Decision of the Homeowner Housing Committee
In an Application under section 17 of the Property Factors (Scotland) Act 2011
by

Aylmer Millen, 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Applicant")

Property Factor: Grant & Wilson Property Management Ltd, 5 Coalhill, The Shore, Edinburgh EH6 6RH ("the Respondent")

hohp Ref: HOHP/PF/13/0240

Re: Property at 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Property")

Committee Members:

John McHugh (Chairman); Sara Hesp (Surveyor Member); and Colin Campbell (Housing Member).

DECISION

The Committee has no jurisdiction to deal with the part of the Application relating to the lighting bollards.

The Committee has jurisdiction to deal with the remaining complaints contained in the Application.

The Respondent has failed to carry out its property factor's duties.

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

1 The Applicant is the owner of Flat 30/5 Eyre Crescent, Edinburgh EH3 5EU (hereinafter "the Property").

2 The Property is located within a development which comprises two residential blocks known as 17 Eyre Place and 30 Eyre Crescent and associated common areas (hereinafter "the Development").

3 The adjacent property is a medical centre at 32 Eyre Crescent (hereinafter "the Medical Centre").

4 The buildings within the Development and the Medical Centre are physically connected.

5 The grounds of the Development and those belonging to the Medical Centre are not separated by a physical boundary such as a fence or wall.

6 The Development and the Medical Centre have different proprietors.

7 A Deed of Conditions governs the arrangements for the sharing of costs relating to common property within the Development among the proprietors of the flats within the Development.

8 There are 23 flats in the Development.

9 The Respondent is the property factor appointed by the owners of the flats within the Development.

10 The Development contains two parking areas. One is accessed from the east and one from the west. The western car parking area shares access to and from the street with parking spaces relating to the Medical Centre.

11 There are seven parking spaces belonging to the Medical Centre and 23 relating to the Development.

12 There are four lighting bollards in the car parking areas (two in the west and two in the east).

13 Three of the lighting bollards (being the two in the eastern parking area and the southernmost one in the west car parking area) are more modern than the remaining bollard.

14 The western parking area has five surface water drains, of which three are located in the shared access area.

15 The plan produced by the Respondent with its letter of 3 February 2014 fails to accurately record the location of one the surface water drains in the western car parking area. It wrongly shows the location of one of three drains in the Shared Access Area as occurring south of the Shared Access Area.

16 The Applicant rents the Property to third parties.

17 The property factor's duties which apply to the Respondent arise from the Statement of Services and the Deed of Conditions. The duties arose with effect from 1 October 2012.

18 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor (7 December 2012).

19 The Applicant has, by his correspondence, including that of 6 March, 14 May, 29 June and 22 September all 2013, notified the Respondent of the

reasons as to why he considers the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.

20 The Applicant's letter of 22 September 2013 raised specific concerns regarding the failure to respond timeously to his complaint; the sharing of charges with the Medical Centre on a 1/24 basis; the inadequate gully clearing and lighting bollard works. The Applicant's complaint of 6 March 2013 raised specific concerns regarding the drain clearing and the sharing of charges on a 1/24 basis. The Applicant's email of 14 May and 29 June 2013 raised the failure to respond to his complaint.

21 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Inspection and Hearing

An inspection of the Development took place on 12 May 2014 and a hearing was held immediately afterwards at Thistle House, Haymarket Terrace, Edinburgh.

The Applicant was present at the inspection and the hearing. No other witnesses were called by him.

The Respondent was not represented at either the inspection or the hearing and no witnesses were led on its behalf.

Introduction

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

The Respondent became a Registered Property Factor on 7 December 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee has previously issued a number of Directions regarding procedure to be followed in dealing with the Application.

The Committee had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent in response to the Committee's Direction dated 25 April 2014.

The documents before us included a Deed of Conditions by Adam Housing Society Ltd dated 12 and registered 13 December 1990, which we refer to as "the Deed of Conditions" and the Respondent's Written Statement of Services (undated but located at 1.8 in the documents lodged by the Applicant) which we refer to as "the Statement of Services".

We refer to the area shaded blue on the plan accompanying the Deed of Conditions as the "Shared Access Area".

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of a failure to carry out the property factor's duties.

The Statement of Services is a source of duties relied upon in the Application.

The Statement of Services (at section 7) contains what is described by the Respondent as a three step Complaints Resolution process. It provides, for a customer who remains dissatisfied after raising a complaint informally, for the first complaint to be made to the Respondent's Customer Service Department. Step 2 is the acknowledgment of receipt of the complaint within three days and a written reply within 21 days. Step 3, for the customer who remains dissatisfied, is to write to the Respondent's General Manager. A further step thereafter is for the customer to write to the Respondent's Managing Director.

(As an aside, we observe an apparent error in the Complaints section of the Statement of Services relating to the website address of the HOHP.)

The Deed of Conditions is a further source of property factor's duties. The Respondent is the factor currently appointed under Clause THIRTEENTH. Clause TENTH specifies the share of maintenance to be paid by each proprietor in the Development as 1/23 other than in respect of the Shared Access Area where the appropriate share is 1/46.

The Code

The Applicant complains under reference to Sections 1.1, 2.1, 2.5, 3.0, 6.0, 6.3, 6.6, 6.9, 7.0, 7.1 and 7.2 of the Code.

On discussion at the hearing, the Applicant accepted that the provisions of Section 1 of the Code related to the contents of the Statement of Services as opposed to specific failures to perform the matters listed in Section 1. He confirmed that he was not pursuing any complaint regarding the adequacy of the Statement of Services and confirmed that he was not therefore relying upon Section 1 of the Code.

The elements of the Code relied upon in the application provide:

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

...2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers)...

...SECTION 3: FINANCIAL OBLIGATIONS
While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

The overriding objectives of this section are:
Protection of homeowners' funds
Clarity and transparency in all accounting procedures
Ability to make a clear distinction between homeowners' funds and a property factor's funds

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

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.

3.4 You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on sale of the property).

If you are a private sector property factor:
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.
3.6a In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account must be opened in the name of each separate group of homeowners.

If you are a Registered Social Landlord or local authority property factor:
3.5b Homeowners' floating funds must be accounted for separately from your own funds, whether through coding arrangements or through one or more separate bank accounts.
3.6b In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account or accounting…

…SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE
This section of the Code covers the use of both in-house staff and external contractors.
6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

6.2 If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.

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.

6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

6.5 You must ensure that all contractors appointed by you have public liability insurance.

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 commission, fee or other payment or benefit that you receive from a contractor appointed by you.

6.8 You must disclose to homeowners, in writing, any financial or other interests

that you have with any contractors appointed.

6.9 You 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…

…SECTION 7: COMPLAINTS RESOLUTION

Section 17 of the Act allows homeowners to make an application to the homeowner housing panel for a determination of whether their property factor has failed to carry out their factoring duties, or failed to comply with the Code.

To take a complaint to the homeowner housing panel, homeowners must first notify their property factor in writing of the reasons why they consider that the factor has failed to carry out their duties, or failed to comply with the Code. The property factor must also have refused to resolve the homeowner's concerns, or have unreasonably delayed attempting to resolve them.

It is a requirement of Section 1 (Written statement of services) of this Code that you provide homeowners with a copy of your in-house complaints procedure and how they make an application to the homeowner housing panel.

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

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 homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel…"

The Factual Complaints

The factual matters underlying the complaint are:

1 The Respondent's handling of the replacement of lighting bollards.
2 The adequacy of drain clearing works.
3 The method of apportionment of factoring charges among proprietors within the Development. The Applicant considers that the apportionment employed by the Respondent is inappropriate and not in accordance with the terms of the title deeds. In particular, the Applicant is unhappy that the Respondent has treated the Medical Centre as equivalent to one of the flats for charging purposes.
4 The adequacy of the Respondent's response to the Applicant's complaints.

We deal with these issues below.

1 The Lighting Bollards

In the Spring/Summer of 2012, the Respondent made arrangements for contractors to quote for the replacement of exterior lighting bollards located in the common areas of the Development. Replacement works were carried out. They were charged to the Applicant in an invoice received by him on 28 August 2012. Subsequently, the Applicant became aware that only three of the four bollards had been replaced and sought an explanation from the Respondent. The Applicant believes that the fourth (unreplaced) bollard continues to function, albeit he considers that leaving one old style bollard is not aesthetically pleasing.

The Applicant raised the issue of the failure to replace the fourth bollard with the Respondent. This lead to a commitment by the Respondent which was expressed at a meeting on 29 May 2013 to the effect that if works were required to the bollard, then the Respondent's Managing Director would address the matter. The Applicant found the reassurance to be rather vague. He is uncertain what went wrong in the tendering and contracting process to cause only three bollards to be replaced or why, ie whether any failing was that of the Respondent or the appointed contractor.

In our Direction of 12 February 2014, we stated in relation to this issue: "It appears that the matters complained of occurred prior to 1 October 2012 and therefore prior to the coming into force of the obligations contained in the Property Factors (Scotland) Act 2011. As a result it appears to the Committee that it may not have jurisdiction to consider this head of complaint. The parties are directed to make written submissions to the Committee upon this issue within 21 days of the service of this Direction upon them".

In response, the Respondent submitted that the matter could not properly fall within the jurisdiction of the Committee, in particular because there could have been no prior complaint to the Respondent as required under section 17 of the 2011 Act. The Applicant submitted that the Committee did have jurisdiction on

the basis that the commitment made by the Respondent on 29 May 2013 rendered the issue a current and pending one.

At the hearing we discussed the Applicant's position further. We referred him to the provisions of Regulation 28 of the 2012 Regulations which allows the Committee to take into account circumstances occurring before 1 October 2012 in determining whether they may have been a continuing failure to carry out the property factor's duties after that date. The Applicant confirmed that he wished to rely upon Regulation 28 in support of his argument.

We are of the view that we do not have jurisdiction to deal with this complaint. It is clear that the matter complained of is an alleged failure of the contracting process regarding replacement of the lighting bollards. The Applicant accepts that the contract was placed and the works carried out prior to October 2012. We do not accept that the reassurance given by the Respondents on 29 May 2013 has the effect of making a failure which had by that time already occurred, a continuing one under Regulation 28.

2 Drain Clearing

The Applicant complained that the Respondents had included in their quarterly invoice dated 21 February 2013 a charge for contractors having cleared the surface water drains serving the car parking areas of the Development.

The Applicant advised that he had gone to the Development in March 2013 and observed that there seemed to be a large quantity of debris present in the drains.

On a later visit in May 2013, the Applicant took photographs of the drains which are lodged with the Committee (at tab 3.1 of the Applicant's folder). He had also made enquiries of a neighbour and of his tenant, neither of whom had seen contractors performing drain clearance works. He therefore deduces that the drain clearance works were not carried out as claimed by the contractor and considers that there has been a failure on the part of the Respondent in that works invoiced for by the contractors but not in fact carried out (or at least carried out inadequately), were not inspected and the cost was incorrectly passed on to the Applicant and other proprietors in the Development.

The Respondent maintained that contractors had performed the clearance works in December 2012.

We observed a total of ten surface water drains, five on the west side and five on the east of the Development. Of those on the west, three are located within the Shared Access area. The plan submitted by the Respondent is inaccurate in that it purports to show one of those three drains as being located south of the Shared Access Area.

The available evidence is that the contractor positively claims to have carried out works. On the other hand, the Applicant can point only to circumstances which he regards as indicative of those works not having been properly completed. As the Applicant very fairly acknowledged at the hearing, his first inspection of the drains took place several months after the works are said to have been carried out and the drains may have accumulated debris in the intervening period. On the available evidence we have found it impossible to conclude on the balance of probabilities that the drain clearing works did not take place as claimed. Given this factual position, no breach of the Code or of the property factor's duties arises.

3 Apportionment of Charges

The Applicant complains that the Respondent has imposed charges in a way which is not consistent with the provisions of the Deed of Conditions. Clause TENTH of the Deed of Conditions provides that each proprietor of a flat within the Development shall be liable for a 1/23 share of the cost of maintaining the common property of the development other than in respect of the Shared Access Area where their liability is for a 1/46 share. The Deed of Conditions defines the Common Property of the Development in detail. As would be expected, the definition includes the garden ground and the car parking areas.

The Respondent has, since its appointment, adopted the practice of combining costs associated with the Development with costs associated with the Medical Centre. It has then applied a 1/24 share of the total cost among the proprietors of flats within the Development and the proprietors of the Medical Centre.

The Respondent has confirmed (by its letter of 3 February 2014 to the Committee) that it has no knowledge of any legal or contractual basis for this practice. In its Written Representations the Respondent explains the basis for adoption of this practice. It cites commercial expediency and cost savings to the proprietors of the Development and the Medical Practice.

The Applicant acknowledges that there may be practical and cost advantages to both the proprietors of the Development and the Medical Centre in the Respondents arranging for works required at both sites being procured and carried out together. However, he considers that the Respondent's practice of combining works relating to both sites and then sharing them out on an arbitrary 1/24 basis (treating the whole cost as being shared 24 ways, with the Medical Centre being treated as equivalent to a twenty fourth flat) to be inappropriate. Rather, he contends it is incumbent upon the Respondent to make specific arrangements to share the costs appropriately between the two properties on an equitable basis. That might be, for example, by obtaining two separate quotes from contractors for works at both sites on the basis that the works are to be carried out simultaneously or by basing costs on the amount of work required on either side of the boundary.

The Applicant has discussed alternative cost sharing methods with the Respondent. The Respondent is of the view that it cannot change to another system without approval of the proprietors.

The Respondent claims to have continued with the combining of costs and the 1/24 sharing arrangement having inherited this from its predecessor as factor, Arklett.

The Applicant considers that Arklett have never followed that practice and has produced records relating to Arklett's management of the Development in support of that position. He considers the Respondent's adoption of the practice referred to to be an administrative convenience to the Respondent which has no basis in

law. In the absence of any agreement to the contrary among the owners of the flats within the Development, he considers that the Respondent must follow the terms of the Deed of Conditions.

Since complaining about this matter, although some changes to billing have been observed, and a specific concession to pursue a different arrangement re the costs of painting, the Applicant remains concerned that the Respondent is still following the same practice and now finds it difficult to tell from the information contained on the Respondent's invoices whether any changes to its practice have been made.

It is clear to the Committee, and indeed it has been accepted by the Respondent, that there is no legal basis for the practice adopted by the Respondent.

The Respondent is only entitled to apply the terms of the Deed of Conditions to its arrangements with the proprietors of the flats within the Development. It is not entitled unilaterally to decide to follow a different practice without the agreement of the proprietors, however beneficial the Respondent may consider that arrangement to be.

In applying a cost sharing practice contrary to Clause TENTH of the Deed of Conditions, the Respondent is in breach of the property factor's duties.

We do not consider that, in respect of this complaint, there has been a breach of the Code. The Applicant raised in particular on this head of complaint that the practice adopted by the Respondent and the issuing of invoices contained an inference that the sums contained on the Respondent's invoices had been properly calculated by reference to the Deed of Conditions. This would be contrary to Code Section 2.1. We consider that the Respondents did not mislead in this respect; they were open and candid about the practice they were following even if the practice was itself unjustified. He also raised his complaint by reference to Code Sections 3.3; 6.3; and 6.6. These concern failures surrounding the appointment of contractors and the provision of information. However, we do not find these sections of the Code well suited to deal with the current situation. It was not a case of there being an absence of information regarding the basis upon which works were procured and the costs shared; rather, it was made relatively clear throughout that the Respondent simply followed an arbitrary practice without having contractors price for the two sites separately.

Nothing, of course, prevents the Respondent from, for example, using the same contractor to provide grass cutting at the Development and the Medical Centre at the same time, provided that the costs are shared on an agreed basis between the two sites before the part of the cost relating to the Development is calculated and shared among proprietors of flats within the Development in accordance with the provisions of the Deed of Conditions.

4 Complaint Handling

The Applicant advises that he attempted to employ the Respondent's Complaints Resolution Procedure as set out at Clause 7 of the Statement of Services (the terms of which we have summarised above).

The Applicant submitted a detailed written complaint to the Respondent on 6 March 2013. This has been produced. He advises that he received no response.

The Applicant advises that he then wrote to the Respondent's General Manager, Mrs Gilmour (although no copy of this has been produced, we accept the Applicant's evidence in this regard) but received no reply.

He then emailed the Respondent's Managing Director, Mr Michell on 14 May 2013. He received an email of acknowledgement from Mr Mitchell on 16 May 2013. He had received no response by 29 June 2013 and as a result emailed Mr Mitchell to advise of his intention to submit a complaint to the HOHP.

The Applicant complains that the Respondent has failed to follow its own procedure under the Statement of Services. He complains by reference to the property factor's duties and Code Section 7.1.

The Respondent answers this point under the heading "Factor's Response to Homeowner's Queries and Complaints" in its Written Representations. It considers that it was entitled not to respond to the formal complaint under its Complaints Resolution Procedure because of the history of prior correspondence with the Applicant. It did not want to repeat answers already given. It considers that it was sufficient simply to acknowledge the correspondence.

The reality is that the Respondent did not at any time during the period 6 March to 29 June make clear to the Applicant that it would not respond in a substantive manner. The Applicant expected, and was entitled to expect, a formal substantive response. When none was forthcoming he was entitled to follow the Respondent's own Complaints Resolution Procedure and escalate the complaint to the next step. We consider that the failure to respond substantively to the complaint from 6 March to 29 June 2013 constitutes a breach of the property factor's duties in that the Respondent has failed to follow the terms of Clause 7 of its own Statement of Services.

We further consider the failure to follow the Complaints Resolution Procedure to be a breach of Code Section 7.1 which requires factors both to have a procedure and to follow it.

Observations

The Committee had issued a Direction to the parties on 31 March 2014 which provided: *"The parties are required to indicate to the HOHP within 14 days of the date of their receipt of this Direction whether they intend to be in attendance or represented at the inspection and hearing and, if so, to confirm their suitable dates to the HOHP within the same timescale."*

The Respondent's response dated 24 April 2014 indicated that their Property Manager, Fraser McIntosh, would attend the inspection but was silent on the question of attendance at the hearing.

Mr McIntosh was said to be free in the week commencing 12 May and the inspection and hearing were fixed accordingly. In the event, no one from the Respondent attended the inspection. No advance notice of the intention not to attend was given by the Respondent to the Committee with the effect that the commencement time of the inspection was delayed to allow attendance by the Respondent in case their representative had been delayed. When after a reasonable time there was no attendance, the Committee confirmed with the HOHP administrative office that there had been no contact from the Respondent before commencing the inspection.

The Respondent was not represented at the hearing. However, Mr McIntosh was in attendance throughout the hearing having explained to the Committee's clerk that he was only there to attend as an observer. No explanation for his non attendance at the earlier inspection was offered.

While it is open to those in the position of the Respondent to choose not to attend a hearing and to rely upon written representations, it strikes us as strange that the very individual within the Respondent apparently responsible for the management of the Development should choose to be present for the full duration of the hearing but not to make any representations. We suspect that it would, in this case, have been of assistance to the Committee had the Respondent's Property Manager taken an active part in the proceedings rather than remaining as a silent observer.

We are of the view that where any party has expressed an intention to attend a hearing or an inspection and where their intention subsequently changes, it is incumbent upon them to make contact with the office of the HOHP in order that the Committee may be informed of the change of position. To fail to do so creates inconvenience to the Committee, the other party and impedes the administration of justice. It also demonstrates a lack of courtesy.

We found the Applicant to have presented his case in a careful and detailed manner. We found him to be a credible and reliable witness.

The Committee, in the absence of the Respondent, ensured that the matters contained in the Respondent's submission were put to the Applicant at the hearing and fully considered.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached document.

APPEALS

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

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

JOHN M MCHUGH

CHAIRMAN

DATE: 26 May 2014

Proposal regarding the Making of a Property Factor Enforcement Order

Following Upon a
Decision of the Homeowner Housing Committee
In an Application under section 17 of the Property Factors (Scotland) Act 2011
by

Aylmer Millen, 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Applicant")

Property Factor: Grant & Wilson Property Management Ltd, 5 Coalhill, The Shore, Edinburgh EH6 6RH ("the Respondent")

hohp Ref: HOHP/PF/13/0240

Re: Property at 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Property")

Committee Members:

John McHugh (Chairman); Sara Hesp (Surveyor Member); and Colin Campbell (Housing Member).

This document should be read in conjunction with the Committee's Decision of the same date.

The Committee proposes to make the following Property Factor Enforcement Order ("PFEO"):

"Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

1 *Apply the terms of the Deed of Conditions to its management of the Development and in particular in relation to the apportionment of common charges as required by Clause TENTH of the Deed of Conditions;*

2 *Make a payment to the Applicant of £150 in recognition of the stress and inconvenience caused to him as a result of the Respondent's failings;*

3 *Send by post to the proprietors of each and every flat in the Development and to the Medical Practice a copy of the Committee's Decision and this PFEO.*

4 *Provide evidence of compliance with paragraph 3 above by sending to the office of the Homeowner Housing Panel Certificates of Posting issued by Royal Mail."*

Section 19 of the 2011 Act provides as follows:

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

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

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

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

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

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

JOHN M MCHUGH

CHAIRMAN

Date: 26 May 2014