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/14/0112

Re: Flat 9, 180 Camphill Avenue, Glasgow G41 3DT('the property')

The Parties:

Ms Karen Watson, 7 Barbeth Place, Cumbernauld G67 4SF ('the homeowner')

Messrs D & I Scott Property Management, 1 Carment Drive, Shawlands, Glasgow G41 3PP ("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:

George Clark (chair), and Jean Thomson (housing member)

Decision

The Committee has jurisdiction to deal with the Application.

The property factor has not failed to comply with its duties under section 14 of the 2011 Act.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as "the 2012 Regulations". The Homeowner Housing Panel is referred to as "HOHP".

The property factor became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the application by the homeowner received on 1 August 2014, with further paperwork, namely a letter sent as an attachment to an e-mail from the homeowner to HOHP on 16 September 2104, an undated letter from the homeowner to the property factor which appears to have been hand delivered on 21 January 2015, a letter from the property factor to the homeowner dated 22 January 2015, a letter from the homeowner to the property factor dated 6 March 2015 and a letter from the property factor to the homeowner dated 26 March 2015; and a written statement from the property factor dated 15 June 2015, with supporting paperwork, namely copies of 39 letters from the property factor to the homeowner dated between 9 February 2011 and 26 March 2015. The Committee confirmed that it did not require any further documentation prior to considering the application at a hearing.

Summary of Written Representations

The Committee had received, in advance of the hearing, written representations made by the homeowner and these are summarised as follows:-

In her letter to HOHP, attached to an e-mail sent on 16 September 2014, the homeowner provided a narrative of the history of the complaint she had against the property factor. She had bought the property in 2006 for her son to live in. After a year, she had been forced to move him out, as he continually had parties at the property which, understandably, upset his neighbours. The two sons of a friend moved in and lived in the property until 2011 and, when they left, the homeowner's son moved back in.

Prior to his moving back in in 2011, the homeowner had gone with her son to his bank to open an account and standing orders were set up for his factor's bill, electricity bill, council tax and Sky subscription. She had understood that factoring bills were the reponsibilty of tenants. The homeowner had then called the property factor, had spoken to Marie there, to inform her that the homeowner's son was moving back into the property. She had given Marie all her contact details and had asked Marie to contact here if there were any problems whatsoever, and the homeowner would make sure they were sorted out.

In August 2013, the homeowner had received a call from the lady who owned the flat beneath the Property, to tell her that the homeowner's son had been disturbing the neighbours again and that they were complaining to the property factor. The homeowner had immediately called the factor, who had confirmed that there had been complaints. The homeowner said she would deal with the matter and asked the property factor to let her know if there were any further problems. At this point in the converstion, Marie at the property factor's office to whom she was speaking had said "I think the factor's bill is overdue" and that there were legal costs involved. The homeowner had been incredulous and could not understand why nobody had contacted her about unpaid bills, rather than allowing the debt to mount up, when the property factor had all her contact details, none of which had changed. Later that day, Marie had e-mailed to the homeowner copies of several factoring bills going back to 2011 and amounting to around £2000. The homeowner was ill at the time and her son had contacted the property factor, offering to pay off the debt at £100 per month, but had been told that this was only acceptable if the property was put up for sale.

The homeowner had not intended to sell the property, which she had bought as an investment. She had spoken to her ex-husband, who had advised her to put it on the market as it was, although it was badly in need of redecoration. A week later, whilst still trying to work out what to do, the homeowner had received a summons from the property factor and a few days after a court hearing at Airdrie Sheriff Court, another summons from the property factor had arrived, this time for Glasgow Sheriff Court.

The homeowner had arranged for an estate agent to look at the property and he had advised her that if she put it on the market in its present condition, she would be left with no flat and a mortgage to pay. She had, therefore, borrowed money to refurbish the property and it had been placed on the market in March 2015. To date it had not sold.

The homeowner had also borrowed money from a friend to pay for a solicitor to advise her and it had been agreed that, if she signed two mandates, saying the agreed amount would be paid when the property was sold, the whole matter would be finished. She had signed the mandates, but a week later a further summons had arrived from the factor. The homeowner had also found out the the property factor had taken a decree against her, which affected her credit rating.

The homeowner's view was that it was grossly unfair that the property factor had run up all the legal expenses, which she was expected to pay. By giving the property factor all her contact details, she felt she had acted responsibly.

The homeowner concluded by saying that she had never signed a contract with the property factor and that the property factor had not carried out necessary work on the property.

The homeowner contended that the property factor had failed to comply with the following Sections of the Code;-

Section 1. The property factor had not provided the homeowner with a Statement of Services since 2011.

Sections 2.2 and 2.5. The homeowner had contacted the property factor in 2011, to let them know that her son was moving back in to the property and, at that point, had given the property factor all her contact details and requested that the property factor call her regarding any matters to do with the property that she should know about, The property factor had failed to contact the homeowner to notify her of a problem affecting her investment. They did not reply to her e-mails. The only contact she had had was through the property factor's solicitors, whom the property factor had already involved without first notifying the homeowner, who had found the solicitors extremely intimidating and unnecessary. It was only when the homeowner contacted them in 2013 that the property factor had reverted to the contact details which she had given in 2011.

Section 4.8. The property factor did not notify the homeowner that there was an issue, despite having all her contact details. It was only in 2013, when the homeowner contacted the property factor regarding another matter that she had been informed that the factoring charges were overdue. Allowing the matter to continue for almost two years and involving solicitors before notifying her had caused the homeowner a great deal of stress and had cost her a huge amount of money.

Section 4.5. Despite the fact that they had all the homeowner's contact details, the property factor had failed to inform her that monies were overdue and only did so when she contacted them about another matter.

Section 4.7. The property factor had failed to take reasonable steps to ensure the money was paid. At no time had they sent a statement to her home address.

Section 4.9. When the homeowner had tried to speak to the property factor's solicitors, she had found them extremely intimidating, to the extent that she had been forced to borrow money to employ a solicitor to deal with them on her behalf.

Sections 5 and 6. The homeowner was totally unaware of the Insurance arrangements or the procedure for carrying out repairs, as the property factor had failed to provide her with a written Statement of Services.

Section 7. The property factor had failed in all aspects of complaints resolution, as they had not responded to any of her complaints or tried to rectify them. Instead, they had cost the homeowner more money by employing solicitors, without first notifying her that there was an issue.

The Committee had received, in advance of the hearing, written representations from the property factor and these are summarised as follows:-

The main points of the homeowner's complaint related to Communication and to Complaints Resolution. The property factors answered the alleged breaches of the Code.

Section 1. The homeowner had claimed that she did not receive a Statement of Services from the property factor, but a Statement of Services had been sent to her at the property address on 20 November 2012 and a second Statement of Services had been sent to her at 7 Barbeth Avenue on 20 November 2014. The homeowner had included the second document in her written submission, so she had definitely received it.

Sections 4.5, 4.7, 4.8 and 4.9. All correspondence, including invoices and statements , were sent to the addresses which the property factor had been asked to use, originally the property, then from 15 July 2011 an address in Wallsend, from 12 September 2011 the property again and, from 7 August 2013, Barbeth Place. No letters had been returned marked as indelivered. The property factors had also confirmed in a telephone conversation with the homeowner on 17 December 2014 that they were not receiving her e-mails. The homeowner had tried to send an e-mail during that call and the property factor had confirmed that it had not come through. As regarded the allegation that the property factor's solicitors had been intimidating, the homeowner's solicitor had not mentioned any such issue when writing to the property factor's solicitor on 3 June 2014.

Sections 5, 6 and 7. All correspondence, including the Statement of Services which contained details of insurance arrangements and procedures for carrying out repairs and maintenance and complaints resolution, had been sent to the homeowner at the addresses the property factor had been given. The last notification of change of address was on 7 August 2013. Since then, six invoices for factoring charges had been sent to the homeowner at that address and none of them had been paid.

The property factor stated that they had been trying to resolve the issue to the best of their abilities from the outset. The first offer to pay the debt in instalments had come in a telephone call from the homeowner's partner, Mr McGill, on 7 August 2013. The property factor had agreed to stop all enforcement action on the decrees obtained against the homeowner, but no payments were ever received and the property factor had been forced to re-instruct enforcement. At a court hearing on 4 February 2014, the homeowner's solicitor had requested a continuation for two weeks to allow an irrevocable mandate to be obtained for all sums to be paid from the sale of the property. The property factor had agreed to this, but the irrevocable mandate, dated 3 March 2014, was only for a portion of the debt, £665.86. In a separate court case, on 18 October 2013, the homeowner had told the court that her tenant was due to pay the debt. When it was pointed out to her that it was the homeowner's responsibility, she had offered to enter into a payment arrangement, but had then failed to do so. In the next court case, the homeowner's solicitors had staed in

a letter that she had not received any formal correspondence from the property factor regarding payment, nor had she had any telephone contact with them advising her that the sums sued for were outstanding. That statement had been made a full year after the correspondence address had been changed to Barbeth Place, Cumbernauld at the request of the homeowner.

The property factor contended that they operated robust but fair debt recovery procedures to ensure that cash flow to their business was maintained and the business continued to operate. It was a small family business and outstanding debt by homeowners could lead to serious cash flow problems. They were happy to accept payments by instalments from debtors, particularly in cases of financial hardship, but where promises of instalment payments were made and not then implemented and where the debtor involved owned more than one property, they were naturally less sympathetic. Had the homeowner settled the bill of £2127.77 on 3 June 2013 and thereafter paid the quarterly invoices, there would be no outstanding debt. The last payment received from her had been on 19 August 2011 and the debt now stood at £4879.16.

In the view of the property factor, the case was entirely related to debt and had nothing to do with standards of service in either communication or complaint resolution. As the evidence submitted by the property factor showed, they had not only communicated with the homeowner at all of the addresses supplied to them, but had also tried to make arrangements for the debt to be recognised and dealt with, even by payments to account. The property factor strongly believed that the homeowner's application had no merit and should be dismissed.

THE HEARING

A hearing took place at Europa Building, 450 Argyle Street, Glasgow on 30 July 2015. The homeowner was present at the hearing. The property factor was represented at the hearing by Mr Donald Scott, one of its partners.

Summary of Oral Evidence

The chairman told the parties that they could assume that the Committee members had read and were completely familiar with all of the written representations and the documents which accompanied them.

The property owner repeated much of the detail which was in her written representations. She then told the Committee she had bought the property in 2006 and that, up until 2011, her (now) ex-husband, Mr Greig McGill, had dealt with all the bills. He had told her that the previous owners had advised him that it was tenants who paid factoring charges. At the

time she had become aware of the outstanding debt in 2013, she was penniless and this remained the case. Following the complaints from neighbours to the property factor, she had gone to the property and it had been in a disgusting state. She had had to borrow money to restore it to a fit state to be sold. It had been on the market with four different estate agents, but there were no signs of a sale, the feedback from viewers being that it was, in effect, factoring matters that were putting them off. She stated that she had signed two mandates, one for £600-odds, the other for several thousands of pounds. By the time she had become aware of the problem, the amounts were so high that she could not pay them. She also had had no idea that any of her e-mails were not reaching the property factor, until she had tried to send one during a telephone conversation with Marie. When she had gone to the bank with her son when he was moving back into the property in 2011, she had dealt with setting up the standing order to her for his rent, so that she could meet the mortgage payments, but her son had said he would set up the standing orders for electricity and the factoring charges. She had been receiving her money, so had no reason to think that her son was not making the other payments, as he had a good job.

When questioned by the Committee, the homeowner said that she had not visited the property between 2011 and 2013 and that, when her son came to visit her, he did not bring any letters addressed to her at the property.

The property factor told the Committee that all bills sent to the homeowner, c/o McGill, had been paid until 2011. The first one that had not been paid was in August 2011. It had been sent to an address in Wallsend at the request of Mr McGill, the homeowner's partner. The property factor referred the Committee to an e-mail sent to Mr McGill on 25 January 2012, in which they referred to his e-mail of 12 September 2011 with a change of address for the homeowner and asked Mr McGill to confirm the address was still the same, as they needed to speak to her in respect of her account. The property factor told the Committee that Mr McGill had replied to that e-mail, giving the property address (Camphill Avenue) as that for the homeowner. The change of address had been intimated in an e-mail from Mr McGill, not a telephone call from the homeowner. The property factor questioned whether the telephone conversation between the homeowner and Mairi of their firm in 2011 (in which the homeowner said that her son was moving back into the property and giving the property factor all her contact details with a request that they get in touch with her if there was any matter relating to the flat that she should know about) had actually taken place, but said that, even if it had, subsequent instructions came in, changing the correspondence address. The homeowner strenuously disputed the allegation that the tepephone call in 2011 might not have taken place.

The property factor then outlined their credit control procedures. Invoices were sent out on 20 February, May, August and November. If an invoice was not paid by the 20th of the following month, a Statement reminder was sent. If it was not paid by the time of the next invoice, it was sent as a Statement with that invoice. If the account was not cleared by the

20th of the next month (meaning that now two invoices were unpaid), a Statement reminder was sent and if the arrears stretched to three invoices, an administration fee was added. The next stage was a 7-day letter, then a 5-day letter, after which, if the bill remained unpaid, it was passed to debt collectors, then to solicitors. All credit control matters were dealt with by letter, not by e-mail or telephone. The property factor had Standing Order mandate forms for use by homeowners who wished to pay monthly. Neither the homeowner nor her son had ever asked for such a form.

The property factor told the Committee that the first Statement of Services was sent to the property in 2012, but the second one had been sent in 2014 to the property owner at 7 Barbeth Place. The second one had incorporated a slight increase in management fees.

The property factor was asked by the Committee whether it was a matter of concern that they did not appear to be receiving e-mails (and in particular the one that the homeowner tried to send during a telephone conversation with them on 17 December 2014). Mr Scott responded that there had been one or two instances when contractors had reported that their e-mails had not got through, but the contractors had then made contact by other means. The property factor did not accept that there might be a problem with their systems hardware or software. They had throughout used the addresses they had been given and had dealt with matters by letter. There was no requirement on them to correspond with the homeowner by e-mail and they had no reason to suppose that she had not received their many letters.

The property factor commented that the homeowner had accepted at the hearing that the problem was due to the behaviour of her son. The homeowner was clearly aware in 2013 that the debt had not been paid off, yet she had paid nothing since then. This case was all about debt, not about communication. All invoices had been sent to the homeowner at the various addresses, including 7 Barbeth Place. The property factor had had offers of payment by instalments, but these had never been honoured and the property factor had had to meet the homeowner's share of the cost of two major repairs, in order to get them done, as the homeowner had not paid a penny since August 2011.

The homeowner told the Committee that the only reason she was in this position was the property factor's failure to communicate. She contended that the change of address intimation on 12 September 2013 gave the new address at 7 Barbeth Place, not Camphill Avenue, as the property factor had said in the written submissions.

The Chairman of the Committee thanked both parties for attending the hearing and told them that the Committee's decision would be intimated to them in due course. The parties then left the hearing and the Committee considered the application, the written submissions and the evidence provided by the parties at the hearing.

The Committee make the following findings of fact:

1. The homeowner is the owner of the property Flat 9, 180 Camphill Avenue, Glasgow G41 3DT, a self-contained flat within a block of flatted dwellinghouses. The property factor manages and maintains the common parts, which are owned by two or more persons, of the block of which the property forms part and the property factor, therefore, falls within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act")
2. The property factor's duties arise from a written Statement of Services, a copy of which has been provided by the property factor.
3. The property factor's duties arose from 1 August 2005.
4. The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
5. The date of Registration of the property factor was 1 November 2012.
6. The homeowner has notified the property factor in writing as to why she considers that the property factor has failed to carry out its duties arising under section 14 of the Act. She did this by e-mail on 18 June 2014.
7. The homeowner made an application to The Homeowner Housing Panel ("HOHP") dated 7 July 2014 and received by HOHP on 1 August 2014 under Section 17(1) of the Act.
8. The following is a summary of the content of the homeowner's application to HOHP:- The property factor did not communicate with the homeowner over unpaid bills even though they had contact details. Bills were allowed to accumulate over three years without notification to the homeowner. The homeowner's solicitor had told her that the property factor had accepted agreed mandates for payment, but further bills had since arrived. This had caused great stress to the property owner, who was looking for the property factor to reduce its fees.
9. The homeowner's concerns have not been addressed to her satisfaction.
10. On 27 May 2015, the President of HOHP referred the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter dated 29 May 2015.
11. A copy of the property factor's written Statement of Services was included amongst the supporting paperwork for the homeowner's application to HOHP.
12. The invoice for factoring charges dated 19/8/2011 was sent to an address in Wallsend, the invoice dated 18/11/2011 was sent to 7 Barbeth Place, the invoices between 20/2/2012 and 20/5/2013 were sent to the property and the invoices from 20/8/2013 to 20/5/2015 were sent to 7 Barbeth Place.
13. The Committee has seen copy correspondence from the property factor to the homeowner c/o McGill sent to an address in Pontefract, West Yorkshire on 9

February 2011, to the homeowner directly at an address in York between 21 March 2011 and 7 July 2011 and to an address in Wallsend between 15 July 2011 and 1 September 2011. The first of the letters sent to Walsall was to the homeowner c/o McGill, but the other letters were sent addressed directly to the homeowner. On 10 October and 19 December 2011 and 11 January 2012, the property factor wrote to the homeowner at Barbeth Place, Cumbernauld. From 29 February 2012 until 4 April 2013, correspondence is addressed to the property and from 11 June 2013 onwards, all letters are sent to Barbeth Place.

Reasons for the Decision

The Committee considered the application, with its supporting papers, the written representations of the homeowner and the property factor and the evidence given by the parties at the hearing.

The Committee was unable to determine whether a written Statement of Services had been sent to the homeowner on 20 November 2012, as contended by the property factor, but concluded, on the balance of probabilities, that a copy of the written Statement of Services had been sent to the homeowner on 20 November, 2014. This was after the date of the application (received on 1 August 2104), but prior to the date on which the homeowner provided HOHP with additional information on 21 January 2015 and 6 March 2015, in which she stated again that the property factor had not provided her with a written Statement of Services. A copy of part of the written Statement of Services had been included with the paperwork attached to the homeowner's letter to HOHP dated 6 March 2015 and the Committee concluded that this supported the evidence given by the property factor that a second written Statement of Services had been sent to the homeowner on 20 November 2014. The Committee, therefore, did not uphold the complaint that the property factor had failed to comply with Section 1 of the Code. Further, as the written Statement of Services contained details of the services provided by the property factor and the procedures for dealing with complaints, the Committee did not uphold the homeowner's complaints that the property factor had failed to comply with Sections 5,6 and 7 of the Code, as those complaints all related to the alleged failure to provide a written Statement of Services, which the Committee had not upheld.

The Committee found no evidence that the property factor had communicated with the homeowner in any way which was abusive or intimidating, or which threatened her, so determined not to uphold the complaint that the property factor had failed to comply with Section 2.2 of the Code.

Section 4.9 of the Code states that, when contacting debtors, property factors or any third party acting on their behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that the property factor may take legal action). The homeowner

had alleged that the property factor's solicitor had been intimidating, but no evidence to that effect had been provided to the Committee. The property factor in their written submissions had pointed out that the homeowner's solicitor had not raised this as an issue when writing to the property factor's solicitor on 3 June 2014. The Committee did not consider that this indicated that the homeowner's complaint was unfounded, but had not been presented with any evidence to support the homeowner's claim. The Committee therefore detrmined that the property factor had not failed to comply with Section 4.9 of the Code.

The Committee considered that the main issue to be determined was whether or not the property factor, in sending letters, invoices and statements to the property instead of the homeowner's home address, was acting in accordance with the information provided by the homeowner. The homeowner stated in the application, written submissions and at the hearing that when her son moved back into the property in 2011, she had had a telephone conversation with Marie, a member of the property factor's staff, and had given her all her contact details, including a mobile phone number and an e-mail address. At the hearing, the property factor questioned whether this conversation had taken place, but did not categorically deny that it had. The homeowner had advised the Committee that from 2006 until 2011, her (now) ex-husband Mr Greig McGill had dealt with all the bills relating to the property and the property factor told the Committee tha they accepted instructions from Mr McGill in relation to the addresses to which correspondence should be sent. The property factor had exhibited to the Committee an e-mail to Mr McGill dated 25 January 2012, referring to an earlier e-mail from him on 12 September 2011 with a change of address for the homeowner. The Committee did not see the earlier e-mail, so was not in a position to confirm the address which had been contained in the earlier e-mail, but noted from the papers submitted with the property factor's written representations that the property factor had written to the homeowner at Wallsend on 1 September 2011 and to 7 Barbeth Place, Cumbernauld (the homeowner's home address) on 10 October 2011. From 29 February 2012, correspondence had been sent to the property. The address to which invoices and statements in respect of factoring had been sent had also changed from Wallsend to 7 Barbeth Place on 18 November 2011 and then to the property from 20 February 2012 until 20 May 2013. The Committee had not seen a reply from Mr McGill to the e-mail of 25 January 2012, so could not find that the property factor had been advised to change the address from 7 Barbeth Place to that of the property, but the subsequent actions of the property factor in changing the address to that of the property indicated to the Committee that such an instruction may have been received from Mr McGill following on the e-mail of 25 January 2012. The homeowner stated that it was only in 2013 that she had become aware of the outstanding debt, when she had contacted the property factor on another matter and the Committee had before it a copy of an e-mail from Marie at the property factor dated 3 June 2013, referring to a telephone conversation. The Committee noted that general correspondence, invoices and statements from 11 June 2013 onwards

were sent to the homeowner at 7 Barbeth Place, which would be consistent with the property factor amending their records following that telephone conversation

The Committee therefore accepted, on the balance of probabilities, that the property factor had at all times written to the homeowner at the addresses provided to them.

The Committee also accepted, on the balance of probabilities, that the homeowner did have a telephone conversation with the property factor when her son moved back into the property in 2011. The main purpose of this, though, appeared to be to ask that the homeowner be alerted if there were any issues regarding her son's conduct. The Committee could not hold that it was intended that invoices, statements or other correspondence regarding factoring charges should be sent by e-mail. Indeed, the homeowner told the Committee that she understood that payment of such charges was the responsibility of the tenant (her son). She was entirely mistaken in this view, but it suggests that she would not have been expecting any credit control letters to be sent to her by e-mail.

The property factor told the Committee that their policy was to deal by letter with all matters of invoicing and credit control. The written Statement of Services does not specify that this will be the method of communication, but, in the Committee's view, it is perfectly normal for commercial organisations to deal with debtors in this way.

The Committee determined that the property factor was advised of a number of changes of address for the homeowner and had sent correspondence, invoices and statements ot the addresses which they held from time to time. This had the consequence that the address used during the period when arrears began to build up and uring the stages of debt recovery was the property address, but the Committee determined that the property factor was entitled to assume that all correspondence was reaching the homeowner, as none of it was returned to them marked as undelivered. It was very unfortunate that the homeowner did not visit the property for some two years after her son moved back in and that her son did not, when visiting her at her home, pass on correspondence addressed to her at the property, but the view of the Committee is that the property factor cannot be held responsible for the situation which arose and which, ultimately, according to her evidence, caused the homeowner to incur huge expense.

The homeowner had contended that the property factor had failed to comply with Section 4.5 of the Code, which requires property factors to have systems in place to ensure the regular monitoring of payments due from homeowners and that they must issue timely reminders to inform individual homeowners of any amounts outstanding. The Committee determined that the property factor had a clear system of credit control set out in the written Statement of Services and that they had issued timely reminders to the homeowner of amounts outstanding. Accordingly, having held that the property factor had sent all invoices, statements and credit control correspondence to the addresses that they held

from time to time, the Committee determined that the property factor had not failed to comply with section 4.5 of the Code.

The Committee then considered the complaint under Section 4.7 of the Code, which provides that property factors must be able to demonstrate that they have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging thise remaining homeowners if they are jointly liable for such costs. The Committee was of the view that the homeowner had misunderstood the wording of Section 4.7, as she did not offer any evidence that the other homeowners in the block had had to make up any shortfall caused by her non-payment or that she had been billed for a portion of any deficit created by non-payment by other homeowners. The Committee also noted the evidence given at the hearing by the property factor that they had met the homeowner's liability in respect of two major repairs to the block, in order that the works might go ahead. Accordingly, the Committee determined that the property factor had not failed to comply with Section 4.7 of the Code.

The homeowner had claimed that the property factor had not notified her that there was an issue regarding payment of factoring charges, despite having all her contact details, and had failed to comply with Section 4.8 of the Code. That Section provides that property factors must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of their intention. The Committee had already decided that the property factor had had no reason to think that correspondence, including invoices and statements, was not reaching the homeowner and the view of the Committee was that, in the absence of any response from a debtor and faced with mounting arrears, the property factor could not be expected to do any more prior to taking legal action. The Committee noted that the property factor would from 2011 have had an e-mail address and a mobile telephone number for the homeowner, but accepted that the property factor chose to deal with all billing and credit control matters by letter. Accordingly, the Committee determined that the property factor had not failed to comply with section 4.8 of the Code.

The final element of the homeowner's complaint related to Section 2.5 of the Code, which states that propery factors must respond to enquiries and complaints received by letter or e-mail within prompt timescales and that their aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if they require additional time to respond. The Section also says that response times should be confirmed in the written Statement of Services. The homeowner argued that the property factor had not responded to her e-mails, but did not provide the Committee with any evidence, such as copy e-mails, to support that view. The parties agreed that, during a telephone conversation on 17 December 2014, in which the property factor said they had not received e-mails that the homeowner said she had sent to them, the homeowner attempted to send an e-mail, which did not arrive. The Committee would comment that the

property factor should carry out a review of its systems, to ascertain whether there is a problem at their end with incoming e-mails, but could not hold that the property factor had failed to respond to e-mailed enquiries, as there was no evidence that they had received any such enquiries.

The written Statement of Services includes timescales for responses to complaints within its section on Communication Arrangements. The formal complaint in this case was in a letter which was delivered to the property factor on 21 January 2015. The property factor issued a full response the following day. Accordingly, the Committee determined that the property factor had not failed to comply with Section 2.5 of the Code.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

The Committee does not propose to make a Property Factor Enforcement Order.

Appeals

The parties' attention is drawn to the terms of section 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 ... "

Chairperson Signature .. Date. 14 September 2015