

**Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011**

**Hohp ref:HOHP/LM/13/0274**

**Re: Common Land forming Springhill Meadows Estate, Moorfield, Kilmarnock ('the Property')**

**The Parties:**

**Steven Callaghan residing at 30 Old Rome Drive, Kilmarnock, KA1 2RU ('the homeowner')**

**Meadfleet, Suite 1, 3<sup>rd</sup> Floor, Southgate House, St Georges Way, Stevenage, Herts, SG1 1HG ('the factor')**

**Committee members:**

**Jacqui Taylor (Chairperson), Carol Jones (Surveyor Member) and David Hughes Hallet (Housing Member).**

**Decision of the Committee**

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors, as required by section 14 of the 2011 Act determined that, in relation to the Homeowner's application, the factor has not complied with Sections 1, 2.1,2.5,4.1,6.3 and 7.1 of the Code of Conduct.

## Background

1. The factor's date of registration as a property factor is 9<sup>th</sup> January 2013.
2. By application dated 28<sup>th</sup> August 2013 the homeowner applied to the Homeowner Housing Panel ('the Panel') for a determination that the factor had failed to comply with:-

2. 1: The following sections of the Property Factor Code of Conduct:

- o Section1: Written Statement of Services.

All Sections as the factor has failed to provide.

- o Section2: Communications and Consultation.

Sections 2.1 and 2.5.

- o Section3: Financial Obligations.

Section 3.3.

- o Section4: Debt Recovery.

Sections 4.1 and 4.8.

- o Section6: Carrying out Repairs and Maintenance.

Sections 6.3 and 6.6.

- o Section7: Complaints Resolution.

Section 7.1.

2.2: The Property Factor's duties.

The homeowner stated:

*'The factors are unable to confirm to the residents of our estate what areas of land they actually maintain. As of 28/08/13 they are still researching and having meetings with the developers to establish the areas which I am being charged for. The general works being carried out are sporadic at best and not as per the claims by the factor.'*

3. By Notice of Referral dated 28<sup>th</sup> November 2013 the President of the panel intimated that she had decided to refer the application to a Homeowner Housing Committee ('The Committee').

4. The factor provided a written response dated 12<sup>th</sup> December 2013.

The factor stated:

- o Section1: Written Statement of Services.

*'Written statement of services as laid out in our Code of Conduct.'*

- o Section2: Communications and Consultation.

*2.1 Meadfleet have not provided residents with written information which is misleading or false.*

*2.5 Meadfleet have at all times endeavoured to respond to enquiries and complaints as quickly as possible and in accordance with our Code of Conduct.*

- o Section3: Financial Obligations.

*3.3 Meadfleet have provided residents with requested information, always assuming that the information requested is available.*

- o Section4: Debt Recovery.

- o *4.1. Procedures for debt recovery are clearly laid out in our Code of Conduct.*

- o *4.8 Meadfleet have procedures which we consider are fair and reasonable as appropriate to Scottish law and the Deed of Conditions signed by residents on purchase of their property.*

- o Section6: Carrying out Repairs and Maintenance.

- o *6.3 Where residents have requested information with regard to appointment of contractors, we have offered explanation and written evidence of procedures.*

- o *6.6 information has been provided to residents upon request.*

- o Section7: Complaints Resolution.

- o *7.1 Our complaints procedures are clearly set out in our Code of Conduct.*

- o The Property Factor's duties.

*o Meadfleet have carried out maintenance works on the residential developments constructed by Bellway Homes and Robertson Homes (respectively known as Springhill Meadows and Fisher Grange) since 25<sup>th</sup> July 2008 (see letter enclosed). Meadfleet employ sub-contractors to carry*

out the maintenance work and we enclose invoices from the contractors (Albar Limited and JMK Limited) for the period 31<sup>st</sup> August 2008 to 31<sup>st</sup> January 2013. During this period Meadfleet inspected the areas under management and we enclose various inspection reports and photographs.

o Mr Callaghan has requested that we provided him with a breakdown of the works undertaken. For the avoidance of doubt, our method of contract procurement and works specification does not require contractors to submit a detailed analysis of works either at tender stage or at the time when maintenance is carried out. Therefore, the level of information requested by Mr Callaghan is simply not available. A copy of our generic tender documentation is enclosed.

o We have enclosed a copy of an invoice as sent to Mr Callaghan which we believe to be self-explanatory. Invoices are routinely sent out twice a year which include a schedule of supplier costs for the invoice period.

o Mr Callaghan has referred to the Deed of Conditions (clause eleven) which he signed upon purchase of his property and in particular the requirement to pay the factor on a quarterly basis. The fact that we invoice twice yearly does not mean that invoices are not due and payable. Should Mr Callaghan require to discuss alternative payments arrangements then our credit control department will be able to assist.

o We have set up a specific e-mail address [Scotland@meadfleet.co.uk](mailto:Scotland@meadfleet.co.uk) to deal with residents' enquiries or alternatively our general enquiries address [info@meadfleet.co.uk](mailto:info@meadfleet.co.uk). Our Code of Conduct states the timescales within which we endeavour to respond i.e. ten working days.

o Mr Callaghan requested a copy of our Code of Conduct on 21<sup>st</sup> June, a copy of which was subsequently provided to Mr Callaghan and other residents on 17<sup>th</sup> September. The background to the delays in issuing the document have been documented and we have apologised for the delay. It is important that the background to this matter is considered in some detail as we fully refute any allegations that we have been remiss in keeping residents informed and we attach copy correspondence in this regard. A meeting with residents' representatives was organised and paid for by Meadfleet on 17<sup>th</sup> September at a venue local to the development. It was agreed at the meeting (see enclosed minutes) that our regional manager would provide monthly dates to the residents committee in order that they could meet him to discuss any issues regarding maintenance. We can advise that only one of the dates offered has been taken up by residents.

o We are sorry to learn that Mr Callaghan has suffered undue stress and anxiety. However Mr Callaghan has seen fit to take advantage of our alternative payment arrangements with our credit control department to make

*direct debit payments. Mr Callaghan has also placed himself in the position of unelected chair of the residents association, a position which in itself would only add to the stress of running his household.*

*o Meadfleet have tried to assist all residents with their concerns be they genuine or spurious. Regrettably, there are some residents who refuse to accept the advice or information given, even when there is no further information to give. We believe that we have acted fully and professionally with full regard to the concerns of residents.'*

5. The Committee issued a Preliminary Direction under paragraphs 13(1) and 13(3)(d)(i) of the Regulations dated 7<sup>th</sup> January 2014 requiring the homeowner to provide a list of outstanding issues as the Written Statement of Service and other documents had been provided by the factor.

In response to the Preliminary Direction the homeowner replied to the Preliminary Direction by clarifying the outstanding issues. The factor was sent a copy of the homeowners' response. The homeowner's reply to the Preliminary Direction and the factors' responses are as follows:

#### **Section1: Written Statement of Services.**

##### **Homeowner's First complaint under Section 1**

###### **(Delay in providing Written Statement of Service).**

*The homeowner explained that he received the Written Statement of Service on 17<sup>th</sup> September 2013, despite asking for it on 21<sup>st</sup> June 2013. He explained that he considered this to be a clear breach of the Code of Practice.*

##### **Factor's reply to Homeowner's First complaint under Section 1:**

*It is regrettable that all information (areas of responsibility) required to properly inform residents did not become available from the developers until the end of August 2013, following a meeting with Robertson Homes. The resulting plans showing managed areas are attached to our Code of Conduct.*

##### **Homeowner's Second complaint under Section 1:**

###### **(Failure to clarify the areas of ground being maintained).**

*Meadfleet have advised that they required further details from the Developers regarding what areas where under their control. This is despite carrying out works since 2008.*

### **Factor's reply to Homeowner's Second complaint under Section 1:**

*At the meeting of 21<sup>st</sup> June it was of great concern to residents that they had accurate plans showing the areas under management. It had been minuted that even Councillor Jones did not have a full understanding of the areas which were subject to future adoption. As such we made it a priority that the correct information was provided as Mr Callaghan has consistently refuted their appointment, therefore we wanted to ensure that we are clear on what the developers were asking us to maintain against what we have been maintaining. For example an issue has been raised by Mr Callaghan in regards to emptying dog bins. The bins are affixed to local authority maintained street lights, it is therefore their assertion that the bins must be the responsibility of the local authority with no involvement from Meadfleet. However Mr Callaghan has made great issue of this point, insisting that Meadfleet have been in some way remiss.*

### **Homeowner's Third complaint under Section 1:**

#### **(Failure to provide an apology)**

*Despite Meadfleet's response to HOHP advising that he had received an apology he is still awaiting any apology.*

### **Factor's reply to Homeowner's Third complaint under Section 1:**

*We do not consider that this is a matter which should have been brought to the attention of the HOHP. We are happy to apologise for some administrative misgivings, however we do consider that we have been doing a good job on maintaining the development.*

### **Section2: Communications and Consultation.**

#### **Section2.1: You must not provide information which is misleading or false.**

#### **Homeowner's First complaint under Section 2.1.**

*The homeowner explained that It is his belief that Meadfleet have provided information that is both misleading and false. They have been tendering and invoicing for areas that are not under their control. They have been failing to maintain areas that are under their control however have been invoicing for these areas.*

### **Factor's reply to the Homeowner's First complaint under Section 2.1:**

*The factor explained that they do not fully understand the issue under this item of the homeowner's application. To explain, Meadfleet will invite tenders from contractors prior to accepting handover from developers. This is simply to ensure that once the areas are in a satisfactory condition, the contractors are aware of the areas and are in a position to commence work. They also explained that they*

*do not consider that they have in any way misled or provided false information to residents.*

**Homeowner's Second complaint under Section2:**

*Page 2 of Meadfleet's Written Statement of Services states that the factor will provide homeowners with handover packs. To date he has never received such a pack.*

**Factor's reply to Homeowner's Second complaint under Section 2:**

*The factor explained that they do not consider that they have in any way misled or provided false information to residents. Areas have been under their remit since July 2008 and since then additional smaller areas have come 'on stream'. The addition of these areas does not constitute a change to the core business and generate a requirement for 'handover' packs.*

**Section 2.5: You must respond to enquiries and complaints received by letter or email within prompt timescales.**

*The homeowner advised that Meadfleet do not respond to complaints or queries in a timeous manner. They had no formal procedure in place until after they supplied residents with their Written Statement of Services on 17<sup>th</sup> September 2013. Since that date they have attempted to answer queries and complaints in a more timeous manner however not always within their own time frames.*

**Factor's reply to Homeowner's complaint under Section 2.5:**

*The factor advised that response times to resident's complaints have varied and this is an issue that has been addressed and the requirements of the Factors Act have focused their attention to this aspect of their business administration. They have implemented new procedures for recording telephone calls (computer data base), a specific email address for Scotland etc.*

**Section3: Financial Obligations.**

**Section 3.3: 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.**

**Homeowner's complaint under Section 3.3:**

*My initial complaint regarding this stands. Despite asking for a detailed breakdown of what I'm actually being charged for I received nothing until after 17<sup>th</sup> September 2013. I would also like to point out that paragraph 2 of part B of Meadfleet's response to my complaint which states ' for the avoidance of doubt, our method of contract procurement and works specification does not require contractors to submit a detailed analysis of works either at tender stage or at the time when maintenance is carried out. Therefore the level of information requested is simply not available.*

**Factor's response to Homeowner's complaint under Section 3.3:**

*No comment*

**Section4: Debt Recovery.**

***Section 4.1: You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.***

***Homeowner's complaint under Section 4.1:***

*At the time of my initial complaint Meadfleet had no written procedure in place at all. Yet again nothing was in place until after 17<sup>th</sup> September when they produced their Written Statement of Services.*

***Factor's response to Homeowner's complaint under Section 4.1:***

*As previously advised they explained that they have implemented new business administration procedures.*

***Section 4.8: You must not take legal action against a homeowner without taking reasonable steps to resolve the matter without giving notice of your intention.***

***Homeowner's complaint under Section 4.8***

*Meadfleet threatened all residents, myself included, with legal action despite making no efforts to resolve the issues or answer complaints.*

***Factor's response to Homeowner's complaint under Section 4.8***

*They explained that they have not threatened all residents with legal action. Meadfleet's Code of Conduct sets out their debt collection procedures that they follow Meadfleet have withheld pursuing any outstanding debts pending the outcome of the HOHP hearing and legal advice. However, going forward should*

*Meadfleet be able to pursue outstanding debts, then the matter will be passed to their solicitors to pursue.*

*Meadfleet have made efforts to resolve complaints, principally by attending meetings and advising the residents of dates when their Regional manager is on the development. The Deed of conditions, signed by residents at the time of purchasing their property, provides quite clearly for action to be taken by factors when faced with unpaid invoices, their actions in this respect are not unreasonable.*

#### **Section6: Carrying out Repairs and Maintenance.**

***Section 6.3: On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.***

#### ***Homeowner's complaint under section 6.3:***

*Meadfleet have been unable to show how or why they appointed their contractors.*

#### ***Factor's response to Homeowner's complaint under section 6.3:***

*Typical tender documentation has been provided to Mr Callaghan. The issue appears to be that either Mr Callaghan or one or two residents are employed by organisations whose contractor procurement methods differ from their own and are fuelling this debate. Our documentation has been provided to the HOHP on the 18<sup>th</sup> February 2014, further to the Directive provided.*

***Section 6.6: If applicable, documentation relating to any tendering process (excluding commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.***

#### ***Homeowner's complaint under section 6.6:***

*The homeowner explained that he asked to see documentation relating to the tendering process along with their Written Statement of Services on 21<sup>st</sup> June 2013. He eventually received this documentation on 11<sup>th</sup> October 2013. Meadfleet's response to ourselves regarding this is misleading and false.*

#### ***Factor's response to Homeowner's complaint under section 6.6:***

*Meadfleet reject any accusation that statements are 'misleading or false'.*

## **Section 7: Complaints Resolution.**

***Section 7.1: You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.***

### ***Homeowner's complaint under section 7.1:***

*At the time of my complaint Meadfleet had no complaints procedure that he was aware of. This is another section of the Act not complied with until after the issuing of the written Statement of Services.*

### ***Factor's response to Homeowner's complaint under section 7.1:***

*This point seems to be a repeat of Section 2.5 to which we have accepted that some failings have occurred and we have made considerable efforts to correct.*

### **The Property Factor's duties.**

The homeowner made no specific complaint that the factor had failed to comply with the property factor's duties.

6. Following service of the Notice of referral, the factor and the homeowner made further written representations.

### **7. Hearing**

A hearing took place in respect of the application on 3<sup>rd</sup> March 2014 at The Europa Building, 450 Argyle Street, Glasgow, G2 8LH.

The Homeowner appeared on his own behalf.

The factor was represented by Stephen Carter and Paul McGovern. Their solicitor Stephen Jansch was also present.

### **Findings of Fact**

1. The homeowner is the proprietor of the Property, his title being registered in the Land Register of Scotland under Title Number AYR77080. His property forms part of the Springhill Meadows Estate.
2. The Property is subject to the title conditions contained in land certificate AYR77080 and created in inter alia two Deeds of Conditions which were both registered on 26<sup>th</sup> May 2006. The first is by Bellway Homes Limited and applies to the Springhill Meadows Estate and the second is by Bellway Homes Limited and Robertson Homes Limited and applies to the Springhill Meadows and Fisher Grange Estates.

3. It is not disputed that the factor is duly appointed factor of the Property in terms of the Title Conditions. The factor was registered under the Act on 9<sup>th</sup> January 2013.

### **Oral Representations from the parties at the hearing.**

#### **Section1**

##### **Delay in providing Written Statement of Service.**

The homeowner explained that he requested a copy of the Written Statement of Services at a meeting on 21<sup>st</sup> June 2013. However he did not receive it until 17<sup>th</sup> September 2013. He explained that he was prejudiced by this delay as he had received the factor's invoices before he had received the written Statement of Services. He bought his property in 2007 and the factors first started to factor the development in 2008. He then received a letter in 2012 looking for back dated payments. No invoices had been received before that time.

Stephen Carter, for the factor accepted that there had been a delay in issuing the Statement of Services.

##### **Failure to clarify the areas of ground being maintained.**

The homeowner advised that he had received three different plans from the factors showing the areas that they manage and these do not appear to correspond with the invitation to tender document.

One of the plans had been attached to the Written Statement of Services but the other two plans had been issued more recently and were slightly different.

Stephen Carter explained that when the developers complete common areas the responsibility for maintenance would then be handed over to the factor.

The plan attached to the Written Statement of Services shows the common areas as they were in 2008. Additional areas were added in May 2013 and August 2013.

#### **Section 2.1**

##### **You must not provide information which is misleading or false.**

The homeowner explained that he believes that the factors have been tendering for and invoicing for areas that are not under their control.

As previously advised he had received three different plans from the factors showing the areas that they manage and these do not appear to correspond with the invitation to tender document.

One of the plans had been attached to the Written Statement of Services but the other two plans had been issued more recently and were slightly different.

Stephen Carter advised that Meadfleet do not invoice for areas that are not under their control.

He explained that the Invitation to Tender document Meadfleet sent to contractors in February 2013 included all the areas they maintain and the prospectively maintainable areas that haven't been handed over to them yet. The prospectively maintainable areas that haven't been handed over to them are the buffer area between the Charles Church and Bellway estates and the Linear Park Area.

Stephen Carter also accepted that the Triangular area (shown on the plan to the west of the pond) was not maintained by the factors until September 2013 but had been included in the tender document. This area extends to approximately 100 square meters of grass and would be cut 17 time per year.

He explained that there was no intention on the part of the factor to mislead.

He advised that Meadfleet did write to the contractor GSB Landscape Limited to advise that the areas of the buffer area and the Linear Park Area were not to be maintained or included in the invoices. He did not have a copy of that correspondence with him at the hearing but it would be provided within 14 days.

The homeowner explained that the Tender document had not been sent to the homeowner until requested as part of the HOHP application and he had been sent three different versions of the plans showing the areas that are maintained by the factor without an explanation as to the areas maintained and not maintained by them.

#### **Failure to provide the handover pack.**

Mr Callaghan advised that he never received the handover pack.

Stephen Carter advised that the no separate handover pack was provided as it was included within the written Statement of Services.

#### **Section 2.5: failure to respond to enquiries and complaints by letter or email within prompt timescales.**

Mr Callaghan advised that the factors had failed to respond to his emails dated 8<sup>th</sup> April and 18<sup>th</sup> May 2013.

Stephen Carter had no further comment to make on this point.

**Section 3.3: Failure to provide detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for.**

Mr Callaghan explained that he had received no detailed financial breakdown of charges until he received the written Statement of Services on 17<sup>th</sup> September 2013. He wanted details of the works the contractors actually do.

Stephen Carter explained that the works specification is the tender document. Further details are provided in the annual invoices.

**Section 4.1: You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is reason not to.**

Mr Callaghan explained that he understood that the written procedure is being compiled. He feels that he had been prejudiced by the fact that the required procedure was not in place timeously as he had been threatened with legal action.

Stephen Jansch explained that the financial specification is set out in the Deeds of Conditions.

**Section 4.8: You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.**

Mr Callaghan accepted that the factors had not taken legal action.

**Section 6.3: On request you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.**

Mr Callaghan advised that he received the tender documents on 11<sup>th</sup> October 2013. However he does not know why GSB Landscapes Limited were the chosen contractor.

Paul McGovern explained that three contractors were invited to tender. Golder Landscapes, GSB Landscapes and Caneth Limited. He confirmed that they did not re-tender when only one response was received. They were tendering in Spring time and wanted the contractor to start before the growing season got under way. He met a representative from GSB Landscapes and was impressed with the standard of their work. He felt confident that they would provide the standard of service that was required.

**Section 6.6: Tendering Documentation to be made available.**

Mr Callaghan confirmed that he had received the tendering documentation.

### **Section 7.1: Clear written complaints procedure to be in place.**

Mr Callaghan confirmed that this was now in place as it was provided as part of the Written Statement of Service on 17<sup>th</sup> September 2013.

#### **Further submissions**

Mr Callaghan considered that the situation could have been avoided. The factor had taken no steps to communicate or answer his questions before he made the application to HOHP. His wife had been particularly upset when they received a threat of legal action.

Stephen Carter advised that Meadfleet resigned as factors for the development on 24<sup>th</sup> February 2014.

Stephen Jansch advised that the titles are far from straightforward. Most of the information requested by Mr Callaghan has been provided by the factor, even although there were delays in providing the information.

## **8. Determination of Complaints**

### **Section1: Written Statement of Services.**

#### ***Delay in Providing Written Statement of Service***

The Committee finds that the homeowner requested the Written Statement of Service in his email dated 21<sup>st</sup> June 2013. In terms of Section 1 of the Code of Conduct the Written Statement must be provided within 4 weeks of the request. The factor had failed to comply with this requirement timeously as the Written Statement of Services was not provided until 17<sup>th</sup> September 2013.

#### ***Failure to clarify the areas of ground being managed.***

Section 1 of the Code of Conduct states that the factor must provide a Written Statement of Services setting out in a simple and transparent way, the terms and service delivery standards of the arrangements in place between the factor and the homeowner.

The Committee acknowledges that the definition of the common parts of the developments in the homeowner's Land Certificate is not straight forward. They also acknowledge that the factor has not assumed responsibility for maintenance of all of the common parts of the development and there are transitional arrangements between the developer and the factor whereby common areas are handed over to the factor when they have been completed by the developer to a satisfactory standard. However, these complexities do not reduce the obligation on the factor in terms of section 1 of the Code of Conduct.

The Committee does not consider that the factor's Written Statement of Services sets out in a simple and transparent way, the areas of ground being managed by

the factors and the transition arrangements for the areas that will be taken over as the development progresses.

### ***Failure to provide an apology***

The Committee finds that failure to provide an apology is not a breach of the Code of Practice.

The Committee finds that the factor has failed to comply with section 1 of the Code of Conduct.

## **Section2: Communications and Consultation.**

### ***Section 2.1: You must not provide information which is misleading or false.***

The factor acknowledged that they had issued tender documentation which includes common areas that have not de facto been handed over to them. Namely the triangular area to the west of the balancing pond and the eastern edge area of the Bellway Homes estate known as the 'buffer zone'. Whilst the Committee accepted the factor's explanation for doing this the factor has not demonstrated to the Committee that they have clearly communicated to the homeowner the reasons for doing this and the fact that it does not result in the homeowner being over charged as a result.

At the hearing the Committee asked the factor to produce evidence to the Committee within 14 days of the hearing demonstrating that the contract with GSB Landscape Limited does not include the areas that have not de facto been taken over by the factor. The factor provided the Committee with a copy of the signed agreement between the factor and GSB landscape Limited dated 22<sup>nd</sup> April 2013. The tender document and estate plan were attached to that agreement. The tender document included reference to the common areas that had not de facto been handed over to the factor, namely the buffer zone and the linear park. Also the plan included the triangular area to the west of the balancing pond. The factor sent the Committee a letter dated 10<sup>th</sup> April 2014 which states inter alia:

*'We have checked the plan referred to by Mr Callaghan and similarly the information sent to the HOHP. We can confirm that the plan correctly shows the maintained areas. For the sake of clarity the same information is herewith attached.'*

*For the avoidance of doubt, the plan excludes (and always has done) those areas Mr Callaghan refers to as the children's play area, known as the linear park and the eastern edge 'buffer zone' separating the Bellway development from Charles Church/ Persimmon development. Again, for the avoidance of doubt, Mr Callaghan has not been charged for maintenance of the above areas'.*

However, the Committee noted that there is an inconsistency between the plan and the tender document. The Agreement between the factor and GSB Landscape Limited dated 22<sup>nd</sup> April 2014 does not state that if there is a discrepancy between the plan and the Tender document the plan will take precedence. The Committee finds the tendering and invoicing information to be misleading.

**Homeowner's Second complaint under Section 2:**

Page 2 of Meadfleet's Written Statement of Services states that the factor will provide homeowners with handover packs. To date the homeowner has never received such a pack.

The Committee finds that the factor either failed to provide the homeowners with handover packs or failed to specifically explain that handover packs are not applicable in these circumstances.

Accordingly the Committee finds that the factor has breached section 2.1 of the Code of Conduct.

**Section 2.5:**

The Committee finds, as accepted by the factor, that the factor did not respond to complaints or queries timeously. However they acknowledge, as confirmed by the homeowner, that the factor has improved its procedures. The Committee finds that the factor has breached section 2.5 of the Code of Conduct.

**Section3: Financial Obligations.**

**Section 3.3:**

Section 3.3 of the Code of conduct provides:

*'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.'*

The homeowner confirmed that he received the financial breakdown after 17<sup>th</sup> September 2013. The factor was registered as a property factor on 9<sup>th</sup> January 2013 and therefore the information was provided timeously. Therefore the Committee finds that the factor has not failed to comply with Section 3.3 of the Code of Conduct.

#### **Section4: Debt Recovery.**

##### ***Section 4.1:***

The Committee acknowledged that the Written Statement of services includes details of the factor's financial and charging arrangements as required by section 4.1 of the Code of Conduct. However, as previously stated the factor was required to comply with the Code of Conduct from the date of registration as a property factor (9<sup>th</sup> January 2013) but failed to issue the Written Statement of Service until September 2013. The Committee finds that the factor had failed to comply with this requirement timeously as the Written Statement of Services was not provided until 17<sup>th</sup> September 2013.

##### ***Section 4.8:***

The Committee finds that the factor had not taken legal action against the homeowner, but they had threatened to do so. Therefore the Committee finds that the factor has not failed to comply with Section 4.8 of the Code of Conduct.

#### **Section 6: Carrying out Repairs and Maintenance.**

##### ***Section 6.3:***

The homeowner confirmed that he received the tender documentation on 11<sup>th</sup> October 2013. However, the factor only explained why they appointed GSB Landscapes Limited at the hearing. Therefore the Committee finds that the factor had failed to comply with Section 6.3 of the Code of Conduct.

##### ***Section 6.6***

The Committee finds that the tendering documentation was provided by the factor. Therefore the Committee finds that the factor has not failed to comply with Section 6.6 of the Code of Conduct.

#### **Section7: Complaints Resolution.**

##### ***Section 7.1:***

The Committee finds that the factor's complaints procedure is detailed in the Written Statement of Services which was not provided until 17<sup>th</sup> September 2013. Therefore the factor had failed to comply with this requirement timeously.

## 9. Decision

### Property Factor Enforcement Notice

In all of the circumstances narrated above, the Committee finds that the factor has failed in its duty under section 17(1)(b) of the 2011 Act to comply with the requirements of the Code of Conduct in respect of sections 1, 2.1,2.5,4.1,6.3 and 7.1.

The Committee has therefore determined to issue a Property Factor Enforcement Notice which will follow separately.

## 10. Appeals

The parties' attention is drawn to the terms of section 21 of the 2011 Act regarding their right to appeal and the time limit for doing so.

It provides:

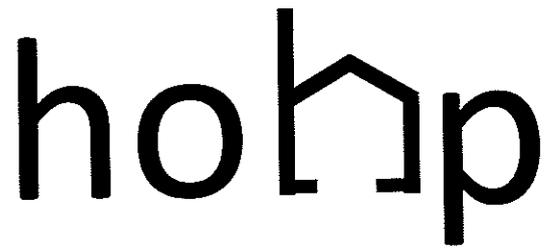
- (1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or homeowner housing committee.
- (2) An appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.'

J Taylor

Signed ....

..... Date 24<sup>th</sup> April 2014

Chairperson



## **Notice of Property Factor Enforcement Order**

**Hohp ref:HOHP/LM13/0274**

**Re: Common Land forming Springhill Meadows Estate, Moorfield, Kilmarnock ('the Property')**

**The Parties:**

**Steven Callaghan residing at 30 Old Rome Drive, Kilmarnock, KA1 2RU ('the homeowner')**

**Meadfleet, Suite 1, 3<sup>rd</sup> Floor, Southgate House, St Georges Way, Stevenage, Herts, SG1 1HG ('the factor')**

**Committee members:**

**Jacqui Taylor (Chairperson), Carol Jones (Surveyor Member) and David Hughes Hallet (Housing Member).**

***This Notice should be read in conjunction with the Decision of even date under reference Hohp ref:HOHP/LM/13/0274***

(1) By decision of even date with this notice, the Committee determined that the factor had breached its duties in terms section 17(1)(b) of the 2011 Act in that it has failed to comply with sections 1, 2.1,2.5,4.1,6.3 and 7.1 of the Code of Conduct for Property Factors as required by section 14(5) of that Act.

(2) Having been satisfied that the factor has failed to comply with the said sections of the Code of Conduct for Property Factors and as the Committee propose to make a Property Factor Enforcement Order before making the Order the Committee must

give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Committee.

- (3) The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2)(a) of the Act.
- (4) The parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) must reach the Homeowner Housing Panel's office by no later than 14 days after the date the decision is intimated to them.
- (5) If no representations are received within that timescale, then the Committee will proceed to make a Property Factor Enforcement Order in the following terms without further representations from the parties.

- (6) Therefore the Committee propose to make the following Property Factor Enforcement Order:

'Within 28 days of the communication to the factor of the Property Factor Enforcement Order the factor must pay the homeowner £250 from their own funds and at no cost to the owners, to reflect the inconvenience the homeowner has suffered as a result of the failures of the factor to comply with sections 1, 2.1, 2.5, 4.1, 6.3 and 7.1 the Property factors (Scotland) Act 2011 Code of Conduct for property factors.'

#### **(7) Appeals**

The parties' attention is drawn to the terms of section 21 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 homeowner housing committee.
- (2) An appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.'

J Taylor

Signed .....

.....Date 24<sup>th</sup> April 2014

Chairperson