



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

HOHP REF: HOHP/PF/14/0105 and HOHP/PF/14/0102

Property: 50 Stark Avenue, Clydebank, G81 6EE.

The Parties:-

Thomas Connor, 50/8 Stark Avenue, Clydebank, G81 6EE and Peter McCulloch, 50/9 Stark Avenue ,  
Clydebank, G81 6EE ("the homeowners")

West Dunbartonshire Council, Garshake Road, Clydebank, G82 3PU ("the property factors")

**Committee Members**

Simone Sweeney (Chair) Carol Jones (Surveyor Member)

**Decision**

The committee determines;

- (i) That there has been no evidence produced which supports there having been any failure on the part of the property factors to comply with the property factor's duties created by Section 17 of the Act.
- (ii) That the property factors are not in breach of Sections 2.1, 2.2, 2.4, 3.3 and 6.9 of the Code of Conduct.

- (iii) That no property factor enforcement order in terms of Section 19 (1) (b) of the Act will be issued.
- (iv) This decision is unanimous.

## **Background**

1. By applications of 15 July 2014 and 6 August 2014, both amended on 6<sup>th</sup> October 2014, the homeowners applied to the Homeowner Housing Panel for a determination on whether or not the property factors had failed to: (i) comply with sections 2.1, 2.2, 2.4, 3.3 and 6.9 of the Code of Conduct imposed by Section 14 of the Act and; (ii) to carry out the property factor's duties in terms of Section 17 of the Act in their failure to carry out repairs to a satisfactory standard and to resolve the homeowners' complaint.
2. A committee of the Homeowner Housing Panel ("the committee") heard evidence from both parties at Wellington House, 134/136 Wellington Street Glasgow on 11<sup>th</sup> March 2016. The homeowners were absent but represented by Mrs Karen Connor and Mr Alex McCulloch. The property factors were legally represented by Mr Anderson, solicitor for West Dunbartonshire Council and Mr Martin Feeney, section head, Maintenance and Repairs, West Dunbartonshire Council. All representatives presented submissions to the committee.

## **Submissions of the homeowners**

3. The committee heard from Alex McCulloch, the father of homeowner, Peter McCulloch and Mrs Karen Connor, wife of Thomas Connor. Mr McCulloch began by commenting on the fact that the property factors were represented by a solicitor and neither he nor Mrs Connor had been given prior warning that this would be case. However Mr McCulloch assured the committee that he felt comfortable to continue with the hearing and saw no reason for a continuation to obtain legal advice or representation. Mrs Connor agreed. Mr McCulloch was invited to provide evidence in support of each of the alleged failures of the property factors as set out in the application before the committee.
4. Beginning with section 2.1, Mr McCulloch submitted that the homeowners had received from the property factors information which was false or misleading. He referred to a letter from the property factors dated 18<sup>th</sup> February 2014 which was before the committee. The letter

referred to works carried out at the roof of the property on the instructions of the property factors following storm damage. At paragraph 2 of the letter, it read, "*During these storms and notably the storm of 3 January 2012, the roof structure itself has not lifted or shown any sign of displacement.*" Mr McCulloch held a contrary view that the roof had in fact lifted during the storms and that residents within the building could confirm this. Moreover the property factors had contradicted their position in later correspondence. He referred to a letter dated, 8<sup>th</sup> April 2014 from the property factors to the homeowner. It read, "*...officers are confident that the roof has been tied down at the time of construction. However, evidence at other blocks in the area indicate that the tie down straps are very much less effective than modern fixings and in extreme storm conditions the roof could potentially lift from the effects of suction.*" It was Mr McCulloch's view that this was information which the landlord had provided which was false.

5. At paragraph 3, the letter read, "*The timber joists are secured to the block-work of the building using galvanised twist straps and vertical restraint straps holding down the wall plates and these met the building regulations at time of construction. We acknowledge the brackets used would not be compatible with building regulations today.*" The letter advised the homeowners that the repair works would include renewal of the tie down straps. It was Mr McCulloch's position that galvanised twist straps could not have been part of the roof as they did not come into use until 1967 and the building had been constructed some years prior to that. Again, Mr McCulloch submitted that this showed the property factors to have provided information which was misleading or false.
6. Next in support of this breach, Mr McCulloch referred to invoices and information received from the property factors relating to the works undertaken to complete the storm damage at the roof of the property. Whilst Mr McCulloch did not dispute that the property factors had arranged for works to be completed in 2014, he submitted that the information contained in various pieces of documentation issued by the property factors contained a lack of specification or provided inaccurate or misleading information. What appeared to have occurred was that having identified the extent of the repairs required to the flat roof following the storms, the property factors took the decision to completely replace the roof. Mr McCulloch alleged that the property factors had given no notice to the homeowners of what

works would be undertaken to the roof, how long they would take or when they might commence and likely costs to the owners. It became evident to the homeowners when the work commenced what was occurring but the first formal notification was an invoice from the property factors in June 2014. The relevant letter, dated 17<sup>th</sup> June 2014, was produced. It read,

*"A common repair was raised to carry out minor repairs to timber rot within the gutter area of the roof and thereafter replace an additional 180m<sup>2</sup> of roof covering in poor condition. This repair has already been completed and will be post-inspected. I apologise for the repairs notification letter being issued to you retrospectively. The work carried out as noted above was unforeseen works and only became evident once the scaffold was erected at the building and the contractor commenced on site to carry out the renewal of 60m<sup>2</sup> of roof covering which related to previous storm damage repairs, the cost of which was not being recharged to owners. The total size of the roof is 240m<sup>2</sup>.*

*Total cost: £15,301.50*

*Proportionate Cost: £1,530.15"*

Mr McCulloch was of the view that the property factors ought to have shared this information with the homeowners in advance of the works proceeding.

7. Mr McCulloch cited another example of a document from the factors dated 22<sup>nd</sup> October 2015.
8. Mrs Connor was invited to address the committee on the alleged breach of section 2.1 of the code by the property factors. Mrs Connor took issue with the content of the letters of 18<sup>th</sup> February and 8<sup>th</sup> April 2014 received by both homeowners. The first of these letters made a positive statement that, *"During these storms...the roof structure itself has not lifted or shown any sign of displacement."* As a resident at the building at the time of the storm, Mrs Connor described how she, together with her husband and two young children, had been eye witnesses to the flat roof tilting and lifting effectively in part from the building. It had been an extremely frightening experience for the family. Water had poured into the property. Mrs

Connor and her children had vacated the property temporarily and resided elsewhere whilst Mr Connor remained to attempt to protect the property. In respect of the second letter, Mrs Connor took exception to the description of the recent storms in the property factors' letter. The letter read, "... *the tie down straps are very much less effective than modern fixings and in extreme storm conditions the roof could potentially lift from the effects of suction.*" Mrs Connor considered this to be a direct contradiction by the property factors. In their earlier letter they denied that the structure was capable of lifting yet in the later correspondence the possibility is conceded. This was false information in Mrs Connor's submission. Moreover Mrs Connor described how a number of similar style properties in the area had undergone extensive damage at the time. She referred to 49 Stark Avenue and 50 Gavins Road where the roofs came free of the properties entirely. The possibility that something similar should have occurred to 50 Stark Avenue was foreseeable in the circumstances and it was wrong on the part of the property factors to have made their denial in their letter.

9. In respect of section 2.2 of the code, the homeowners were invited to point to examples of where the property factors had communicated in a way which they considered abusive or intimidating, or which threatened them. Mr McCulloch referred again to the terms of the letter of 18<sup>th</sup> February 2014. Again he specified the positive statement which the property factors had made that the roof structure had not lifted during the storms. Mr McCulloch felt that this was disrespectful to the residents at the building and particularly towards the Connor family in light of their experience. The factors had not been at the building at the time of the storm. To make such an inaccurate statement was an example of intimidation in Mr McCulloch's opinion. Mrs Connor was in agreement. Secondly Mr McCulloch submitted that the conduct of the property factors in their approach to recovering the costs of the works was in the opinion of Mr McCulloch, a breach of section 2.2. There was inconsistency in what the property factors had agreed with them in person compared to what they committed themselves to, in writing. Mr McCulloch explained that a meeting had taken place in July 2014. In attendance had been the homeowners, the local Provost, local Councillor, Councillor O'Neill and Ms Helen Turley, Head of Housing and Community Safety at West Dunbartonshire Council. The purpose of the meeting was to discuss the complaints of the homeowners regarding their costs for the roof replacement. It was the homeowners'

understanding that agreement had been reached that they would pay their share of the costs. However the homeowners believed that the property factors ought to have replaced the entire roof some years earlier. Had they done so, the homeowners would have avoided incurring unnecessary costs in "patch-up" repairs which they had paid. It was the homeowners' understanding that parties had reached agreement at this meeting that the property factors would deduct all previous sums paid from the amount to be paid for the roof replacement. However the owners had felt let down when they received a letter from Ms Turley for the property factors, dated 22<sup>nd</sup> August 2014. The terms of that letter read:

*"I agreed that owners would require paying recharges for the following repairs:*

- *Common Repair (Repair no. B209251Y14) to repair timber rot to the roof and replace 182m<sup>2</sup> of roof covering in poor condition*
  - o *Total cost £15,301.50*
  - o *Share cost £1,530.15*
  
- *Common Repair (Repair no. B191066T13) to erect scaffold and roof edge protection following storm of 5 December 2013*
  - o *Total cost £5680.60*
  - o *Share cost £568.06"*

In light of this being contrary to what he understood to have been agreed, Mr McCulloch challenged the terms of the letter but submitted that having understood that matters had been agreed whereby the owners had nothing to pay and then receiving a letter requesting a payment of money was intimidating on the part of the property factors. Mrs Connor agreed.

10. Finally, in respect of section 2.2 and the letter of 18<sup>th</sup> February 2014, Mr McCulloch referred to the works proposed by the property factors. The relevant paragraph read,

*"The work involved in renewing the tie down straps is very intrusive where residents homes at 7,8, 9 and 10 upper room's ceilings would require to be removed, décor would be destroyed on all external walls in these rooms as the plaster would be*

*removed to expose the brickwork. Re-plastering would be carried out and then residents would require to re-decorate their bedrooms and bathroom.”*

Not only did Mr McCulloch submit that the works proposed were unnecessary in his opinion, he objected to the language and tone of the letter as likely to cause alarm to the reader and therefore threatening on the part of the property factor.

11. Turning to section 2.4 of the code, the homeowners were invited by the committee to direct it to evidence which showed that the property factors had failed here. Mr McCulloch submitted that the property factors had failed to consult with the homeowners prior to replacing the roof. Written intimation was issued to the homeowners on 15<sup>th</sup> March 2014 that scaffolding was to be erected around the property. The notice referred to “*essential maintenance work.*”

However there was no formal notification afforded to the homeowners of the property factors’ intentions as and when these changed to replacement of the roof, the first the homeowners being formally advised being the letter of 17<sup>th</sup> June 2014, referred to previously. Mr McCulloch explained to the committee that he was now retired from a long career in the building trade. He was of the view, on the basis of his expertise, that a full replacement roof was necessary at the property at this time and ought to have been applied well before then. He was satisfied with the quality of the new roof and was satisfied that the contractors instructed to carry out the works had the relevant expertise unlike the contractors who had completed earlier repairs. After the scaffolding had been in place for some weeks it became obvious to the homeowners that there was more than a few minor repairs being carried out and on discussions with the contractors, on site, it was confirmed to Mr McCulloch that the roof was being replaced completely at the property.

12. The homeowners turned to their allegation of a breach of section 3.3 of the code. Mr McCulloch submitted that despite requests for a breakdown of costs and specification of the repairs undertaken, the property factors provided him with a document providing information of materials used in the works but no information was provided about specific costs. Mrs Connor explained that she had contacted the property factors on receipt of her bill in June 2014. After, what she described as, “*a long time*” Mrs Connor received a document (before the committee) from the property factors. The document referred to “*50 Gavins Road*” and not

the address of her property. There were other inaccuracies in the document such as a charge for a skip. Mrs Connor denied there had ever been a skip at her property whilst the roof was being replaced. She also had concerns about whether or not any works had been done to address the issue of rot at the roof as the document was silent on this notwithstanding the content of the letter of 22<sup>nd</sup> August 2014. Mrs Connor advised that she might have expected a certificate to have been provided should any rot works have been completed. The letter contained no cost information. She raised this with the property factors in a telephone conversation but was told that such information was sensitive and could not be shared. Even now the homeowner was unsure if the document even related to her own property or if she had been sent a letter about works at 50 Gavins Road as no explanation had been provided to her.

13. With regards to section 6.9 of the code, it was the views of both homeowners that repair works taken to the roof prior to its replacement were to a very poor standard. The roof had been not been left wind and water tight, reflected in the fact that the Connor family's property had been damaged with water ingress during the storms. It was the view of the homeowners that the poor workmanship ought to have been picked up by the property factors and the original contractors should have been forced to make good their poor work with no charges having been levied against the owners. Mr McCulloch had concerns about how closely the property factors had inspected the roof after the original repairs. He referred to information from the factors that they had taken photographs of the roof from the ground level. This took the homeowners by surprise as they had doubts as to how clear a picture could be gained of a flat roof from that level.
14. With regards to a breach of the property factors duties, Mr McCulloch advised that after the storm the homeowners were advised that the property factors would not inspect the properties for 2 weeks. The houses were saturated and three ceilings had come down by this time. The homeowners felt that this fell short of the service which they would expect from their factor. Moreover the property factors were in the habit of instructing similar repairs to flat roofs on similar properties in the area. Mrs Connor also submitted that she was no longer a homeowner at the property having sold her flat in July 2015.



15. Finally when asked by the committee what, if anything the property factors could do to resolve their complaint, the homeowners advised that settlement of their claim for compensation would resolve matters for them. Mr McCulloch explained that the homeowners had submitted public liability claims which were currently the subject of negotiation with the insurers of the property factors. Mr McCulloch was advised that the committee had no jurisdiction to interfere with that process.

### **Submissions of the property factors**

16. Mr Anderson, solicitor for the property factors, opened by raising an objection to what he considered a lack of fair notice by the homeowner. Mr Anderson alleged that some of the documents referred to by the homeowner had not been shared with the property factors nor the committee prior to the hearing. Mr Anderson was unable to specify which documents he was referring to. Mr Feeney accepted that the documents which the homeowners had referred to were documents from West Dunbartonshire Council or letters from the homeowners to the Council. There had been no opposition raised by the property factors to the documents as the homeowners had gone through each one. The only document not within the committee's papers had been a document relevant to an insurance claim which the homeowners had made against the Council. Each party had this before them however as it been relevant to a mediation which the parties had previously attended the committee did not have this document.
17. Addressing the allegation that the property factors had breached section 2.1 of the code, Mr Feeney rejected this. It had never been the intention of the factors to mislead the homeowners. He explained that a number of the Council's officers had been involved in responding to the repair issues which would explain any discrepancies in the information provided to the homeowners. Also this was an older and unusual property and unforeseen issues can arise as investigations and repairs progress. The roof was replaced ultimately and the homeowners appeared satisfied with the workmanship. Mr Feeney explained that Ms Turley has now left the Council but she had been clear that she did not believe that any Council official could possibly meet the aspirations of the homeowners.
18. Mr Feeney criticised the application as lacking in specification. The homeowners alleged that earlier repairs to the roof had been to a poor standard and that the property factors ought to have identified this. They had produced photographs of parts of the roof but it was very unclear what each of these photographs showed and whether the areas in the photographs even showed the parts of the roof where the repairs had been carried out. The roof had been applied in 1961 and only replaced in 2014. Mr Feeney submitted that it would be difficult to

suggest that the homeowners had been charged unnecessarily. In any event of the entire 240 square metres of roof which were replaced, the property factors charged the homeowners for only 120 square metres.

19. Turning to the comments from the homeowners that the roof had in fact lifted from the building during the storms, Mr Feeney explained that what he had meant in his letter was that he saw no evidence to support this allegation at the time of his inspection. Mr Feeney advised that he might have expected to have seen cracks in the building had the roof lifted free from the building but nothing of this nature was in evidence. He did not dispute Mrs Connor's experience but the letter was intended to simply express the findings from his visit which had occurred after the storms. Mr Feeney denied the suggestion that the roof had come free from 49 Stark Avenue and that the property factors had experienced this before. There had been storm damage to the roof of that property but it had been decking and felt which had come away only.
  
20. Turning to the allegation of a breach of section 2.2 of the code, Mr Feeney denied any suggestion of intimidation by the property factors. Any misunderstanding around the question of tie down straps being applied to the roof was never intended to come across as intimidating. Having investigated matters, Mr Feeney was satisfied that no Council officers could be deemed to have conducted themselves in an intimidating or threatening manner towards the homeowners.
  
21. With regards to section 2.4 of the code, Mr Feeney submitted that he had been involved in various discussions with the homeowners about the extent of the work which was required to the roof. Mr Feeney was of the opinion that he had the support of the homeowners for a new roof to be fitted to the building. Mr Feeney referred again to the age and unusual construction of the building and explained that because the work was an "*on-going repair*" as he described it, the factors were unable to provide the homeowners with a definitive cost at the outset as the extent of the works couldn't be determined. Mr Feeney submitted that he had had a discussion with Mr McCulloch on the telephone and indicated to him at that time that a full replacement of the roof was looking likely as the roof appeared to have come to the end of its life. The replacement was a necessary repair in the opinion of the property factors and even if the support of the homeowners had been absent, the property factors had the right to complete the work in terms of the deed of conditions over the property. Further authority for the property factors to act and their level of delegated authority is included in the

written statement of the property factors. A copy of the written statement was before the committee. Mr Feeney submitted that the letter of 17 June 2014 referred to by the homeowner was formal notification but he refuted any suggestion that the homeowners were unaware of what was going on. Their elected member was in communication with the property factors and he had been advised that a new roof would be required at the property.

22. In response to the allegation that the property factors had breached section 3.3 of the code of conduct, Mr Feeney submitted that the property factors have a process in place which complies with this section of the code. Details of the proportion of overall costs per homeowner are provided in writing to homeowners but due to contractual sensitivity a breakdown of costs is not provided. He explained that the property factors follow strict competitive tendering processes to procure services. In response to the inclusion of a charge for a "skip" identified by Mrs Connor, it was explained that this word is simply terminology used by the property factors when a charge is applied for items to be removed from a site which occurred at the property during the works. It is not meant literally and the homeowners had not been charged for an actual skip which was not there. Mr Feeney conceded that the letter which Mrs Connor had highlighted which referred to 50 Gavins Road was a clerical error. The information within the letter was relevant to the homeowners' property but the address had been an error. It ought to have read, 50 Stark Avenue.
23. Finally in respect of section 6.9, Mr Feeney explained that initial work undertaken at the roof by a local contractor had left some snagging issues only. Beyond that the standard of work was satisfactory on inspection. The roof replacement was advantageous to all homeowners Mr Feeney submitted. The contractors would not have provided any warranties for the previous repairs as the works which they had carried out were *ad hoc* minor works which would not provide a guarantee covering the entire roof. In conclusion Mr Feeney submitted that he acknowledged that certain things could have been done differently and that he had considerable sympathy for the homeowners over the effects of the water penetration but the property factors had satisfied all duties on them in terms of the Code of Conduct and in terms of the Act.

### **Findings in fact**

24. That the homeowners were the heritable proprietors of Flats 50/8 and 50/9 Stark Avenue, Clydebank, G81 6EE ("the property") at the date of their applications.
25. That the property factors registered as factors on 19<sup>th</sup> December 2012.

26. That the property factors are responsible for arranging and administering repair and maintenance of the common parts of the property and recovering all associated costs from the homeowners.
27. That, in identical letters dated, 6<sup>th</sup> October 2014, the homeowners had specified paragraphs, 2.1, 2.2, 2.4, 3.3 and 6.9 as the sections of the Code which they considered to have been breached by the property factors.
28. That the property factors are bound by the Code of Conduct in terms of section 14(5) of the Act.
29. That, at section 7B of their respective applications, the homeowners claimed that the property factors had failed to carry out the duties incumbent upon them in terms of the Act, specifying,  
*"The responsibility of the property factor is to ensure work carried out is of a satisfactory standard and to ensure the roof was water tight. The original contractor was not used to complete the new repairs when they should have as in section 6.9 repaired the defects which would not have resulted in the homeowners being recharged for work"*.
30. That section 2.1 of the Code of Conduct places a duty on the property factors not to provide information which is misleading or false.
31. That there were a number of discrepancies and errors within the documentation and communications from the property factors to the homeowners.
32. That there was no evidence before the committee which showed that the property factors had provided information to the homeowners deemed by the committee to have been deliberately misleading or false on the part of the property factors.
33. That section 2.2 of the Code of Conduct provides that the property factors,  
*"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)"*.

34. That the letter of 18<sup>th</sup> February 2014 intimated works proposed by the property factors to repair the roof which would cause disruption to homeowners and that this information may cause disappointment to the reader but was factual and not abusive, intimidating or threatening.

35. That the letter of 18<sup>th</sup> February 2014 contained a statement which read,

*“During these storms and notably the storm of 3 January 2012, the roof structure itself has not lifted or shown any sign of displacement.”*

36. That this statement was contrary to the experiences of the homeowners, notably Mrs Connor and that the author of the statement had not been present at the building at the time of the storms. Notwithstanding the inaccuracy of the statement it was not deemed by the committee to be abusive, intimidating or threatening.

37. That the letter from the property factors’ Mrs Turley dated, 16<sup>th</sup> September 2014, provided details of the homeowners’ costs for the roof to be replaced at the property.

38. That the charge to the homeowners was offset against the sums paid previously for earlier repairs.

39. That, even if this letter contained information which was contrary to their understanding of what had been agreed, the costs to the homeowners for the replacement roof was negligible and nothing contained within that letter is deemed to be abusive, intimidating or threatening on the part of the property factors.

40. That section 2.4 of the Code of Conduct provides that the property factors,

*“must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with a group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies)”.*

41. That there had been a number of repairs carried out to the roof of the property prior to 2014.

42. That, notwithstanding these repairs, the homeowners provided evidence that water ingress continued through the roof of the property into the individual flats.
43. That the evidence of the homeowners was that these repairs, for which they had been charged, had not been completed to a satisfactory standard.
44. That the homeowners were dissatisfied at having been expected to meet the costs of these repairs.
45. That an entirely new roof was applied to the property in 2014.
46. That the homeowners gave evidence that they were satisfied with the standard of workmanship in the roof replacement.
47. That the evidence of both parties was that the roof replacement was necessary.
48. That the property factors submitted evidence that the terms of the deed of conditions over the property provided them with authority to replace the roof in 2014 and, further, the authority of the property factors to act and their level of delegated authority is included in the written statement of the property factors.
49. That this evidence was not disputed by the homeowners.
50. That the homeowners received no formal notification of the property factors' intention to replace the roof until the letter of 17<sup>th</sup> June 2014 requesting payment.
51. That the property factors notified the homeowners on 15<sup>th</sup> March 2014 that, "*essential*" repairs would be carried out to the roof.
52. That the homeowners had come to realise that the roof was being replaced between March and June 2014 due to the scaffolding being in place, the works on-going, their discussions with the building contractors on site.
53. That the charge to the homeowners for their share of the roof replacement was £1530.16 per flat.
54. That this charge was offset against the sums which the homeowners had paid in the past for repairs to the roof.

55. That no consultation was carried out with the homeowners prior to the decision by the property factors to replace the roof but notwithstanding this, the evidence of the homeowners was that they would have supported a proposal to replace the roof in 2014.
56. That section 3.3 of the Code of Conduct provides that the property factors,  
*"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"*.
58. That the homeowners received a letter from the property factors dated, 17<sup>th</sup> June 2014, intimating to the homeowners their proportionate costs for the works to the roof of the property.
59. That, on receipt of this letter, Mrs Connor contacted the property factors requesting a more detailed breakdown.
60. That a response was forthcoming from the property factors on 15<sup>th</sup> July 2014 by email with title, *"Block 50 Gavins Road, Breakdown of Common Repair (Repair no. B209251Y14)"*.
61. That the address contained an error and that the information contained within the email concerned the property.
62. That the email contained a description of the activities and works for which the homeowners were charged.
63. That the email provided only the total cost of the works and the proportionate costs for each of the homeowners (the figures being consistent with those on letter of 17<sup>th</sup> June 2014) and that no detailed breakdown was provided.
64. That specification of the quantification of each repair was provided in terms of square metres.

65. That no greater specification could be provided of the individual costs because of contractual sensitivities between the property factors and their contractors, procured through a tendering process.
66. That the homeowners had been provided with a document bearing the title, "*Summary of works, costs and charges*" from the property factors and that a copy of this document was before the committee.
67. That the committee finds no evidence of a breach of section 3.3 of the Code by the property factors.
68. That section 6.9 of the Code of Conduct provides that the property factors must, "*pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.*"
69. That the storm in 2013 caused damage so extensive to the roof of the property that the roof required replacing.
70. That this was not disputed by the homeowners.
71. That the repairs carried out prior to this time had been minor repairs at separate sections of the roof which would not carry guarantees.
72. That the committee find no evidence of a breach of section 6.9 of the Code by the property factors.
73. That the committee find no evidence of a failure on the part of the property factors to carry out the Property Factor's duties.
74. That no Property Factor Enforcement Order (PFEO) will be made by the committee.

**Reasons for decision**

75. The committee accepted that there had been errors and statements contained within letters which could have been avoided or worded in a more empathetic tone and that there were examples before them where greater specification could have been provided by the factors but there was no evidence before the committee which revealed any intention on the part of



the property factors to be deliberately misleading or false. Therefore the committee find no breach of section 2.1 of the code of conduct by the property factors.

76. With regards to the allegation of a breach of section 2.2, the committee found the letter of 18<sup>th</sup> February 2014 intimating proposed works to be factual. The terms of that same letter made a positive statement that there was no sign of any displacement in the building and that had led the property factors to the conclusion that the roof structure could not have lifted during the storms. This statement reflected the findings of their inspection and was contrary to the experiences of the homeowners, notably Mrs Connor who had been present in her home at the height of the storms. The property factors could have offered an explanation as to why they reached their conclusion and it is regrettable that Mrs Connor felt let down by the terms of the letter. However this statement it not considered by the committee to be abusive, intimidating or threatening towards the homeowners. The committee finds no evidence of a breach of section 2.2 by the property factors in this letter.
77. The committee accepted that there may have been a difference of opinion between the parties following their meeting in July 2014. However, even if it were to be accepted that the terms of the letter from the property factors dated 16<sup>th</sup> September 2014 contained an inaccurate account of what the homeowners understood to have been agreed, the committee find no evidence that the content of the letter is in any way abusive, intimidating, or threatening towards the homeowners. Therefore the committee finds no evidence of a breach of section 2.2 by the property factors in this letter.
78. The property factors wrote to the homeowners in February 2014 intimating that works would be carried out to the property following storm damage. A further notification was issued to them on 15<sup>th</sup> March 2014 indicating that essential maintenance works requiring scaffolding were to proceed. Whilst it is accepted that the property factors failed to explicitly notify the homeowners that their intention was to replace the roof entirely (and see no reason why this could not have notified the homeowners explicitly) the committee is of the opinion that the homeowners knew that a new roof was being applied. This was confirmed to them by the site contractors, Mr McCulloch had identified this was occurring on the basis of his professional expertise and the property factors had intimated this to the homeowners' elected member.

Moreover the roof replacement was a necessity and the deeds allow the property factors to carry out necessary repairs. In any event the homeowners were satisfied with the replacement roof and took the view that it was the correct thing to do at the time. The committee finds no evidence of a breach of section 2.4 by the property factors in this letter.

79. The property factors provided the homeowners with details of their individual share of the costs of the roof replacement, in writing, under cover of 2 separate documents. On request from Mrs Connor a breakdown of the works was provided. There was an unexplained delay in this information being provided and administrative errors which ought to have been identified before the information was released to the homeowners. The submissions of the property factors indicated that issues of data protection prohibited them from providing greater specification of individual costs with the homeowners. The committee finds no evidence of a breach of section 3.3 by the property factors in this letter.
80. The committee accepted the evidence of both parties that repairs carried out to the roof prior to it being replaced in 2014 had been minor in comparison and undertaken on an *ad hoc* basis. It is reasonable to assume therefore that the contractors would not have given any guarantee over the works and it may not have been cost effective to have pursued the contractors for their poor workmanship, should that have been established. In any event, regardless of the quality of these earlier works, the property factors' investigations led them to the decision that the best course of action in 2014 was to fully replace the roof. This was not an issue in dispute and in fact the homeowners expressed their satisfaction with the finished works. The committee finds no evidence of a breach of section 6.9 by the property factors in this letter.
81. There being no evidence of the breaches of the particular sections of the Code of Conduct or the property factors' duties, the committee do not intend to issue a PFEO. It is noted that there were a number of errors and delays which could have been avoided by the property factors in their communications with the homeowners.

## **Appeals**

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

*"(1)An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner housing committee.*

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

.....Chair

AT GLASGOW ON 18<sup>th</sup> APRIL 2016

