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

HOHP reference: HOHP/PF/13/0063

Re: Property at Flat 3, 23 Hyndland Road, Glasgow G12 9UZ

The Parties:

Mr Euan MacLeod, Flat 3, 23 Hyndland Road, Glasgow G12 9UZ ('the applicant')

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow G3 7PL ('the respondent')

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:

Sarah O'Neill (Chairperson)

George Campbell (Surveyor member)

Susan Brown (Housing member)

Decision of the committee

The respondent has failed to comply with its duties under section 14 of the Property Factors (Scotland) Act 2011 in respect of sections 2.1 and 7.2 of the code of conduct for property factors. The respondent has not failed to comply with its duties as a property factor as defined in section 17 (5) of the Act after 1 October 2012.

The committee's decision is unanimous.

Background

1. By application dated 12 April 2013, the applicant applied to the Homeowner Housing Panel ('the panel') to determine whether the respondent had failed to comply with its duties under the Property Factors (Scotland) Act 2011.

2. The application alleged that the respondent had failed to comply with the following sections of the code of conduct for property factors ('the code'): 1L

(written statement of services); 2.1 and 2.2 (communication and consultation); 3.5a (financial obligations); 6.3 (carrying out repairs and maintenance); and 7.2 (complaints resolution). The application also alleged that the respondent had failed to comply with the property factor's duties as defined in section 17(5) of the Act.

3. By letter dated 11 June 2013, the President of the panel sent a notice of referral to both parties, intimating her decision to refer the application to a panel committee for determination. Written representations were requested by 25 June 2013. Both parties submitted written representations to the committee by that date. The applicant indicated that he wished the application to be considered at an oral hearing. The respondent indicated that it wished the application to be considered by written representations only and without a hearing.

4. Both parties were notified by a letter from the panel dated 1 July that a hearing was to be held on 6 August 2013. A letter from the respondent dated 29 July, advising that it did not intend to appear or be represented at the committee hearing, was received by the panel on 30 July. The respondent requested that further written submissions enclosed with its letter be considered by the committee at the hearing, together with its previous written representations. A copy of the respondent's letter, together with the further written submissions, was sent to the applicant on 30 July.

Hearing

5. A hearing took place before the committee at the offices of the Homeowner Housing Panel, Europa Building, 450 Argyle Street, Glasgow on 6 August 2013. The applicant represented himself. He gave evidence and called no witnesses. The respondent did not appear and was not represented. The committee had available to it the initial application and subsequent correspondence between the applicant and the panel. The committee also had available to it the written representations submitted by both parties, together with a substantial number of indexed documents submitted by the respondent, and the respondent's letter of 29 July, together with its further written representations.

Findings in fact

6. The committee finds the following facts to be established:

- The applicant is the owner of Flat 3, 23 Hyndland Road, Glasgow G12 9UZ.
- The respondent is the property factor responsible for the management of the flats within the property at 23/25 Hyndland Road, Glasgow.

- The respondent wrote to the applicant on 22 October 2012, setting out its Terms of Service and Delivery Standards relating to the arrangements in place between the respondent and the applicant.
- The respondent became a registered property factor on 1 November 2012. Its duty under section 14 (5) of the Act to comply with the code arose from that date.
- The applicant pursued his complaints through the respondent's formal complaints process, which ended with a letter from the respondent dated 28 March 2013 advising that the respondent believed it had attempted to resolve the complaints. The applicant wrote by email to the respondent on 16 April 2013, notifying the respondent of the reasons why he considered the respondent had failed in its duties under section 14 and its duties as defined by section 17(5) of the Act, and stating his intention to make an application to the panel. The respondent replied on 23 April 2013, stating that it had nothing to add to its letter of 28 March 2013.
- The respondent has refused to resolve the applicant's concerns.

Preliminary issues

7. The committee considered whether the hearing should go ahead in the absence of the respondent. The committee was satisfied that, in terms of regulation 23 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 ('the regulations'), the requirements of regulation 17 (1) regarding the giving of notice of a hearing had been complied with. It therefore decided it would proceed to make a decision on the basis of the oral representations of the applicant and the written representations submitted by both parties. The applicant indicated that he was unhappy that the respondent had failed to attend the hearing, but accepted that the committee had no power to compel the respondent to attend.

8. The committee then considered whether the respondent's letter of 29 July, together with the written representations enclosed, which had been received 7 days before the hearing, could be considered by the committee as part of the evidence before it. The applicant confirmed that he had had time to read all of the written representations submitted by the respondent with that letter, and that he was happy for the hearing to go ahead on that basis. He had prepared his responses to all of the points raised in the respondent's written submissions. As there was no objection from the applicant, the committee decided that the hearing should go ahead, and that the respondent's letter of 29 July, together with the enclosed written representations, should be included with the evidence it would take into account in reaching its decision.

9. The applicant brought with him printed copies of two recent emails from neighbours in support of his case which had not previously been submitted to

the committee, requesting that they be considered by the committee in reaching its decision. The committee did not take a view at this stage as to whether it would consider this evidence. In reaching its decision following the hearing, the committee decided that it was unable to consider this evidence, as it had not been submitted at least 7 days before the hearing, as required by regulation 12 of the regulations. The respondent had not seen the documents, and had not had fair notice that the applicant intended to rely upon them in support of his case. In the respondent's absence, the committee concluded that it would not be fair in all the circumstances to allow this evidence to be considered. The committee noted, however, that this evidence was not of great significance in relation to the main thrust of the applicant's complaints.

The complaints made by the applicant

10. The applicant made a number of complaints about the respondent, which were set out in detail in his initial application, his subsequent correspondence with the panel, his written representations to the committee and his oral submission. His original complaints related to work carried out by a contractor appointed by the respondent in June 2012, before the duties of the respondent under the Act arose. There was, however, ongoing correspondence relating to these and subsequent complaints up until April 2013. Regulation 28 (1) of the regulations provides that: 'subject to paragraph (2), no application may be made for determination of whether there was a failure before 1st October 2012 to carry out the property respondent's duties'. Regulation 28 (2) provides that the committee '....may take into account any circumstances occurring before 1st October 2012 in determining whether there has been a continuing failure to act after that date'.

11. The respondent submitted in its written representations that the substantive merits of the applicant's complaints had arisen prior to the introduction of the Act and prior to its registration as a factor, and could not therefore be considered by the committee. It was clear to the committee that the applicant was aware that there was a question over this issue, but he submitted that the complaints had continued after the relevant dates, and could therefore be considered by the committee. The committee concluded that, although some of the complaints had their origin in works carried out prior to 1 October 2012, there were on the face of it issues raised in the complaints which related to matters arising after 1st October 2012. Some of the issues also related to potential failures to comply with the section 14 duty after 1 November 2012. The committee therefore decided to consider the evidence submitted in relation to those complaints.

12. The applicant's application set out the following specific sections of the code with which he believed the respondent had failed to comply:

1.1b (l) [The written statement of services should set out] your in-house complaints procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure.

2.1 You must not provide information which is misleading or false.

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).

3.5a Homeowners' floating funds must be held in a separate account from your own funds. This can either be one account for all your homeowner clients or separate accounts for each homeowner or group of homeowners.

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.

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the applicant is notified in writing. The letter should also provide details of how the homeowner may apply to the homeowner housing panel.

13. The applicant had also referred to alleged failures to comply with sections 6.6 and 6.7 of the code in later correspondence and in his oral evidence. While these were not specifically mentioned in the original application, the committee decided to consider these complaints, as the applicant had raised these several times in written correspondence and the respondent had specifically addressed these points in its own representations. These sections state:

6.6 If applicable, documentation relating to any tendering process (excluding any 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.

6.7 You must disclose to homeowners, in writing, any financial or other interest that you have with any contractors appointed.

14. By reference to the respondent's 'Terms of Service and Delivery Standards' document, the applicant alleged that the respondent had breached its duties as defined in section 17(5) of the Act in the following respects:

1. The respondent had used suppliers that were not suitable for the work.
2. The respondent had failed to check contractors' invoices.
3. The respondent had failed in its duty to investigate complaints of inadequate work or service from contractors and pursue them to remedy these.
4. The respondent had communicated with him in a way that was misleading, intimidating and false.
5. The respondent had failed in its duty to disclose commission received from contractors.

In his oral evidence to the committee, he also stated that the respondent had failed to carry out its general duty to manage the property effectively, as evidenced by the errors made and its failure to address his queries.

15. In the respondent's absence, the committee agreed that its 'Terms of Service and Delivery Standards' document, which the respondent had sent to the committee, should be taken as the basis for the property factor's duties under section 17(5) of the Act. In relation to the duties numbered 4 and 5 above, the committee took the view that these were issues which clearly fell under duties set out in the code. The applicant had, in any case, also raised these as code issues, and they would be more appropriately dealt with under the code.

16. In his written representations and his oral submission, the applicant summarised his complaint under four broad headings:
    1. 'Boiler work'
    2. 'Leaks'
    3. 'Float'
    4. 'Hohp'

Discussion of particular complaints

17. **'Boiler work'**- this related to work carried out in June 2012 by a contractor engaged by the respondent to carry out repairs to the communal boiler at 23/25 Hyndland Road. The respondent's quarterly invoice including this work was sent to the applicant in August 2012. The applicant wrote to the respondent initially in September 2012 raising concerns about the level of the charges for the work. Following further correspondence, he remained unhappy with the invoice and wrote to the respondent again on 16 November 2012, asking the respondent to clarify exactly what work had been carried out.

18. The applicant stated that, following advice from trading standards, he telephoned the contractor who had carried out the work, asking for a quote, and was advised that the contractor's standard rates were significantly lower than the rate invoiced for. He also stated that the contractor had advised him

that repairs to a boiler, whatever the fault, would be much less than £1000, unless a new boiler was to be installed. He believed that the invoice was overpriced as a result of an unfair relationship between the respondent and the contractor, and that this was due to a 'mark up' on the price of the work charged to applicants. He submitted in his written representations and oral evidence that this was a breach of section 6.7 of the code.

19. Following a meeting on 28 November 2012 with the contractor to discuss the work, the respondent wrote to the applicant referring to the work as 'the installation of the new boiler'. The applicant queried this in writing on 15 December 2012, and received a reply from the respondent on 8 January 2013 confirming that, following discussions with the contractor, a new boiler had not in fact been installed, and that the work did relate to repairs to the existing boiler. The applicant submitted that the respondent was in breach of section 2.1 of the code, as it had provided information which was misleading or false. He also submitted that the respondent had breached section 2.2 of the code, by attempting to intimidate him into paying an unjustified invoice.

20. The committee concluded that, given that the work complained about was carried out prior to October 2012, it was unable to consider the complaint in relation to whether the factor had used suppliers that were unsuitable for the work, and whether the level of costs for the boiler repairs was too high. It was also unable to consider the alleged breach of section 6.3 of the code, in relation to the appointment of the contractor. The applicant had acknowledged in both prior correspondence with the panel and his oral evidence to the committee that, while he had requested this information by telephone prior to 1 November 2012, he had not asked for this information after that date.

21. The committee took the view that it could consider the complaints relating to the alleged failures of the respondent to check contractors' invoices and to investigate complaints of inadequate work or service, as these issues had been raised by the applicant in ongoing correspondence after 1 October 2012. In relation to the checking of invoices, while it did appear that there had been a small overcharge in the original invoice, the factor made the applicant aware of this in August 2012, which was in any case prior to the factor's duties arising under the Act. There was no evidence before the committee to suggest that the respondent had failed in this duty after 1 October 2012.

22. With regard to the alleged failure to investigate complaints of inadequate work or service, the applicant had first raised concerns in general terms about the level of costs in September 2012, but it did not appear to the committee that he had actually raised a complaint about the nature of the work until 14 November. His email of that date asked the respondent to clarify exactly what work had been carried out, and referred to the duty to investigate complaints

of inadequate service from contractors set out in its 'Terms of Service and Delivery Standards' document. The respondent replied to him on 22 November stating that there appeared to be various discrepancies in the contractor's invoices and that the respondent had arranged a meeting with the contractor to discuss the matter on 28 November. Following that meeting, the respondent wrote to the applicant on 6 December, confirming that a calculation error had occurred in the totalling of the invoice, which was to be rectified and the overcharged amount credited to the common charges account for the property, together with a goodwill payment by the contractor.

23. On the basis of the evidence available to it, the committee concluded that the respondent had investigated the applicant's complaint of inadequate work or service and had pursued this by meeting with the contractor and reporting back to the homeowner. It therefore found that the respondent had not failed in respect of this duty.

24. The committee then considered the alleged failure to comply with section 6.7 of the code. Given that it was clear from the evidence that this alleged breach of the code related specifically to the work carried out in June 2012, the committee was of the view that it could not consider this matter, which had occurred before the section 14 duties under the code arose.

25. Finally, the committee considered the alleged failure to comply with sections 2.1 and 2.2 of the code. The respondent actually acknowledged in its written representations that it had provided incorrect information to the applicant in its letter of 6/12/12, advising that a new boiler had been installed, when this was later confirmed not to be the case. The respondent stated that the information given to the applicant was not intended to be misleading or false, and was the result of simple human error. It said that when these errors were identified, written apologies had been sent to the applicant, and that, as a gesture of goodwill, it had returned his management fee for the relevant period. It is clear, however, from the terms of section 2.1 that whether the respondent intended to provide false and misleading information is irrelevant. It was clear from the evidence before the committee that the respondent had provided false and misleading information to the applicant, and had therefore failed to comply with its duties under section 2.1 of the code.

26. In relation to section 2.2, the applicant stated that the respondent had attempted to intimidate him into paying an invoice that was not justified, and that he found their letters threatening. While the committee accepted that the applicant felt intimidated by the letters from the respondent, there was nothing in the correspondence before the committee which supported his allegation. The letters from the respondent were written in a courteous manner, and no

abusive or threatening language was used. The committee therefore decided that the respondent had not breached its duty under section 2.2 of the code.

27. **'Leaks'** – this also related to work carried out in June 2012 by the same contractor who carried out the boiler work discussed above, also involving repairs to the communal boiler at 23/25 Hyndland Road. This work was included in the same invoice as the boiler repairs discussed above, which was sent to the applicant in August 2012. This work was listed as 'leak repairs'. The applicant initially wrote to the respondent on 15 August 2012 querying this invoice. The respondent replied on 28 August 2012, stating that this invoice was for repairs due to water leaks reported in the boiler room. The applicant said that none of the homeowners at the property were aware of any leaks, that no-one had complained about these, and that the respondent had not provided an estimate for the work in advance. On 4 September 2012, the applicant wrote to the respondent asking why the owners were not consulted about this, where the leaks were and what was repaired.

28. Following two further letters from the applicant, the respondent replied on 19 October 2012, stating that the invoice was in fact for 'essential repairs to halt a gas leak'. On 8 November, the respondent sent the applicant copy correspondence relating to the repairs. The respondent later wrote to him on 8 January 2013 stating that the repair was to halt a water leak. The respondent also advised in a letter to the applicant dated 28 January 2013 that the leak was discovered by the contactors while working on site, when later correspondence from the contractor to the respondent stated that the leak was reported by the respondent to the contractor. The applicant submitted that the respondent had breached section 2.1 of the code by providing information which was misleading or false.

29. The applicant also disputed the amount of the bill, which he felt was overpriced for the work done. He again felt that the respondent was making a commission from this work, due to its relationship with the contractor. He expressed doubts as to whether the work was necessary. He alleged that, as no information regarding a tendering process had been made available to him, the respondent was in breach of section 6.6 of the code. He also submitted that the respondent was in breach of section 6.7 of the code.

30. The committee took the view that, given that the work had been carried out prior to October 2012, it was unable to consider the complaint that the factor had used suppliers that were unsuitable for the work. It was also unable to consider the complaints about the level of costs for the leak repairs, whether the owners were consulted before the work was done, or whether the work had required to be done.

31. The committee concluded that it could consider the complaints relating to the respondent's alleged failure to check contractors' invoices and the alleged failure to investigate complaints of inadequate work or service, as these issues had been raised by the applicant after 1 October 2012. In relation to the checking of invoices, there was no evidence before the committee to suggest that the respondent had failed in this duty after 1 October 2012.

32. With regard to the alleged failure to investigate complaints of inadequate work or service, the applicant had first raised concerns about this in September 2012, having asked the respondent for information about the location of the leaks and what was repaired. The respondent replied in its letter of 19 October, advising (erroneously) that the work involved essential repairs to a gas leak, and stating that if the applicant did not feel the work was carried out to a satisfactory standard, the respondent would ask the contractor for a formal response detailing the repairs which were carried out. The applicant's email to the respondent of 14 November queried the rates quoted, and referred to the duty to investigate complaints of inadequate service from contractors set out in its 'Terms of Service and Delivery Standards' document. The respondent replied on 22 November stating that there appeared to be various discrepancies in the contractor's invoices and that the respondent had arranged a meeting with the contractor to discuss the matter on 28 November. Following that meeting, the respondent wrote to the applicant on 6 December, advising that the contractor had confirmed that the hourly rate it charged the respondent was less than those charged to a private client.

33. While it was clear that there were delays in dealing with this matter and in responding to the applicant, some of which occurred prior to 1 November 2012, the committee did not consider that there was sufficient evidence to support a finding that the respondent had failed in this duty. Although the committee noted that the applicant had written to the respondent about the matter on several occasions before the respondent arranged a meeting with the contractor to discuss it, there was evidence that the respondent had nevertheless investigated the applicant's complaint and met with the contractor to discuss the work. After some delay by the contractor, a response was sent to the respondent following the meeting, which confirmed that the charges levied to the applicant were lower than the contractor's standard rates. When the applicant later requested a breakdown of the 10 hours' labour charged, the respondent wrote to the contractor 2 days later and the contractor's response was copied to the applicant as soon as it was received. The committee also noted that the respondent had written to the applicant in November 2012 suggesting a meeting to discuss his complaints, but that the applicant had declined this offer on the grounds that he worked constantly, and asked for the matter to be dealt with by email or letter.

34. The committee then considered the alleged breach of section 6.7 of the code. Given that it was clear from the evidence that this related specifically to the work carried out in June 2012, the committee decided that it could not consider this issue, which arose before the respondent's duties arose under section 14 of the Act.

35. In relation to the alleged breach of section 6.6, the committee noted that for this section to apply, the homeowner must request the documentation. The applicant confirmed, when asked by the committee, that he had not in fact requested this information. The committee therefore found that the factor had not failed in its duties under that section of the code of practice.

36. Finally, the committee considered the alleged breaches of sections 2.1 and 2.2 of the code. The respondent acknowledged in its representations that it had provided incorrect information to the applicant in its letters of 19/10/12 (advising that the repairs concerned a gas leak) and 28/01/13 (advising that the contractors discovered the leak while working on site). While the letter of 19/10/12 predated the respondent's duties arising under the code, the letter dated 28/01/13 was sent after they arose. The respondent stated that the information given to the applicant was not intended to be misleading or false, and was the result of simple human errors and a change in personnel. It stated that when these were identified, apologies were given to the applicant, and his management fee for the relevant period had been returned. It is clear, however, from the terms of section 2.1 that whether the respondent intended to provide false and misleading information was irrelevant. It was clear on the basis of the evidence before the committee that the respondent had provided false and misleading information to the applicant in its letter of 28/01/13. The respondent had therefore failed to comply with its duties under section 2.1.

37. In relation to section 2.2, however, the committee found that there was no evidence to support the allegation that the respondent had failed to comply with its duties under this section, for the same reasons set out above in relation to the 'boiler' complaints.

38. **'Float'** – the applicant had received a letter from the respondent dated 19 September 2012, requesting payment of an additional £150 float in respect of his property. He wrote to the respondent on 12 October 2012, pointing out that he had previously paid a £150 float charge and asking it to confirm whether this letter had been sent to other homeowners. Having received no reply, he wrote to the respondent about this twice more (on 28 October and 14 November). He eventually received a reply dated 22 November, apologising and advising that there was no further sum due with regard to the float payment. The respondent then wrote to him on 28 January 2013 advising that the same letter had mistakenly been sent to all homeowners at 23 and 25

Hyndland Road. He said he had spoken to two of the other homeowners at the property, and that neither of them had received such a letter.

39. The applicant felt that, in being sent this letter, he had been victimised and harassed by the respondent as a result of his complaints. He said that he had asked for further clarification about this matter from the respondent, but it was unwilling to comment further. He submitted that the respondent had provided him with false information about the identity of the residents from whom it had requested a float payment. He submitted that the respondent was in breach of sections 2.1 and 2.2 of the code.

40. In his original application, the applicant had also alleged that the respondent was in breach of its duties under section 3.5a of the code. He had, however, confirmed in an email of 4 June 2013 to the panel that in relation to the float issue, he wished only to pursue his complaints in relation to sections 2.1 and 2.2 of the code. He also confirmed this in his oral evidence to the committee.

41. The committee concluded that the respondent had not failed in its duties under section 2.1 or section 2.2 of the code in relation to this issue. The original letter had been received before the respondent's duties arose in relation to the code. While the applicant had stated that the other homeowners had not received such a letter, there was no other evidence to support this, and therefore the committee was unable to conclude that there was a breach of section 2.1 in relation to the letter sent on 28 January. In relation to section 2.2, the applicant believed that the respondent had victimised him by sending the letter. There was, however, nothing in the evidence before the committee to support the allegation that the respondent had communicated with the applicant in an abusive or intimidating manner.

42. **'HOHP'** – the applicant stated that he had twice received letters (dated 28/1/13 and 28/3/13) relating to his complaint from the respondent after 1 November 2012 which advised him not to send his application to the homeowner housing panel. The applicant submitted that this was a breach of section 7.2 of the code. He confirmed in his oral submission that his complaint related solely to the second part of the section, which provides that, where the respondent's in-house complaints procedure has been exhausted without resolving the complaint, the letter notifying the applicant of the final decision should provide details of how the applicant may apply to the panel.

43. Both of the letters referred to by the applicant, signed by David Doran, one of the respondents' directors, clearly stated: 'It is my understanding that as your complaint refers to matters prior to the 1 October 2012, the Homeowners (sic) Housing Panel would not be in a position to consider the same and I would therefore suggest that as members of the Property Managers Association

Scotland, you are entitled to refer your complaint to them for consideration.' In both cases, the address of the Property Managers Association Scotland was supplied in the letter.

44. As the section 7.2 duty applies only to the letter notifying the respondent's final decision, the committee took this to be the letter dated 28/3/13. It was clear from the evidence that the respondent had not fulfilled its duties under this section of the code, as it had not provided details of how to apply to the panel. The respondent had also admitted in its written representations that it had not done this. The respondent submitted that, as the substantive merits of the applicant's complaints arose prior to the introduction of the Act on 1 October 2012 and its registration on 1 November 2012, it had believed that they fell outwith the jurisdiction of the panel, and that the applicant should therefore be referred to the Property Managers Association Scotland, of which it was a member. The respondent pointed out that it had apologised for this to the applicant in its letter of 24 June 2013 and advised that it would remove a further £42 from the applicant's common charges account in recognition of the inconvenience caused.

45. While the committee accepted that the respondent appeared to have genuinely believed that it was not appropriate to provide this information given the timing of the complaints, it was clear that the respondent had failed to comply with its duties under section 7.2 of the code.

Other complaints

46. The applicant had alleged in his original application that the respondent had failed to comply with its duty under section L of the code. The committee noted that there is no section L in the code. It was suggested that the applicant had in fact intended to refer to section 1.1b (l), and this was confirmed by the applicant. The applicant also confirmed that he did not wish to pursue this particular complaint, as his concern here was addressed by his complaint in relation to section 7.2 of the code.

47. The applicant had submitted at the hearing that the respondent had failed to carry out its general duty to manage the common property effectively. The committee concluded that, as this alleged failure had not been specifically included in the original application or subsequent representations by the applicant, and not therefore notified to the respondent, it could not be considered by the committee.

Observations

48. The committee was unable to consider a number of issues raised by the applicant either because they related to matters arising before the respondent's duties arose under the Act and the code, or because they were not specified in the application or written representations. The committee did, however, make a number of observations about some of the matters arising from the evidence before it.

49. Firstly, while the committee saw no evidence of any improper relationship between the respondent and the contractor in question, and while its core standards clearly state that it does not accept any commission, fees or other payment from any contractor it appoints, the applicant clearly perceives otherwise. The respondent may wish to consider how this perception might be addressed.

50. Secondly, it was clear from the evidence that there had in several instances been considerable delays in responding to email correspondence from the applicant and supplying the information he had requested. In some instances, this occurred prior to the respondent's duties arising under section 14. For instance, the applicant had to write to the respondent on three occasions about the float issue before he received a reply. He also wrote to the respondent several times asking for further details about the water leak repairs before this was sent to him.

51. The applicant did not explicitly make reference to section 2.5 of the code in his initial application or subsequent written representations. This section requires the factor to respond to enquiries and complaints by letter or email within prompt timescales. Had the applicant referred to this section, the committee believed that there were other instances in which it might have been able to consider whether there had been a failure in this respect. The committee noted, for example, that in his email of 14 November 2012, the applicant had asked the respondent to clarify the nature of the work which had been carried out, but that this information was not provided by the respondent until 8 January 2013, when it advised him that the work included the' renewal of several components'. He was not sent the more detailed correspondence regarding the scope of the work until 1 February 2013.

52. While this did not of itself mean that the factor had not investigated the complaint of inadequate work with the contractor, it showed that there had been a delay in responding to the applicant's queries about the matter. The committee considered that 'responding' to an enquiry requires a substantive response, rather than simply an acknowledgement.

53. The committee noted, moreover, that the respondent could have been clearer and more transparent in its written communications with the applicant, by

providing him with more detailed information about the work as requested at an earlier stage. Had the applicant been less tenacious in pursuing various issues, it appeared from the evidence that the respondent would not have addressed these issues as he had requested.

54. While the committee decided that the respondent had not failed in its duties, it noted that there was evidence of poor record keeping and inaccurate invoicing, some of which had resulted in the provision of misleading or false information to the applicant.

55. The respondent acknowledged that it had provided incorrect information in its correspondence with the applicant and with the panel. It had issued apologies for this, although it had denied any failure in its duties. It had made various references to having refunded management fees to the applicant, and in its letter to the panel of 29 July, the respondent stated that it had already refunded to the applicant the equivalent of 9 months' management fees, totalling £122.40. This was disputed by the applicant, who said that he was only aware of the sum of £43.20 having been refunded on 30/1/13. This was the only sum repaid which had been evidenced by the respondent to the committee.

Decision

56. The committee's decision is that the respondent has failed to comply with its duties under section 14 of the Property Factors (Scotland) Act in respect of sections 2.1 and 7.2 of the code of conduct for property factors. The respondent has not failed to comply with its duties as defined in section 17 (5) of the Act after 1 October 2012.

57. As the committee is satisfied that the property factor has failed to comply with its section 14 duty, the committee must make a property factor enforcement order, as required by section 19 (3) of the Act. In terms of section 19 (2) of the Act, where the committee proposes to make such an order, it must, before doing so, give notice of its proposal to the factor, and must allow the parties an opportunity to make representations to the committee.

58. The intimation of this decision to the parties should be taken as notice for the purposes of section 19 (2). The parties are hereby given notice that any written representations which they wish to make under section 19 (2)(b) must reach the Homeowner Housing Panel's office no later than 14 days after the date this decision is intimated to them. If no representations are received within that timescale, the committee will proceed to make a property enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order without reasonable excuse constitutes an offence under section 24 of the Act.

59. The committee proposes to make the following Property Factor Enforcement Order:

Within 28 days of the date of communication to the respondent of the property factor enforcement order, the respondent must:

1. Refund to the homeowner the quarterly management fee paid to the respondent for each of the three quarters from September 2012 – May 2013, together with an explanation of how this figure was calculated **or** if this sum has already been repaid to the applicant, provide evidence of this having been done.
2. Make payment to the applicant of £100 in recognition of the stress and inconvenience caused to him by the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.
3. Issue a formal written apology to the applicant in respect of the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.

Right of appeal

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 homeowner housing committee.
(2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

http://hohp.scotland.gov.uk/prhp/2649.325.346.html

Sarah O'Neill

Signed..... Date..27/8/13.

Chairperson