Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/15/0087

Re: 3/6 Hawthornden Place, Edinburgh EH7 4RF ('the property')

The Parties:

Walid Al-Khames, residing at 26 Mortonhall Park Avenue, Edinburgh EH17 8BP ('the homeowner');

and

Life Property Management Limited, a company Registered in Scotland SC253869 and having their Registered Office at 11 Somerset Place, Glasgow G3 7JT and a place of business at Regent Court, 70 West Regent Street, Glasgow G2 2QZ ("the property factor')

Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011('the Act')

Committee members:

George Clark (chair) and Elaine Munroe (housing member)

Decision

The Committee has jurisdiction to deal with the Application.

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

The Decision is unanimous.

Introduction

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

The property factor became a Registered Property Factor on 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 had available to it and gave consideration to: the application by the homeowner received on 5 June 2015, with supporting paperwork, including copies of various e-mails and letters from the homeowner to the property factor beginning with the homeowner's letter to the property factor's solicitors dated 24 May 2015; a letter from the property factor's solicitors to the homeowner dated 20 November 2015; an e-mail from the property factor to the homeowner dated 20 October 2015, (responding to an e-mail from the homeowner dated 4 October 2015), to which were attached copies of the Written Statement of Services and of Minutes of the previous two Annual General Meetings of the estate homeowners; a letter from the property factor dated 24 September 2015 (responding to the homeowner's letter of 26 August 2015), with 7 appendices attached; a letter from the property factor to the homeowner dated 22 April 2015 (responding to the hoemowner's letter of 5 April 2015); a further letter from the homeowner to the property factor dated 27 April 2015; a letter from the property factor to all homeowners on the estate, intimating the arrangements for a proposed Extraordinary General Meeting; and copies of the Proxy Vote Form, a list of proxies and The Minutes of that meeting, which was held on 31 March 2015.

The following is a summary of the content of the homeowner's application (as amended by the e-mails referred to in the next paragraph) to HOHP:- The property factor had failed to comply with Sections 2.1, 2.4, 2.5, 5.2, 5.3,6.1, 6.3, 6.6 and 6.7 of the Code and had failed to carry out the Property factor's duties. The property factor had failed to instruct and supervise common repairs and maintenance in a timely manner, particularly in relation to a dampness issue which had been going on since 2011. The property factor had failed to comply with an agreement concerning an Extraordinary General Meeting convened on 31 March 2015 and had failed to respond to the homeowner's letter regarding this matter dated 24 May 2015. The property factor was charging "legal fees" and imposing insurance arrangements on homeowners which it was not entitled to do in terms of the title deeds and the current apportionment of the individual claim excess was neither fair nor legal. The property factor had failed to supply the homeowner with a commission disclosure letter

from its brokers confirming the brokers' and property factor's commissions on the insurance policy and had failed to supply the homeowner with a copy insurance certificate , showing the reinstatement value of the homeowner's property, the individual premium paid and the excess on such policy. The property factor used a company called "Property Response 24 Ltd" for some of the work carried out within the estate and it appeared that the property factor's owner/director was also a director of that company and both companies had the same address. The homeowner alleged that the director/owner of the property factor company continued to make false and/or misleading statements. The property factor had also failed to adhere to charges specified by the deeds, had collected a maintenance fund by way of illegal charges and had failed to provide proper statements to show how this fund was being used. The property factor had failed to put services contracts for gardening and cleaning out to tender and had failed to have proper, signed contracts for these services with the current contractor.

The application was amended by e-mail dated 4 October 2015, to include Sections 2.4, 2.5, 3.2 and 6.6 of the Code and to remove complaints under Sections 5.7 and 5.8. In a further e-mail dated 7 November 2015 the homeowner deleted complaints under Section 3.2 and 3.3 of the Code and added a complaint under Section 6.7.

Summary of Written Representations

The Committee had not received, in advance of the hearing, any further written submissions made by the homeowner or the property factor.

THE HEARING

A hearing took place at George House, 126 George Street, Edinburgh EH2 4HH on 4 March 2016. The homeowner was present at the hearing. The property factor was represented at the hearing by Mr David Reid, Director, Mr Alasdair Wallace, Head of Estates and Jacqueline Borthwick, Head of Finance.

Summary of Oral Evidence

The chairman told the parties that they could assume that the Committee members had read and were completely familiar with all of the written submissions and the documents which accompanied them. He then invited the homeowner to address the Committee with reference to his complaints under each Section of the Code and in relation to the alleged failure to carry out the Property Factor's duties. When the homeowner concluded his evidence, the representatives of the property factor were invited to respond. For ease of reference, this Summary combines the homeowner's evidence and the response of the property factor under each head of complaint.

Section 2.1 of the Code states that property factors must not provide information which is misleading or false. The homeowner told the Committee that the breakdown of the budget figures for 2013 included £270 for legal fees. When he had queried this, he had been told by the property factor that it related to solicitors' fees for pursuing owners who had not paid their factoring charges, but in later correspondence, it had emerged that it had been for obtaining legal advice on the property factor's working practices for insurance.

Mr Reid, in an e-mail of 11 November 2013, had made reference to one or two owners "nowhere near a majority", being dissatisfied with the property factors, but at the AGM held on 13 November, the vote had been 11 in favour of removing the property factor and 20 against.

When the homeowner had raised with the property factor his concerns about the apparent association between the property factor and Property Resonse 24. Mr Reid had responded by e-mail on 20 October 2015, referring the homeowner to the Written Statement of Services. This stated that Property Response 24 Limited had "an affiliation to the Directors at lpm". The homeowner had made checks at Companies House and had discovered that Mr Reid was a director of both companies. He was not satisfied that there might not be a conflict of interest, with both companies operating from the same office in Glasgow and he could not see how it could be cost-effective to use a Glasgow company for repair and maintenance work in Edinburgh.

In his letter to the homeowner dated 24 September 2015, Mr Reid had said that the Extraordinary General Meeting of 31 March 2015 had been "chaired and minuted by homeowners", but that was a false statement, as the property factor would have been aware from intervening correspondence that the person who chaired the meeting was not an owner and did not hold a valid proxy from an owner. His wife owned one of the flats in the estate. On many occasions, the property factor had refused to answer the question of how and why this person, Mr Colin MacLean, had chaired the meeting.

At the November 2014 AGM, it was minuted that downpipes and gutters were broken and leaking in Blocks 1,2 and 3 and it was agreed that repairs were needed. The owners had confirmed the location and the homeowner had written to the property factor on 5 April 2015 indicating the exact location, but in his letter of 24 September 2015. Mr Reid was alleging that the homeowner had refused to identify the exact location.

The property factor responded to the homeowner's evidence relating to Section 2.1 of the Code. Ms Borthwick told the Committee that factoring charges were levied in advance, against a budget, but there was no allowance in the budget for legal fees. The account had contained a generic description which had referred to chasing non-payers. Ms Borthwick had apologised to the homeowner for this oversight. The owners had voted in favour of a block insurance policy, but the homeowner,at a later date, had wanted to change this arrangement and the property factor had taken legal advice on whether the original decision was binding. This was a valid charge to pass on to the owners and was specific to this one development. The homeowner had accepted that he had agreed to block insurance at the outset.

Mr Reid told the Committee that the comment regarding "one or two owners" had been made in an e-mail dated 11 November 2013, which was 2 days before the "vote" at the meeting to which the homeowner was referring. Twice since 2004, the question of changing property factors had been raised at homeowners' meetings and on both occasions, the majority of those in the room had voted against it, so, against that background, he had not made any statement that could be regarded as false or misleading on 11 November 2013. At that date, Mr Reid was not aware that there were as many as 11 homeowners in favour of a change, but in any event that was nowhere near a majority, in a development of 80 flats.

Mr Reid told the Committee that the Written Statement of Services clearly states that there is an association between the property factor and Property Response 24 Limited. The property factor had set up that company, which had developed a service for out of hours work, currently charged at the rate of £4.50 per property per annum. The property factor looked at comparisons every two years or so and the lowest competing quotation it had obtained was £5.50, with most companies charging £10-11 per annum. The property factor had raised with the committee of the residents' association the matter of the link with Property Response 24 Limited and there had been no objection to date. Mr Reid explained that the company is a call-handling centre, which passes on enquiries to Impact, who instruct an emergency contractor at a previously negotiated rate.

Mr Reid then turned to the complaint regarding the Extraordinary General Meeting of 31 March 2015 and told the Committee that the person who had chaired it was the chair of the residents' association and the property factor had not been aware at the time that he was not a homeowner within the development. He had been elected to the committee of the association by the residents in 2014 and subsequently, when the chair stood down, he had offered to chair the EGM. Ther had been no intentional false or misleading statement in the

letter of 24 September 2015. The property factor had no involvement in deciding who should chair meetings and no role in the appointment of committee members, so had no reason to check against their records whether a committee member or chair was a homeowner within the development. The fact that it was Mr Maclean's wife who was the owner of the flat in which they live only came to light after the EGM. Recently, the committee of the residents' association had disintegrated and the property factor had had to chair meetings.

In relation to the gutters and downpipes, the property factor told the Committee that its estates manager inspects work carried out on a monthly basis. Following the 2014 AGM, the estates manager had stated that he would assess the position on his next visit. He reported back that he could see no evidence of leaks from downpipes or gutters. The homeowner had raised the issue with Mr Reid in April 2015 and, when asked to identify the location of a leaking pipe, had merely said there were a number of rhones and downpipes near his flat. When the property factor had finally obtained confirmation as to precisely where the problem lay, the repair had been carried out within a month. The property factor had combined the repairs with a programmed cleaning of gutters, in order to minimise costs by only having to use a cherry-picker once. Mr Wallace told the Committee that the original complaint from the homeowner had been about leaking downpipes, but that the property factor had found no evidence of that. The homeowner had complained that the property factor had told him on 22 April 2015 that this repair work would have to be raised with the residents' committee first, but the reason for that was that there was no visible evidence of leaking downpipes, so it was for the committee to decide whether it was more cost-effective to check them at the same time as the scheduled gutter cleaning, when there would be an access platform in use in any event. Mr Reid told the Committee that he accepted that he could have set out the reason for this more clearly in his letter of 22 April 2015, but did not consider that the contents of the letter had been false or misleading.

Section 2.4 of the Code states that 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 and **Section 2.5 of the Code** provides that property factor must respond to enquiries and complaints received by letter or e-mail within reasonable timescales. The homeowner told the Committee that a simple repair to a downpipe had taken 14 months and that there had been dampness problems in Blocks 3 and 4 for a number of years. He alleged that the property factor had ignored completely a service issue relating to the health and safety of occupants for 5 years and there was no timetable even yet for finally dealing with the dampness issue.

The property factor responded that this was a matter relating to a property in Block 4 and that, so far as the property factor was aware, there had never been a dampness problem in the homemowner's property, so this was not an issue for the Committee.There had been

condensation issues in 2 ground floor properties 5-6 years ago. One of these had gone away and the other had been resolved by the installation of a ventilation system. There had also been an issue of dampness specific to another flat in the development which had been taken to HOHP, where the only failing upheld was that the property factor had failed to report on progress to the owner of that property over a period of 3 months. The property factor also told the Committee that there had been an ongoing problem relating to ground moisture levels in some ground flats and it had been agreed at AGMs that this would be looked at. The property factor had instructed a consultant to provide a report, the object of that exercise being to ascertain whether other parts of the development had similar problems. There had been condensation on the mains riser in Block 4, but the consultant's report showed no such condensation in the other blocks. There had been a suggestion that an underground mains water pipe might be leaking and, in consultation with Scottish Water, it had been agreed that the mains water pipe would be replaced, but it was a process of elimination and there was no guarantee that this replacement would solve the problem. The property factor had spent a huge amount of time and effort in trying to sort out the matter. Mr Reid added that in the previous HOHP case, it had been accepted that the problem was very complicated.

The property factor stressed to the Committee that it had throughout engaged the relevant specialists and had consulted directly with the affected homeowners and generally with the other homeowners in the development via the residents' association committee.

Section 5.2 of the Code requires property factors to provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the insurance company providing insurance cover and the terms of the policy. The homeowner was of the view, set out in the written submissions which accompanied his application, that he could arrange insurance for his own flat at a much cheaper rate than his share of the block policy premium and that the premium should, in any event, be divided amongst the various flats according to their respective reinstatement values. He had tried unsuccessfully on a number of occasions to obtain from the property factor the precise amount for which his flat was insured and ithe proportion of the premium that related to his flat.

The property factor referred to its written response of 24 September 2015 to the homeowner's letter of 26 August, to which the property factor had appended all the documentation regarding insurance which had been sent to the homeowner in the previous 3 years. The property factor was of the view that all the documentation requested by the homeowner had been provided and told the Committee that the homeowners in the development had agreed to a block insurance policy and the title deeds provided that all common charges were to be split equally amongst all 80 homeowners in the development.

The homeowner told the Committee that he accepted that he had now received information disclosing the commission received by the property factor from the insurance company and that he was withdrawing his complaint under **Section 5.3 of the Code**.

Section 6.1 of the Code requires property factors to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. At the hearing, the homeowner accepted that the evidence on this matter had aleady been led under Section 2.5 of the Code.

Section 6.3 of the Code states that on request property factors must be able to show how and why they appointed contractors, including cases where they decided not to carry out a competitive tendering exercise or use in-house staff. **Section 6.6 of the Code** states that, 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.The homeowner told the Committee that he had discovered that the stair cleaning and gardening were both done by the husband of one of the homeowners. He wanted to know that there had been a process of appointment and that the best tender had been accepted. Homeowners did not know the detail of the contracts, such as frequency of stair cleaning, grass cutting and pruning. The homeowner was concerned that outside contractors were also used for pruning, at additional cost. The individual who carried out the stair cleaning and gardening was also the handyman and some of his invoices were for electrical work, but he had no qualifications or insurance to work as an electrician. He had also put up his charges by 10%, but there was no consultation and no transparency to show the homeowners were getting value for money.

The property factor told the Committee that the individual concerned did not carry out any electrical work. He did not even change light bulbs, as the stairwell lighting is maintained by City of Edinburgh Council. Mr Reid explained that the reason for contracting the individual was that at an AGM the homeowners had said they were not happy with the incumbents. The owners had voted by majority to appoint the individual and this appointment had since been renewed. The individual had also been appointed by the property factor as concierge at one of its other sites and had been given the appropriate training to change lamps. He acted as a general gardener, so any tree lopping had to be carried out by a tree surgeon. The 10% increase in his fees had been agreed at an AGM. The property factor had thought that the contract it had with the individual from 2010 was adequate, but there were now detailed service level agreements for garden maintenance and stair cleaning. Mr Wallace told the Committee that some individuals had raised the issue of tendering for these services, but there had been no dissatisfaction expressed at the AGMs. The property factor had, however, carried out in 2014 a sample retender for these works, but the prices received were considerably more than the prices currently being charged. In the absence of any major issues being raised, the property factor had opted to keep the present

arrangements in place, but both contracts had been put out to tender from 1 March 2016 and the present incumbent had, in any event, resigned.

The homeowner responded by telling the Committee that one of the invoices for factoring services indicated that the individual had changed a lamp. Mr Wallace told the Committee that he had never instructed him to change a lamp. If he had done so (and the canopy lights outside the block entrance door were not covered by the Council) it was possible that he had been reimbursed the cost of the lamp. The amount charged appeared to be £17.98 and the property factor asked the Committee to accept that if this had happened it was a one-off occurrence.

Section 6.6 of the Code requires property factors to ensure that all contractors appointed by them have public liability insurance. The homeowner accepted that the property factor had provided evidence that the individual who had carried out the stair cleaning and gardening did have such insurance, but contended that it did not extend to electrical work carried out by him. The property factor responded by saying that any such repairs now would be carried out by suitably qualified contractors, that the one-off instance of electrical work by the individual appeared to be the changing of one lamp and reassured the Committee that the individual had, in any event, received training in changing light bulbs in 2011.

The homeowner withdrew his complaint under **Section 6.7 of the Code** and confirmed that his complaint under **Section 6.8 of the Code** related to the insurance arrangements and had already been dealt with at the hearing.

The homeowner had one further complaint that he had not categorised with reference to a particular Section of the Code, but which the Committee considered under **Section 3.5a of the Code**. The property factor ran a maintenance fund and it was supposed to be in a separate bank account. The homeowner had asked for proof of this and for statements, but the property factor had failed to provide them. The property factor refuted this claim and Ms Borthwick told the Committee that she had provided the homeowner with a screenshot of the online bank statement covering the last 15 months and a separate note showing the balances each year from 2005. The homeowner was not satisfied with this and said he had never received the documents referred to. Ms Borthwick offered to send the documentation again to the homeowner and told the Committee that she had demonstrated that the property factor had a separate account for each estate for which it provided services, but that monthly statements were no longer sent out by the bank, so she had sent the best evidence she could, namely the screenshot and a separate note of previous annual balances.

The homeowner's application also alleged that there had been a failure to carry out the property factor's duties. The evidence that he led on this matter was confined to the proceedings at the EGM held on 31 March 2015. The purpose of the meeting had been to

consider the homeowner's wish to install a gas supply to his flat. This involved work on the outside walls, which were common parts of the development, so required majority consent. The homeowner told the Committee that he had, in advance, agreed a form of proxy to be used. The proxies were to be sent to the property factor. The homeowner had gained a majority of one, but the chairman had then cast his vote against the proposal, which consequently fell. The homeowner had spent money on prepaid envelopes for proxies. He had subsequently ascertained that some of the proxies were not in the agreed format, so should not have been counted. He had also received a letter from the property factor's solicitors, telling him that a majority vote would not have satisfied the law in relation to common property and that every one of the homeowners would have had to consent to the work and he then had had to pay his proportion of the solicitors' fees for that advice.

The property factor told the Committee that a considerable amount of work had been done in advance of the meeting and that the chairman had said that he would only exercise his vote if it was a tie or there was a difference of one and he had repeated this at the start of the meeting, as recorded in the Minutes. There had been a number of proxy votes and not all were submitted on the form which had been sent out in advance. The property factor pointed out to the Committee that the proxy from stated that it should be returned to the property factor's office no later than the day before the meeting, but that the homeowner had arrived at the meeting with a number of proxies which he had elicited directly and which had not been submitted in time. The chairman had been anxious to ensure that everyone had a vote, so had allowed both the proxies that were not in the agreed form but were nevertheless proxies and those which had not been submitted to the property factor, but had been brought to the meeting by the homeowner himself. It was not part of the property factor's duties to conduct the meeting or to question the judgement of the chairman. The property factors' role had merely been to facilitate the meeting by intimating it to the homeowners and collecting proxy forms that were sent in. Accordingly, there had been no failure to carry out the property factor's duties.

Having concluded giving oral evidence, the parties withdrew and the Committee gave careful consideration to all the evidence before it.

The Committee makes the following findings of fact:

- The homeowner is the owner of the property 3/6 Hawthornden Place, Edinburgh EH7 4RF, part of a development of 80 flatted dwellinghouses erected by Teague Homes (Scotland) Limited around 1990.
- The Deed of Conditions recorded by Teague Homes (Scotland) Limited on 2 May 1989 relates to the two blocks of dwellinghouses (1-3 and 4-6 Hawthornden Place) which comprise the development. It confers on the proprietor of each flat in a right of common property with each and every other proprietor in the block of which his/their flat forms part and with the proprietors in the remaining block of flats to, amongst other things, the outside supporting walls, divison walls, gables, roof and roof space, entrance doors and steps, common entrance halls and passages, common stairways and landings and passages. Each of the 80 owners is responsible for an equal share of the expense of maintaining the common parts.
- The property factor, in the course of its business, manages the common parts of the development of which the Property forms part. The property factor, therefore, falls within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act")
- The property factor's duties arise from a written Statement of Services, a copy of which has been provided to the Committee.
- The date from which the property factor's duties arose is unknown, but it is not disputed that it was prior to the date of the homeowner's application.
- The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- The date of Registration of the property factor was 7 December 2012.
- The homeowner has notified the property factor in writing as to why he considers that the property factor has failed to carry out its duties arising under section 14 of the Act.
- The homeowner made an application to The Homeowner Housing Panel ("HOHP") received by HOHP on 5 June 2015 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- On 16 December 2015, the President of HOHP referred the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter dated 16 December 2015.

Reasons for the Decision

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

1. The property factor gave the homeowner wrong information by indicating tha t legal fees included in the factoring charges were for chasing non-payers when they were actually for obtaining advice relating to the block insurance arrangements. The Committee accepts, however, that the generic wording used was not designed to mislead the homeowner and does not consider that it amounts to a breach of Section 2.1 of the Code.
2. The e-mail sent by Mr Reid of the property factor on 11 November 2013, referring to one or two owners having expressed a desire to change factors, nowhere near a majority was sent 2 days before the AGM at which it appears that 11 owners expressed that view. Mr Reid could not have known in advance of the meeting the number that might be of that opinion and, in any event, 11 out of a possible 80 is nowhere near a majority. Accordingly, the Committee finds that this statement does not amount to a breach of Section 2.1 of the Code.
3. The Committee finds that the Written Statement of Services clearly states the association between the Directors of the property factor and Property Response 24 Limited, so does not uphold that element of the complaint under Section 2.1 of the Code.
4. The Committee finds that the statement in the letter of 24 September 2015 to the homeowner from the property factor that the EGM of 31 March 2015 was "chaired and minuted by homeowners", whilst incorrect in that the chairman, Mr Colin Maclean was the husband of a homeowner, was made in good faith, based on the fact that the he had been elected to the committee of the residents' association at the previous AGM. The property factor had no duty to check its records to verify the entitlement of candidates for election. The Committee has seen the Minutes of the AGM held on 24 November 2014 and Mr Maclean's election is recorded in the Minutes of that meeting. The property factor was entitled to accept that he had ostensible authority to act as a member of the committee. Accordingly, the Committee does not uphold this element of the homeowner's complaint under Section 2.1 of the Code.
5. The Committee is satisfied, on the balance of probabilities, that the delay in carrying out repairs to a leaking downpipe was not attributable to a false or misleading statement on the part of the property factor or its Head of Estates. The property factor has accepted that in its letter of 22 April 2015, it could have made clearer the reason for having to revert to the committee of the residents' association, namely to

seek authority to delay carrying out the repair until the scheduled gutter cleaning work was being done, but the Committee accepts that the property factor was unsure as to the exact location of the problem reported by the homeowner. The letter of 22 April 2015 mentions a crack on one downpipe in Block 2 and asks the homeowner to confirm the exact location of where he believed a problem to exist. Accordingly, the Committee does not uphold this element of the homeowner's complaint under Section 2.1 of the Code.

6. The Committee accepts the evidence given by the homeowner, that the problem at the development relating to dampness has taken a very long time to resolve, but is satisfied that it has been a very complex matter and that the property factor has acted reasonably in employing specialists to identify the issue and consulting with homeowners on the best way to proceed. Property factors are not deemed to be experts on construction and the timescale for identifying and remedying the problem is not within the property factor's control. It appears to be a process of elimination and the Committee finds no evidence of failure by the property factor under Sections 2.4, 2.5 or 6.1 of the Code.
7. The Committee finds that the property factor has provided all the information relating to the insurance arrangements that it could reasonably be asked to provide. The Committee has been provided with copies of a large number of documents sent to the homeowner. The homeowner is of the opinion that he could insure his individual flat for less than the propertion of the block insurance premium that he is being charged, but such insurance may not cover the homeowner's share of the common parts of the building and it might be the case that the premium would be considerably altered if the insurance company was made aware that the common parts of the development include both blocks in their entirety and not just a portion of the block in which the homeowner's flat is situated. In any event, the Committee is satisfied from the evidence given by the property factor and not challenged by the homeowner that the homeowners within the development voted in favour of block insurance and that it would take another vote to revert back to individual policies. The Committee is also satisfied from an examination of the Deed of Conditions for the development that all common charges fall to be shared equally amongst all 80 homeowners and that it would not, without unanimous agreement, be possible to split the premium in any other way. Accordingly, the Committee does not uphold the homeowner's complaint that the property factor has breached Sections 5.2 or 6.8 of the Code.
8. The Committee finds that the property factor has not failed in its duty to, on request, show how and why contractors (in this instance the contractor for stair cleaning and gardening services) have been appointed. The evidence led by the property factor and not challemged by the homeowner was that the decision to appoint the husband of one of the homeowners to carry out stair cleaning and gardening work was taken by the residents' association and not by the property factor and that the

increase of 10% in his fees was also approved at an AGM of the residents' association. The papers before the Committee included copies of the contracts with the individual dated 30 September 2008. The Committee also saw evidence that the individual had public liability insurance cover for the work that he was contracted to carry out. The Committee also finds, on the balance of probabilities, that the individual on one occasion changed a light bulb in the development, and that he was not contracted to carry out such work, but the Committee is satisfied that this was a one-off occurrence and is of the view that it does not warrant a finding that the property factor has acted in breach of the Code of Conduct. The Commitee derived some comfort from knowing that the individual had been trained in another post to change light bulbs, although the property factor's evidence was that he was not instructed to do so at the development. The Committee concluded that he had carried out the work on his own initiative and that the property factor would have had no prior knowledge of it. Accordingly, the Committee did not uphold the homeowner's complaint in respect of Sections 6.3 or 6.6 of the Code.

9. The Committee was unable to determine whether or not the homeowner had received the screenshot and note of balances in relation to the maintenance fund and in the absence of evidence to support the contention of either party was unable to uphold the homeowner's complaint in relation to Section 3.5 of the Code of Conduct.
10. The Committee has looked very carefully at all the evidence in relation to the EGM held on 31 March 2015. It finds that the letter calling the meeting enclosed a form of proxy but did not indicate that only proxies using that form would be accepted. The Committee also accepts the evidence given by the property factor that it did not call the meeting. The meeting arose from a decision taken by the residents' association at its AGM on 24 November 2014 and the role of the property factor was merely to facilitate it by sending out the notices and proxy forms and collecting proxies which were sent in. The Committee makes no comment on the conduct of the meeting and the decision of the chairman to accept proxies submitted late by the homeowner and proxies which were not in the form sent out to homeowners, but finds that there was no failure to carry out the property factor's duties.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

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

Appeals

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

"(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee. (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made ... "

Chairperson Signature George Clark Date 4 March 2016