



Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/13/0243

Re: 52 St. Vincent Street, Flat E/8, Glasgow ('the property')

The Parties:

Mrs. Danielle Bakayoko residing at Flat E8, 52 St. Vincent Street, Glasgow G3 8UU ('the homeowner')

Glasgow West Housing Association Ltd having a place of business at 5 Royal Crescent, Glasgow G3 7SL ('the property factor')

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

Committee members:

Karen Moore (Chairperson)

Carolyn Hirst (Housing member)

Colin Campbell (Housing member)

Decision (including Statement of Facts and Reasons for Decision)

The committee found that the property factor (i) has failed in terms of Section 17(1) (a) of the Act to carry out the property factor's duties as defined by Section 17(4) and 17(5) (a) of the Act and (ii) has failed in terms of Section 17(1)(b) of the Act to ensure compliance with the Code of Conduct for Property Factors as required by Section 14(5) of the Act.

Background and Earlier Procedure

1. The property factor's date of registration as a property factor is 17 December 2012.

2. By application dated 9 July 2013 ("the Application"), the homeowner applied to the Homeowner Housing Panel for a determination that the property factor had failed to comply with Section 1 (Written Statement of Services) and Section 7 (Complaints Resolution) of the Code of Conduct for Property Factors ("the Code") as required by Section 14 of the Act. The homeowner also alleged failure of the property factor to comply with the property factor duties as required by Section 17 of the Act. .
3. Although the homeowner had not specifically alleged a failure of the property factor to comply with Section 2 (Communication and Consultation) of the Code in the application form, the additional paperwork clearly alleged such a failure.
4. Although the homeowner had not specifically alleged a failure of the property factor to comply with Section 3 (Financial Obligations) of the Code in the application form, the additional paperwork clearly alleged such a failure.
5. The President of the Homeowner Housing Panel accepted the Application on 13 November 2013 and remitted it to the committee for determination.
6. On 17 January 2014 the committee made the following Direction (Direction 1):
"Direction in terms of Rule 13 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012:-
Title Deeds
Supply to the Committee a coloured title plan for Title Number GLA207481. This can be either a coloured print from the Land Register or a copy of the title plan with the colourings indicated on it.
Provide the Committee with confirmation of the number of residential and other units in the Main Building, which building is referred to in the title deeds.
Identity of Factor
In Glasgow West Housing Association Ltd.'s opinion, which company, Glasgow West Housing Association Ltd. or Glasgow West Enterprises Ltd. is the Factor for the property of which the Homeowner's flat forms part?
If, in Glasgow West Housing Association Ltd.'s opinion, Glasgow West Enterprises Ltd. is the Factor, how was Glasgow West Enterprises Ltd. appointed in terms of the title deeds?
The Committee note that both Glasgow West Housing Association Ltd. and Glasgow West Enterprises Ltd are registered Property Factors. What is the relationship, if any, contractual or otherwise, between these two organisations?
What is the authority of Mrs Caroline Mills and Mrs Elaine Travers to act on behalf of both or either Glasgow West Housing Association Ltd. or Glasgow West Enterprises Ltd.?
Scope of Services

Concierge Services

The Committee note that the concierge services are listed in the Written Statement of Service as Additional Services. With reference to the title deeds, what is the Factor's authority for undertaking and charging for these services? What is meant by "concierge services" and has the extent of the concierge services differed from the caretaking and cleaning service referred to in the title deeds since the Homeowner acquired her property? If so, in terms of the title deeds, how was this change dealt with and on what date or dates?

Please provide evidence that written details of the concierge service were provided to the Homeowner, including detail of the method used to apportion charges?

Please provide a copy of the annual statement of information, supplementary to the Written Statement of Services, which it is claimed was provided to the Homeowner in November 2013

CCTV

With regard to the CCTV service which is invoiced, with reference to the title deeds, what is the Factor's authority for undertaking and charging for, these services?

Has the scope of the CCTV service changed since the Homeowner acquired her property? If so, in terms of the title deeds, how was this dealt with and on what date or dates?

Reasons for Direction 1

It would be helpful for the Committee to have a full understanding of the basis on which the Factors have been appointed, the extent of their power and authority to instruct and procure works and services and to have a full understanding of the way in which the title deeds apportion common property and common charges."

7. The property factor complied with Direction 1 on 07 February 2014.
8. On 21 January 2014 following the submission of supplementary correspondence dated 31 December 2013 by the homeowner to the Homeowner Housing Panel on 3 January 2014, the committee made the following further Direction (Direction 2):

"1. The Homeowner's supplementary correspondence dated 31 December 2013.

The Committee directs that in relation to the supplementary correspondence dated 31 December 2013 and submitted by the Homeowner to the Homeowner Housing Panel on 3 January 2014, the Committee will restrict consideration of this correspondence to the matters raised by the Homeowner in her Application received by the Homeowner Housing Panel on 29 July 2013. Therefore, the Committee directs that the Committee will note the Homeowner's statement in the first paragraph of her letter of 12 November 2013 to Andrew Watson, 5 Royal Crescent, Glasgow in reply to the said

Andrew Watson's letter of 31 October 2013 on behalf of Glasgow West Housing Association Ltd to the extent that her complaint relating to cleaning services narrated in paragraph 7 of page 2 of the supporting statement to her said Application remains unresolved.

The Committee directs the Factor, Glasgow West Housing Association Ltd, being the body who has replied to the Homeowner's application, to comment on the first paragraph of Homeowner's said letter of 12 November 2013.

Handling of the Homeowner's Complaints

The Committee refers the Factor, Glasgow West Housing Association Ltd, being the body who has replied to the Homeowner's application, to the paragraph of the Homeowner's letter dated 29 August 2013 headed "Code of Conduct Section 7: Complaints Resolution" and submitted by the Homeowner to the Homeowner Housing Panel on 30 August 2013 and directs the Factor to provide the Committee with (a) the number of complaints received from the Homeowner and (b) the following information in relation to each of the Homeowner's complaints :-

Date complaint made;

Nature of complaint;

Date complaint dealt with by Factor and

Outcome of complaint handling.

The Factor, Glasgow West Housing Association Ltd, being the body who has replied to the Homeowner's application, is directed to respond to this Direction no later than Wednesday 5 February, 2014.

Reasons for Direction 2

It would be helpful for the Committee to have a full understanding of the way in which the Factors dealt with the Homeowner's complaints."

9. The property factor complied with Direction 2 on 07 February 2014.
10. The homeowner requested that a translator be present to interpret the proceedings for her.
11. The parties made no further written representations to the committee.

Hearing

12. A Hearing took place on 15 April 2014 at the Homeowner Housing Panel offices at Europa House, 450 Argyle Street, Glasgow. The homeowner appeared and represented herself. The property factor was represented by Mrs. Caroline Mills and Mr. Andrew Watson both of whom work within the property factor's organisation. Ms. M. Hilley provided interpreting services at the Hearing.

13. The homeowner and the property factor's representatives gave oral evidence to the committee. No other witnesses or parties gave evidence. The committee had the benefit of the Application and the additional paperwork which accompanied the Application, all as submitted by the homeowner and copied to the property factor. The committee had the benefit of the property factor's responses to the Application and to the Directions, which responses had been copied to the homeowner. The committee also had the benefit of the Written Statement of Services and a print of the homeowner's title deeds, being Land Certificate GLA 207481 ("the Land Certificate").

14. The property factor's representatives confirmed the identity of the property factor as Glasgow West Housing Association Ltd.

Evidence on behalf of the homeowner

15. The homeowner made a statement to the committee that her complaint consisted of five elements:-

- a. The concierge service;
- b. The CCTV service;
- c. The standard of cleaning;
- d. The property factor's communication standard and
- e. The invoices which the property factor issued.

These elements were consistent with the Application made by the homeowner and the additional paperwork lodged by the homeowner, which Application and additional paperwork had been copied to the property factor. Accordingly, the committee took the view that it was competent to deal with them.

16. In respect of the concierge service, the homeowner submitted that this is outwith the scope of the title deeds and that the service is not required at the property. The homeowner submitted that the cost of the service is too expensive and that it does not add anything to her enjoyment of her property. The homeowner pointed out that similar neighbouring developments do not have a concierge service and do not suffer as a result.

17. In respect of the CCTV service, the homeowner submitted that this also is outwith the scope of the title deeds, that the service is not properly licensed and that the footage is of poor quality and is shadowy.

18. In respect of the cleaning service, the homeowner submitted that cleaning is not carried out on a regular basis and is not carried out to an adequate standard. She submitted that the car park and the yard area had been cleaned on the day before the Hearing and that this was the first time they had been cleaned for a considerable time.

19. The homeowner referred the committee to photographs lodged with the application. These showed the dirty condition of the corridor outside the property. The homeowner submitted that the property factor's cleaning process was not adequate and that the property factor failed to use the correct cleaning equipment. She submitted that the extent of the cleaning was infrequent mopping of the corridors which left the surface wet and slippery.

20. In respect of the invoices, copies of which were before the committee as part of the homeowner's application, the homeowner submitted that the invoices were not clear and did not sufficiently detail the work carried out. The homeowner submitted, with reference to the copy invoices, that the invoice should explain and justify the works which are charged and that the invoices lacked in this respect.

21. The homeowner also submitted that she did not understand the way in which the percentage of 1.54% of the total common charges apportioned to the Property had been calculated.

22. In respect of communication, the homeowner submitted that she had called the property factor by telephone, speaking with Mrs. Mills, on several occasions to request an explanation of the invoices and the common charges and factoring services but that Mrs. Mills had failed to explain the invoices to her satisfaction. The advice given to her by Mrs. Mills was to make a formal written complaint. The homeowner advised the committee that she did so but that her letter of complaint was ignored. The homeowner also advised the committee that on one occasion the outcome of her call was to highlight a mistake in an invoice and an overcharge of £500.00.

23. The homeowner submitted also that she had requested a meeting with Mrs. Mills and had had to plead to achieve this. She advised that she did meet with Mrs. Mills but that the meeting was not a success as Mrs. Mills simply read the invoices to her and repeatedly asked why she could not understand them. The homeowner advised that Mrs. Mills' voice was raised and that she did not want to respond in a similar way in case the police were called.

24. The homeowner submitted that the effect of the invoices and her lack of success in having the property factor explain them were causing her distress and ill health.

25. The homeowner submitted that she would like the property factor to supply an invoice in a format which would allow her to calculate for herself the amount due by her so that she could be sure of what she was to pay.

26. In response to questions from the committee, the homeowner advised the committee that she did not receive a written response to her written complaint.

27. The property factor's representatives had no questions for the homeowner.

Evidence on behalf of the property factor.

28. Mr. Watson made an oral statement on behalf of the property factor. Mr.

Watson advised the committee that he is the line manager for the concierge service, which service is a 24 hour service undertaking the security of the development of which the property forms part, enquiries from the residents and environmental maintenance. Mr. Watson submitted that the concierge service was not specifically mentioned in the title deeds but that it had been carried out by the previous factor, Glasgow Housing Association, and that the property factor, Glasgow West Housing Association Ltd., continued with it.

29. In respect of the CCTV, Mr. Watson submitted that this service also had been carried out by the previous factor, Glasgow Housing Association, and continued by the property factor, Glasgow West Housing Association Ltd. He advised the committee that the CCTV was fit for purpose when taken over by the property factor but that it is now part of the property factor's major works programme and will be renewed. Mr. Watson advised the committee that the CCTV did not cover the whole development all of the time and he assured the committee that all of the concierges who operated the CCTV system had had full disclosure checks.

30. In respect of the cleaning service, Mr. Watson submitted that cleaning of the walls and floors should be carried out weekly and that any complaints raised are dealt with then and there. He advised the committee that, in addition to himself, there are two cleaning supervisors and a lead concierge and so poor standards should be addressed. In respect of the landscaping, Mr. Watson advised the committee that Glasgow City Council have responsibility for the areas next the shops. Mr. Watson further drew the committee's attention to the focus groups which the property factor organises and which are referred to in the documentation submitted by the property factor as part of their responses to the Directions. He submitted that there is not a volume of complaints raised by these groups.

31. Mrs. Mills made an oral statement on behalf of the property factor. Mrs. Mills advised the committee that she is responsible for the issue of the quarterly invoices. She explained to the committee that the invoices detail the charges for services and repairs, the relevant dates for these charges; the properties for which these apply; the costs of these items together with a total calculation at the bottom of the invoice and an explanation of how payment can be made. Mrs. Mills explained further that she issues a statement and a service statement annually in May. She submitted that she holds quarterly factoring surgeries, the dates and times of which are intimated to residents along with

the invoices, in order that residents can meet with her to discuss the invoices and that residents can also call in to the property factor's office to view any of the contractors' accounts. Mrs. Mills advised the Committee that the property factor is reviewing the presentation of the invoices to provide more and better information for homeowners and that the new layout would be available in May 2014.

32. In respect of communication with the homeowner, Mrs. Mills advised the committee that she refuted strongly the homeowner's account of their meeting and considered that she had never had a reference to the likelihood of police involvement in her dealings before. Mrs. Mills advised the committee that she adhered to her employer's code of conduct and would have referred the matter to a senior colleague to deal with.
33. Mrs. Mills submitted that, in her opinion, she had responded to the homeowner's enquiries and had tried as far as possible to provide explanations. In respect of the overcharging error, Mrs. Mills advised the committee that she has invoices for 600 owners to scrutinise and that she noticed the concierge overcharge and arranged the refunds.
34. Mrs. Mills advised the committee that the property factor encourages comment from residents and politeness in staff. She explained that there is a practice of consultation and that the CCTV upgrade will be subject to this consultation practice.
35. Mr. Watson and Mrs. Mills answered questions put to them by the homeowner and the committee.
36. The homeowner asked Mrs. Mills to comment on the homeowner's view that the property factor imposed their decisions on the owners without consultation and consideration of the owners' views. Mrs. Mills disagreed and advised the committee that the property factor has surgeries and focus groups in place and that, since taking over as property factor has augmented the level and scope of service as a result of this participation.
37. The homeowner asked Mrs. Mills to comment on the homeowner's claim that Mrs. Mills had not advised her of the existence of the Homeowner Housing Panel. The homeowner also asked Mrs. Mills to explain why she had not contacted the homeowner find out if the homeowner was satisfied with the property factor's responses. Mrs. Mills responded that she had followed the property factor's complaints process at each stage.

38. In response to the homeowner's question on the need for a concierge service, Mrs. Mills did not agree with the homeowner that the service should only be available for elderly residents.
39. In response to a question from the committee, the homeowner clarified to the committee that the concierge service had been in place when she purchased the property but that she did not know that she had to pay for the service.
40. With reference to the invoices, the homeowner asked Mrs. Mills to clarify the 1.54% apportionment of common charges. Mrs. Mills responded that this is an equal share across all of the properties in the development.
41. In response to questions from the committee on invoicing, the apportionment of common charges and the terms of the title deeds, which questions made direct reference to the copy invoices lodged with the Application, Mrs. Mills was unable to explain the way in which the apportionment of common charges for the property had been calculated in relation to the Land Certificate. The committee drew Mrs. Mills' attention to the particular terms of the title deeds which specified differing shares of 1/100, 1/88 share and 1/196 which shares equate to 1%, 1.36% and 0.51%, respectively. Mrs. Mills agreed with the committee that 1.54% equates to 1/65 but was unable to reconcile this figure to the Land Certificate and stated that the proportion of 1.54% applied by the property factor was the proportion "handed over" by the previous factor.
42. In response to questions from the committee on invoicing and the apportionment of common charges Mrs. Mills made direct reference to that part of the property factor's written response to Direction 2 which attempted to define the way in which common charges were apportioned. The property factor's written response narrated numbers of residential and commercial properties amongst which the common charges were allocated. However, Mrs. Mills was unable to reconcile the addition of the numbers as set out in the written response and was unable to explain the way in which the written response related to the title deeds.
43. In response to questions from the committee in respect of abatement of concierge charges shown on the invoices, Mrs. Mills explained that the property factor's management committee had taken a decision to reduce the actual concierge charge due by proprietors to a lesser charge with the property factor absorbing the difference from the rental income received from the property factor's tenants.
44. In response to questions from the committee on the appointment of the property factor, Mrs. Mills and Mr. Watson explained that this was the result of

a stock transfer of housing stock and property management from Glasgow Housing Association following a vote taken at a meeting of owners on 27 June 2011.

45. In response to questions for the committee on the property factor's communication with the homeowner, Mrs. Mills advised the committee that comments are dealt with within 14 days of receipt and complaints within seven days, and that the level and content of the response would depend on the nature of the comment or complaint. In respects of the homeowner's written complaints, Mrs. Mills considered that these had been dealt with but agreed with the committee that the responses of the property factor did not advise the homeowner of the complaints process nor did the responses explain to the homeowner the steps she could take if not satisfied with the response. Mrs. Mills conceded that the responses were outwith the procedural timescales.
46. In summing up, the homeowner expressed her concern at having to meet the cost of the concierge service and CCTV system as she did not consider that these elements added any value to her enjoyment of the property. The property factor's representatives declined an opportunity to sum up.

Statement of Facts.

47. From the written and oral evidence before the committee, the committee found that the property formed part of a development of flatted properties at 30, 50, 52, 70 and 72 St Vincent Terrace ("the Development"), which Development had been constructed and owned by Glasgow City Council and was later part of a larger housing stock transfer to Glasgow Housing Association. The homeowner had exercised her "right to buy" in terms of the Housing (Scotland) Act 1987 and acquired the property from her then landlord, Glasgow Housing Association, on 14 September 2010. At that time, Glasgow Housing Association acted as factor in respect of the common parts of the Development. The committee's findings in respect common parts of the Development and the property factor's powers and responsibilities are dealt with later in this Decision.
48. The committee found that, following a vote taken at a meeting of the proprietors of the Development and adjacent properties at Blythswood Court, Glasgow, on 27 June 2011, Glasgow West Housing Association Ltd. were appointed as factor. The committee was satisfied that the property factor is the majority proprietor at the Development.
49. The committee found that the homeowner's title to the property is registered in the Land Register for Scotland under Land Certificate Title Number

GLA20748, a print of which was lodged as part of the Application. From this print, the committee found that the property is the westmost house on 5th floor of the tenement known as 52 St Vincent Terrace, Glasgow, and that the property shares common ownership of several elements of common property with other parts of the Development.

50. The committee's findings in respect of the Land Certificate are that, in general, the common property is property which is used by more than one flatted property in the tenement blocks known as numbers 30, 50, 52, 70 and 72 St Vincent Terrace and that this is owned equally by those owners.

51. The specific shares as detailed in the Land Certificate are as follows:

The External Areas

Garden ground – owned in common with the owners of numbers 52, 70 and 72, each having a 1/100 share;

Garden ground – owned in common with the owners of numbers 32 and 52, each having a 1/88 share;

Garden ground - owned in common with the owners of numbers 30, 50, 52, 70 and 72, each having a 1/196 share.

Common Parts of the Tenement Blocks

The common parts of the tenement blocks are the solum on which the block is erected, the foundations of the block, its outside walls, common stairs, landings, doors, hallways, roof, utility and service media cables and pipes, and, in general all structural parts which are used by more than one flatted property.

52. The parts of the tenement blocks used in common are owned in common by all who use them in with each flatted property having one equal share. However, the actual number of flatted properties in the Development is not specified in the Land Certificate.

53. There is no mention of commercial or non-residential units in the Land Certificate and no mention of common property, if any, used by or owned in common by the proprietors of the commercial or non-residential units. However, it was clear to the committee from the evidence that there are commercial or non-residential units within or adjacent to the Development and that these commercial or non-residential units do not form part of the property factor's property portfolio.

54. The committee found that two Deeds of Declaration of Conditions are registered against the Property ("the Deeds"). These are Deed of Declaration of Conditions by Glasgow City Council ("the GCC Deed") registered on 7 October 2002 and Deed of Declaration of Conditions by Glasgow Housing Association ("the GHA Deed") registered on 14 October 2004, which are

reproduced as entry numbers 1 and 3 respectively in the Burdens Section of the Land Certificate.

55. The terms and conditions of the Deeds are almost identical, the difference being that the GHA Deed provides that "caretaking and cleaning" are added to the common charges at Clause 6c of that deed, which provision is not included in the GCC Deed. The Deeds affect the Development and, inter alia, set out the way in which (i) common property (as detailed at paragraphs 50 and 51 above) is dealt with and (ii) the factoring arrangements.
56. The GCC Deed provides that for as long as Glasgow City Council "and their successors as housing authority" are owners, Glasgow City Council can carry out gardening and cleaning as part of the common charges. The committee found that although Glasgow City Council no longer have an ownership interest in the residential units in the Development, the terms of the Deeds were sufficiently wide to allow the property factor to undertake cleaning works which the property factor deems are necessary or desirable for the maintenance of the common parts and that the property factor is empowered to carry out these services and to charge for them. Further, the committee were satisfied that cleaning had been a chargeable service carried out by the property factor as custom and practice inherited from previous factors. In any event, the GHA Deed empowers the property factor to carry out cleaning.
57. The Deeds provide that common charges are the costs of the repair, maintenance and authorised improvement of the common parts.
58. The committee found that the Deeds give the property factor full power to instruct and to execute repair, maintenance and renewal works up to a cost of £2,000.00. Works which cost over this value and improvement works are to be authorised at a meeting of proprietors. The committee found that the Deeds entitle the property factor to recharge the proprietors for in accordance with their share of ownership of the common parts. In respect of the property, these shares are as outlined in paragraph 50 above. The committee found no evidence or facts to support the property factor's allocation of a share of 1.54% of the common parts to the property.
59. The committee found that the property factor's Written Statement of Service is clear and detailed in respect of the property factor's service provision and is compatible with the terms of the Deeds, albeit it lacks to explain the specific way in which common charges for the property are apportioned.
60. In respect of the concierge and CCTV services, the committee found that there is no dispute that these services are provided by the property factor and that they had been in place before the homeowner purchased the property.

The committee found that the service amounted to caretaking and the operation of the CCTV system at the Development. The committee found that although the Deeds do not use the specific term “concierge” nor do they specifically mention the CCTV system, the scope of the property factor’s powers in the Deeds is sufficiently wide to include these services as works which the property factor deems are necessary or desirable for the maintenance of the common parts and that the property factor is empowered to carry out these services and to charge for them.

61. In respect of the cleaning service, from the evidence before the committee, the committee found that there is no dispute that these services are provided by the property factor. The committee were persuaded that the standard of cleanliness of the common property fell short of what could reasonably be expected. The committee found that whilst the property factor has a procedure to set, monitor and supervise cleaning standards, this procedure is not adhered to and so the property factor’s cleaning process is not adequate.
62. In respect of the invoices, the committee found that the invoices lacked clarity, were difficult to understand and that no satisfactory explanation of the invoices was provided by the property factor’s representatives. The committee found that apportionment of common charges at 1.54% to the homeowner did not conform to her ownership share of the common property in terms of the Land Certificate and that no satisfactory explanation of this apportionment was provided by the property factor’s representatives.
63. The committee found that the property factor’s Written Statement of Service is clear and detailed in respect of the way in which the property factor’s charges and fees are calculated and invoiced. However, the committee found that invoices themselves bear little relation to the content of the Written Statement of Service and fall below the standard set out in the Written Statement of Service.
64. The committee found no evidence that the property factor had power to fix the homeowner’s common charges at 1.54% and no evidence that the property factor had power to reduce the homeowner’s share of the concierge service.
65. In respect of communication in general, the committee found that the Written Statement of Service does not specify a timebound service standard for communication with proprietors. However, from the evidence before the committee, the committee found that the property factor regularly issues newsletters and holds meetings and surgeries.
66. The committee are satisfied that the property factor has a complaints handling procedure.

67. In respect of the property factor's dealings and communication with the homeowner, the committee found that whilst the property factor responded in writing, the content of the responses did not provide a full explanation to the homeowner and did not provide the homeowner with advice and guidance on the property factor's complaints handling procedure, nor did the responses advise the homeowner of her right to apply to the Homeowners Housing Panel.

Observations by the committee

68. The committee is satisfied that all of those who gave oral evidence did so to the best of their ability and did so truthfully.

69. The homeowner was well prepared and professional in her approach. It was clear to the committee that she had tried repeatedly, but without success, to seek from the property factor an explanation as to how they levied their invoices for the common charges. The property factor's representatives' inability to explain the invoices and the charging structure at the Hearing gave the committee a clear understanding of the frustration which the homeowner has had to endure in dealing with the property factor. The committee has a great deal of sympathy for the homeowner in this respect.

70. Whilst the committee appreciates and understands the homeowner's view that she does not require or wish to have benefit of the concierge service and CCTV system, it is not within the committee's jurisdiction to make an order in this respect. As narrated in the Statement of Facts, it is within the power of the property factor to provide these services and, in any event, these services had been in place prior to the homeowner's purchase.

71. The committee was disappointed at the standard of preparation displayed by the property factor's representatives. It should have been clear to the property factor that the content and format of the invoices and the cleaning record were crucial to the substance of the Application and so the committee expected that, before attending the Hearing, the property factor's representatives would have apprised themselves of the title deeds and the dates on which cleaning was carried out.

72. The committee noted that the property factor's representatives tended to give evidence on the basis of what should have happened if the property factor's processes and procedures had been followed by the property factor's staff. The committee expected that the property factor's representatives would have familiarised themselves with the precise detail of this case and would have been able to advise the committee of what did actually occur.

73. The committee was also disappointed that the property factor was not represented by senior management.

Reasons for Decision

74. The committee found that the property factor has failed in terms of Section 17(1)(a) of the Act to carry out the property factor's duties as defined by Section 17(4) and 17(5)(a) of the Act.

The reason for this decision is that the property factor failed to carry out duties in relation to the management of the common parts of land owned by the homeowner by failing to have an adequate system in place to ensure that cleaning of common parts was undertaken to a reasonable standard.

75. The committee found that the property factor has failed in terms of Section 17(1) (b) of the Act to ensure compliance with the Code as required by Section 14 (5) of the Act by failing to comply with Section 2 of the Code.

The reason for this decision is that the property factor failed to provide clear and understandable invoices for charges for common services which are consistent with the title deeds and failed to provide an oral or supplementary explanation of the invoices. The property factor failed to deal with the homeowner's enquiries as quickly and as fully as possible. These are failures to comply with Section 2 of the Code and, in particular, Sections 2.1 and 2.5.

76. The committee found that the property factor has failed in terms of Section 17(1) (b) to ensure compliance with the property factor code of conduct as required by Section 14(5) of the Act by failing to comply with Section 3 of the Code.

The reason for this decision is that the property factor failed to ensure that the homeowner knew what it is she was paying for, how the charges were calculated and failed to ensure that no improper payment requests were involved. These are failures to comply with the overriding objective in Section 3 of the Code.

77. The committee found that the property factor has failed in terms of Section 17(1)(b) of the Act to ensure compliance with the property factor code of conduct as required by Section 14 (5) of the Act by failing to comply with Section 7 of the Code.

The reason for this decision is that the property factor failed to advise the homeowner of the complaints process and failed to advise the homeowner how to take forward her complaints. These are failures to comply with Section 7 of the Code and, in particular, the overriding objective set out in Section 7 and Section 7.1 of the Code.

Appeals

78. The parties' attention is drawn to the terms of Section 22 of the 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..."

Karen Moore

Chairperson Signature

Date *13 June 2014*



Notice of proposal to make a Property Factor Enforcement Order made under Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”) following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act

By

Mrs. Danielle Bakayoko (‘the homeowner’)

Glasgow West Housing Association Ltd (‘the property factor’)

HOHP Ref: HOHP/PF/13/0243

Re: Property at 52 St. Vincent Street, Flat E/8, Glasgow

Committee members:

Karen Moore (Chairperson)

Carolyn Hirst (Housing member)

Colin Campbell (Housing member)

This document should be read in conjunction with the Committee’s Decision under Section 19(1)(a) of the Act of the same date.

The Committee proposes to make the following Property Factor Enforcement Order (“PFEO”)

Within 42 calendar days of the date of the Property Factor Enforcement Order, the Factor must:

1. Provide the Committee with a template of the reviewed and revised invoice layout as referred to by Mrs. Mills in her evidence to the Committee
2. Evidence to the Committee that the Factor has a process in place to review invoicing arrangements to ensure that the correct calculation and apportionment of common charges.
3. Evidence to the Committee that the Factor has a process in place to ensure thorough cleaning of the common area at the Development

4. Evidence to the Committee that the Factor has a process in place to improve and carry out staff training on complaints handling.

Section 19 of the 2011 Act provides as follows:

"... (2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so...

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order..."

The intimation of the Committee's Decision and this notice of proposal to make a PFEO to the parties should be taken as notice for the purposes of section 19(2) (a) of the Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2) (b) of the Act reach the Homeowner Housing Panel's office by no later than 14 days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Committee is likely to proceed to make a property factor enforcement order ("PFEO") without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

Chairperson Signature *Karen Moore*

Date *13 June 2014*