as to when this area will be brought back up to a sufficient standard within the next twenty four hours not as your call handler stated 21 days (not acceptable)."

83. That only the area of grass identified in the photograph which forms production numbers, 2 and 11 in the factors' inventory was left uncut.

84. That, in the photograph, the area of grass is shown to be surrounded by barriers preventing access to the area which had been placed there by the local authority as a result of concerns of risks to health and safety from the wall of a neighbouring property.

85. That the factors acknowledged receipt of the email and responded in full by email 25th June 2013. The email reads,

"Thank you for your recent emails, regarding the area of grass on either side of the path adjacent to your home having not been cut this season. As I am sure you are aware, the path itself has been barricaded to prevent access for some time now due to the ongoing issue with the gable end of the property directly adjacent. The health and safety concern related to this has prevented our contractor from accessing the area to cut grass this season. There is a small section of the path which is out with the barricade however, and I have gained assurance that this will be attended to during the next visit....Although I appreciate that you expected the small area mentioned above to be attended to regardless of the adjacent barricade, I am sure you will have observed the routine maintenance programme having been adhered to on all other areas of your development."

86. That the factors' contractors, McLeod Landscaping, cut the grass within this area in July 2013.

87. That there is no evidence to support the allegation that the grass had not been cut for a period of 6 months.
88. That the factors' letter of 14th April 2014 setting out the factors' written responses to the homeowner's application provides a list of websites confirming severe weather conditions on 2nd January 2012.
89. That various plants and trees were damaged at the development as a result of severe weather damage on 2nd January 2012.
90. That the factors replaced the damaged plants and trees in February 2012 as part of non-routine works. The homeowner's share of the cost of the re-planting of the trees was 73p. His share of the cost of the re-planting of the shrubs was £4.93.
91. That the factors employ an Operations Manager who carries out regular inspections of all works undertaken by contractors on behalf of the factors and records are kept of the findings of these inspections. The factors had lodged within their inventory of productions a document bearing the title, "*Chapel Level – Site Walk through Sept 14*" which included photographs of the area where the storm damaged trees had been re-planted.
92. That the factors provided the homeowner with a "Gap Planting Plan" in response to a request by the homeowner at the telephone and by letter of 25th March 2013 provided an explanation as to why the storm damaged trees were not identified on the plan. The letter states,
- " With regard to the replanting of the trees, our Operations Manager has confirmed that 2 Prunus Avium's were planted in the SUDS area, however these would not be marked on the gap planting area as these trees were replaced due to storm damage and not part of the gap planting programme.*
- We can confirm that all gap planting shown on the Gap Planting Plan, was carried out during the planting season, November 2011- March 2012 and our Operations Manager has confirmed that all of the gap planting is still in place."*
93. That there is no evidence of any failure on the part of the factors in their property factor's duties in terms of the Act.

Reasons for decision

94. The committee's reasons for its finding that the factors have satisfied section 1.1(b) of the code are set out at paragraphs 5 to 9 of the findings in fact.
95. The committee's reasons for its finding that the factors have satisfied sections 2.1 and 2.5 of the code are set out at paragraphs 10 to 13 of the findings in fact.
96. The committee's reasons for its finding that the factors have satisfied section 3.3 of the code are set out at paragraphs 14 to 15 of the findings in fact.

97. The committee's findings in respect of the allegation of a breach of section 4.2 of the code by the factors are set out at paragraphs 16 to 19 of the findings in fact.
98. The committee's reasons for its finding that the factors have satisfied section 6.4 of the code are set out at paragraph 20 of the findings in fact.
99. The committee's reasons for its finding that the factors have satisfied sections 7.1 and 7.2 of the code are set out at paragraphs, 21 to 26 of the findings in fact.
100. The committee's reasons for its findings that there has been no failure of the factors in carrying out their property factors duties in terms of the Act are set out at paragraphs 27 to 39 of the findings in fact.

Appeals

101. The parties' attention is drawn to the terms of section 22 of the Act regarding the right to appeal and the time limits which apply. Section 22 provides that,

“(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 day on which the decision appealed against is made.”

Signed

Simone Sweeney

Chairperson

15/03/2015