



Decision of the Homeowner Housing Committee issued under Section 19(3) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/16/0088

Re: Flat 5, The Italian Centre, 176 Ingram Street, Glasgow G1 1DN ('the property')

The Parties:

Mr David Harrison, Flat 5, The Italian Centre, 176 Ingram Street, Glasgow G1 1DN and 43 Liffier Road, Plumstead, London, SE18 1AU ('the homeowner')

Speirs Gumley Property Management, 194 Bath Street, Glasgow, G2 4LE ('the property factor')

Homeowner Housing Committee: Martin J. McAllister, legal member and Mary Lyden, housing member (the Committee)

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors, as required by Section 14 of The Property Factors (Scotland) Act 2011 (the 2011 Act).

Determines that, in relation to the homeowner's Application, the factor has not complied with the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors (the Code) and proposes to make the following property factor enforcement order:

The property factor is to pay the sum of £300 to the homeowner in respect of compensation and such compensation is to be credited to the account for service charges that the property factor holds in respect of the homeowner's property. The payment is to be made within twenty eight days of service of the property factor enforcement order.

Background

1. By application dated 20th June 2016 the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the property factor had failed to comply with the Code in relation to the property owned by him being a

flatted property at Flat 5, the Italian Centre, 176 Ingram Street, Glasgow (hereinafter referred to as "the Property"). The specific matters complained about in relation to breach of the Code were breach of Sections relating to Written Statement of Services, Communications and Consultation, Financial Obligations, Debt Recovery, Insurance and Complaints Resolution. A Convener of the Panel, acting under delegated powers, decided to refer the matter to a homeowner housing committee (the Committee) on 5th September 2016.

2. The Committee issued a Notice of Direction dated 6th October 2016. The Direction required the homeowner to lodge a skeleton argument which summarised his position. The Direction required the property factor to lodge certain items including all correspondence which it had sent to the homeowner from 17th October 2014 to date, copies of written statement of services and complaints procedure and information when these two latter items had been sent to the homeowner. The property factor was also required to lodge a copy of any apportioned factoring account which it had issued as a result of the change of ownership of the Property on 17th October 2014.

3. The homeowner's response to the Direction was to send an email dated 17th October 2016 which stated a number of matters. The significant points made by the homeowner were that, when he first purchased the flat, he had been told that an agent called Speirs Gumley was responsible for buildings insurance, that he should contact them for more information, and that shortly after completing the purchase he had advised them of his ownership. He said that he left details with someone in their office and expected that someone would be in touch. The Homeowner's email then states that two letters were sent to him by Speirs Gumley and their solicitors in May 2016 and that they had been sent to an address he had moved out of. He said that he had been told that, if he did not pay the money due to Speirs Gumley, he would be sued. He said that he had been told by Speirs Gumley that they had not been advised of the change of ownership of the property and that he had then been told that they had found a letter from the seller's solicitors advising of the sale. Mr Harrison stated that he had been told by Speirs Gumley that his own solicitors should have contacted them to let them know of his purchase. The homeowner said he had not been provided with details of the services provided by Speirs Gumley and that he believed that the property factor had not followed the Code in so many levels, that the property factor had been venomous in dealings with him and that he is now under severe financial stress due to having to pay £400 a month in respect of arrears owed by him. Mr Harrison stated that he would want the property factor to forgive all or a significant portion of the "property management fee expenses."

The homeowner also stated that he had not been kept aware of the proposals to renew the courtyard area outside of his property.

4. The property factor's response to the Notice of Direction was to send a letter dated 28th October 2016 together with forty seven productions and a timeline.

On the day prior to the Hearing the Property Factor lodged copies of the two Deeds of Condition relevant to the Development. The homeowner sent an email stating that he had never previously seen the documents .

5. A Hearing was fixed for 9th November 2016.

Hearing

6. The homeowner was not in attendance. Four representatives of the property factor attended the Hearing and provided evidence: Mr Ian Friel, managing director, Mr John Paul Longmuir, Senior Commercial Management Surveyor, Mr Gary MacDonald, Property Manager and Ms Jill Armstrong, Head of Commercial Management Department.

Preliminary Matters

7. Mr Friel indicated that he wanted to raise some preliminary matters.

7.1. Mr Friel requested that the Committee approve the late lodging of the Deeds of Condition. These had been lodged by the property factor on the day prior to the hearing but Mr Friel considered that it was appropriate that they should be before the committee.

The Committee had no issue with this.

7.2. Mr Friel asked that he be allowed to use an iPad during the Hearing so that he could demonstrate the Speirs Gumley website.

The Committee had no issue with this.

7.3. Mr Friel indicated that he did not believe that the complaints process had been properly followed through and exhausted. He said that the complaint had not been addressed to the appropriate people in Speirs Gumley. Mr Friel said that the homeowner had made the application on the 20th June 2016 and that he believed that this was the very early stages of Speirs Gumley interacting with him. Mr Friel did indicate that he was perhaps arguing against himself because he said that it would be in the interest of the property factor for matters to be resolved. The Committee noted the terms of the email exchanges between the homeowner and Mr Friel of September/ October 2016 where Mr Friel invites the homeowner to allow him to try and resolve his complaint but the homeowner indicates that he wants the matter to be dealt with by the Panel.

The Committee decided to delay consideration of this particular point until evidence had been heard.

Concessions Made by the Property Factor

8. There were certain matters helpfully conceded by the property factor at the start of the hearing or during the course of it. It is appropriate to set these out.

8.1. The written statement of services was not issued to the homeowner and other proprietors in the Italian Centre until 4th November 2016

8.2. Prior to the Hearing, the homeowner and other proprietors in the Italian Centre had not been sent details of commission paid to the Property Factor in respect of buildings insurance.

8.3. A copy of the complaints procedure issued to the homeowner made no reference to possibility of the homeowner making an application to the homeowners housing panel.

8.4. Reference contained within the property factor's representations to having contact with the homeowner's solicitors is incorrect. There was contact with Messrs Burness Paull LLP and not Conveyancing Direct who were the solicitors acting for the homeowner in the purchase of the Property.

9. There are a number of matters which appear to the Committee not to be in dispute and it is considered helpful to set these out. These matters are either contained within the documents lodged by the homeowner or the Property Factor or given in oral evidence.

9.1. The Italian Centre is a development well known in Glasgow. It is a mixed development with retail units and it has forty flats on the upper floors. The development has a courtyard area which is open for public access during the day. There is a caretaker and cleaning staff paid for by the proprietors. There are common stairwells, lifts, external lighting, statues and artworks which require to be maintained by the proprietors. There are communal bin stores which are managed by the property factor. The property factor manages the common repairs for the development.

9.2. The homeowner purchased the property on 17th October 2014 from Grouss Residential Investment Partnership LLP.

9.3. On 13th October 2014 Messrs Burness Paul LLP, solicitors for the seller, wrote a letter to the property factor which *inter alia* stated that the sale to the homeowner was due to settle on 17th October 2014. The letter gave the name of the homeowner and his solicitors.

9.4. In response to the letter of 13th October 2014 Collette Muldoon of the property factors emailed Messrs Burness Paull LLP on 16th October 2014 giving details of the block insurance policy and policy wording, advising of the fact that the courtyard refurbishment was currently out to tender and that the estimated figure for the work was £250,000. The email also gave details of the apportionments of the services charge and the insurance premium and advised that the seller would receive refunds if the apportionment had not been dealt with at the sale.

9.5. On 22nd August 2014 Burness Paull had previously sent a similar letter to the property factor which stated that the sale was to occur on 5th September 2014. Following upon that letter there were internal emails amongst staff of the property factor making enquires with regard to whether or not the sale had settled on 5th September 2015.

9.6. On 2nd January 2015 the homeowner emailed the property factor intimating that there was a roof leak causing dampness in a bedroom.

9.7. Grouss Residential Investment Partnership LLP continued to make payments to the property factor in respect of common charges and service charges until April 2016.

9.8. There is an ongoing project at the Italian Centre for upgrade and repair of the courtyard area. The co proprietors of the Italian Centre are responsible for payment of these repairs.

9.9. On 17th May 2016 the Property Factor wrote to the homeowner at an address in London where he no longer resided. The letter stated *inter alia* "it has recently been brought to our attention that you purchased the above property at the Italian Centre in Glasgow." The Letter provided details of the sums sought from the homeowner in respect of the apportioned service charges, insurance and special levy for the courtyard works.

9.10. On 14th June 2016 Messrs BTO, solicitors for the property factor wrote to the homeowner at the same address seeking payment of a sum of £5,275.72. The letter gave a deadline for payment or alternative acceptable proposals for payment by instalments failing which it intimated that court action would be raised.

9.11. On 16th June 2016 the homeowner emailed the property factor seeking information and requesting that they ask BTO to stop contacting him.

9.12 Between 17th October 2014 and June 2016 the homeowner made no payment to the property factor in respect of buildings insurance.

10 Oral Evidence

10.1 Mr Friel explained that the Italian Centre contract had been managed by Speirs Gumley for many years. Mr Longmuir said that the commercial owners had sixty percent of the voting rights and the residential owners had forty percent.

10.2 Mr Friel said that Speirs Gumley had two departments which dealt with factoring matters. One department dealt with residential factoring and the other with commercial factoring. He said that the Italian Centre contract was managed by the commercial department. Ms Armstrong explained that the apportionment and allocation of responsibility amongst the owners was extremely complex. Mr Friel and Ms Armstrong said that, in commercial properties, they would not carry out an apportionment until they had received confirmation that a sale had settled. In reference to the letter of Burness Paull of 13th October 2014 Mr Friel said that he would have expected further confirmation that the sale had settled. Mr Friel said that he believed this to be good practice in residential factoring but he accepted that many solicitors do not do this and that the apportionments and change of ownership proceed in such cases. Ms Armstrong stressed that in commercial properties she would not undertake the apportionment and change of the records until she had received confirmation that a sale had settled.

10.4 Mr Friel accepted that a written statement of services had not been sent to any of the residential proprietors (subsequent to the Hearing the property factor sent the Committee a copy of a letter sent to residential proprietors on 4th November 2016

which enclosed a written statement of services). Mr Friel said that the contract for the Italian Centre was managed in the way that the property factor dealt with commercial factoring contracts and that this was because of the particular nature of the development. He readily conceded that the property factor had been wrong in not applying the terms of the 2011 Act to its management of the Italian Centre. The property factor conceded that this meant that written statements of services had not been issued and also that, in respect of insurance matters, no disclosure of commission had been made to the residential proprietors which he accepted was in breach of the Code. (Subsequent to the Hearing the property factor sent the Committee a copy of a letter to the homeowner, dated 11th November 2016, in which the property factor explained that it had come to its attention that the insurance certificate did not disclose commission paid. The letter was accompanied by a schedule setting out the levels of commission.)

10.5 Mr Friel explained that DJ Alexander were agents for Grouss Residential Investment Partnership LLP (Grouss) and that the property factor dealt with the agents rather than Grouss. DJ Alexander paid sums due in October 2014 and then continued to pay until April 2016. He said that it was not unusual for a property factor to be told that a sale was proceeding and then for it not to settle. He said that in the very unusual circumstances of this case Grouss' agents continued to make payment of the service charges.

10.6 Mr Friel referred to the email of 16th October 2016 from Speirs Gumley to Burness Paull LLP (Grouss' solicitors). He said that he would have expected that email or its contents to have been passed to Conveyancing Direct which was the firm of solicitors acting for the homeowner in the purchase.

10.7 Mr Friel said that when it came to light that Grouss no longer owned the property a title search was done and the homeowner was identified as the owner. The property factor wrote its letter of 14th June 2016 to the homeowner at the address that was shown on the Title Sheet. The subsequent letter by BTO solicitors which sought payment from the homeowner was sent to the same address. Mr Friel said that, as soon as the property factor was made aware of the situation when the homeowner got in touch with them, BTO was instructed to do nothing further. He said that no legal action had been raised.

10.8 Mr Friel said that arrangements were made with the homeowner to pay the arrears. He said that he was surprised that the homeowner made the application to the HOHP on 20th June 2016 because at that time his staff were still engaging with him with regard to the issues. Mr MacDonald said that he was also surprised because, at all times in his dealing with the homeowner, he considered matters to be dealt with on a cordial basis by both parties.

10.9 Mr Friel said that the homeowner was not an owner occupier and that the property was tenanted.

10.10 Mr Friel said that, as far as he was concerned, it was reasonable to assume that the homeowner knew the identity of the factor and also that he would have some liability for common service charges and repairs. He believed that the homeowner's

solicitors should have sent him details of the title which would have included the Deeds of Condition. He said that the unique nature of the Italian Centre is such that the title conditions are quite restrictive. He cited, as an example, a restriction with regard to curtains. He said that he also believed that the homeowner's solicitors would have been sent the details supplied to Messrs Burness Paull LLP by email on 16th October 2014. This email gave details of the identity of the property factor, the apportionment of charges and insurance premium and reference to the courtyard works.

10.11 Mr Friel said that the homeowner should have expected to pay service charges and insurance premia and that he would have expected him to set money aside for the liability and also to make enquiry if he were not receiving a bills for his share of charges.

10.12 Mr Friel referred to the Speirs Gumley's website and he said that he believed that the homeowner had used the website to report a leak. He referred to an email of the homeowner dated 2nd January 2015 with the subject matter "Report and Repair." (production 7 of the property factor) He explained that the email had been generated from the website. The Homeowner stated in the email "Leak within the roof which is causing damp within a bedroom below on the top floor of the flat. Please could you access the roof via the staircase and advise what the issue is and when it can be fixed? Many thanks, David"

The email states "This email was sent from REPORT A REPAIR contact form on Speirs Gumley (<http://www.speirsgumley.com>) "

10.13 Mr Friel said that the homeowner knew the identity of the property factor and that he considered that it is a duty of any solicitor acting for a purchaser to ensure that he/she understands the repairing obligations that come with ownership and that are contained within the title.

10.14 Mr Friel said that Speirs Gumley did not consider that the homeowner had made a complaint. Ms Armstrong agreed with this and Mr Longmuir said that what he thought the homeowner was looking for was information and that he provided this. He said that he provided copies of meetings of the co proprietors and copies of various accounts regarding works to the Italian Centre.

10.15 Mr Friel said that agreement had been reached with the homeowner with regard to monthly instalments to deal with the arrears and ongoing liabilities. He said that this had been agreed at £400 per month and that the homeowner had made payment in August and September but no payment in October. Mr Friel said that the homeowner's share of the sum paid to Speirs Gumley in respect of the management fee is £150 per annum.

10.16 Mr Friel said that, when the homeowner accessed the Speirs Gumley website to report the repair, he would have seen other options available to him including details about how to make a complaint. Mr Friel conceded that the copy of the complaints procedure sent to the homeowner on 18th July 2016 after he had requested it made no reference to the homeowner housing panel and that this was because the homeowner had been sent the version relating to commercial

properties. Mr Friel said that, in other respects, it gave the same pathway for complaints. Mr Friel said that he did not consider that the homeowner had flagged the matter up as a complaint. Mr Friel conceded that the homeowner's email of 12th July 2016 (property factor's production 42) should have alerted the property factor to a possible complaint. This email stated *inter alia* "My main complaint has remained unresolved and although I am happy we have come to a payment agreement to avoid Speirs Gumley pursuing legal action against me I feel that Speirs Gumley have violated several duties with regard to the Code of Conduct for Property Factors; which has left me financially much worse off and under a lot of stress. Please find attached a formal notification of this....."

10.17 Mr Friel said that the meetings of owners would discuss such matters as insurance including possible revaluation of properties and would also cover such matters as debt recovery. He said that the normal procedure for debt recovery in the Italian Centre is for a letter to be written to the debtor and , if no payment is made, a letter is sent by solicitors one month after the original letter.

10.18 Mr Friel said that lessons had been learned and that any management contracts where there are residential properties were now being dealt with differently.

11. Homeowner's Position with regard to the application

The homeowner's position with regard to the application is set out in the application form, his email of 17th October 2016 and his email of 8th November 2016.

In summary, he says that he has never seen the Deeds of Condition lodged by the property factor, that he was aware when he bought the property that an agent called Speirs Gumley was responsible for buildings insurance and that he should contact them for more information. The homeowner's position is that he made such contact, left his details and that no one got in touch with him. He said that the next contact was in May 2016 when he received letters sent to an address he had moved from which sought payment "in relation to property management fees." The homeowner said that he had tried his best "to find out about the services" when he moved in and that he was being threatened with legal action. The homeowner said that he had not been provided with information requested from the property factor. He also said that he had not had the opportunity to vote on the works being carried out to the courtyard and that the payments he was requiring to make were causing him to be under financial stress.

12. The Committee considered the alleged breaches of the Code as contained in the application:

12.1 1. Written Statement of Services

The written statement of services should be provided to any new homeowner within four weeks of the property factor being made aware of a change of ownership.

The written statement of Services should set out:

- A. Authority to Act*
- B. Services provided*

- C. *Financial and Charging Arrangements*
- D. *Communication Arrangements*
- E. *Declaration of Interest*
- F. *How to End the Arrangement.*

The Committee examined the evidence. The property factor had issued no written statement of services to the homeowner because its position was that it did not know that ownership had transferred. The Committee considered that there was a more fundamental point and that is that the property factor had issued no written statement of services to any proprietor in the Italian Centre because it was dealing with management of the Centre as a commercial development rather than a residential development. The property factor conceded this and had rectified the situation by issuing written statements of services.

In this regard the Committee found that the property factor had not complied with the Code.

12.2 2. Communication and Consultation

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

The Committee considered carefully the documents produced to it and found no evidence of false or misleading information. The property factor had indicated that it had contact with the homeowner's solicitors when it should have stated that the contact was with the seller's solicitors but the Committee did not consider this to amount to false or misleading information but rather an error on the part of the property factor.

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

The homeowner states that replies made by the property are "venomous." The property factor did write seeking payment and thereafter a solicitor instructed by the property factor wrote to the homeowner seeking payment and making reference to possible court action.

The Committee had the advantage of seeing a number of emails between the homeowner and the property factor and did not consider any communications by the property factor to be venomous. The email exchanges were appropriate by both parties and polite. Both parties stated their position in clear terms but the Committee found nothing abusive or intimidating on the part of the property factor.

12.3 Financial Obligations

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 of inspection or copying. You may*

impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

The Committee considered that the homeowner had not been provided with a detailed financial break down in terms of the Code and this was because the property factor had not noted the change in ownership. Once the property factor had acknowledged the homeowner as owning the Property, it had provided information as evidenced by the productions lodged by the property factor.

What the Committee had to determine was whether the property factor should have noted the change of ownership and, on balance, for reasons stated later in this Decision, the Committee found that the property factor should have noted the change of ownership and that in a somewhat narrow sense had not complied with the Code in this regard.

12.4. Debt Recovery

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

4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive.

4.4 You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations.

4.5 You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely written reminders to inform individual homeowners of any amounts outstanding.

4.6 You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of data protection legislation).

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

4.9 When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.

The Committee decided to examine together all the matters concerning debt recovery rather than deal with them individually. It had some difficulty in identifying what breaches of the Code the homeowner was referring to because the homeowner had not provided much evidence in this regard but his position appeared to be that the property factor had behaved inappropriately in trying to recover funds from him and that Messrs BTO had behaved improperly in its letter to him. The property factor had stated what its procedure was in relation to debt- that it is reported to the

owners. It also stated that in terms of the Deed of Conditions there is reference to debt recovery.

The Committee had no evidence of the property factor making any charges in relation to late payment.

The Committee noted the terms of the Minutes of meetings of the owners which set out any issues with regard to non payment by owners.

The Committee found no evidence that the property factor did not monitor payments from owners and it was clear that when it recognised the homeowner as an owner that it had written to him.

The Minutes of the meetings of owners show that owners are kept advised of payment issues with other owners.

The property factor had not taken legal action against the homeowner.

The Committee did not consider that any communication that had emanated from the property factor or its solicitors was intimidating or threatening.

12.5 5. Insurance

5.2 You must 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 company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.

The details of the insurance cover was provided to Messrs Burness Paull LLP at the time of the sale. The Committee considered that a solicitor acting for a purchaser would not have settled the transaction unless he/she had sight of such insurance details from the seller's solicitors. The Committee accepted the evidence of the property factor that such matters were dealt with at meetings of the proprietors.

5.3 You must disclose to homeowners in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance.

The Committee had no difficulty in finding that the property factor had not complied with the Code in this regard. The Property factor had conceded that commission details had not been provided to homeowners and had rectified this omission on 11th November 2016.

5.8 You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the majority of homeowners in the group.

The Committee accepted the evidence of the property factor in this regard.

12.6 Complaints

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 Committee had some difficulty in coming to a view on this matter. The property factor's position is that the in- house complaints procedure has not been exhausted and the homeowner's position is that he does not want to take the complaint any further with the property factor but wants the matter dealt with by the homeowner housing panel and the property factor wants the complaints process to progress because it does not consider that it has been exhausted. On balance the Committee found no evidence of breach of the Code in this regard.

13. Discussion

The Committee considered that the issues surrounding the sale of the Property and its consequences were relatively straightforward if somewhat unusual. The normal process had been followed in that a seller's solicitors had written to the property factor advising of a sale and seeking information on apportionment of charges and insurance. This had been provided. The property factor's position is that it had not received any confirmation that the sale had actually taken place and that, because The Italian Centre was dealt with by its commercial department, no change in their records would have occurred until that confirmation had been received. Mr Friel conceded that in the residential department such confirmation often did not occur. The Committee considered that the letter sent by the seller's solicitors would have been sufficient to at least alert the property factor that a change of ownership was imminent. It also noted that in August 2014 a similar letter had been received and that subsequent to that there had been email exchanges between staff of the property factor to ascertain whether or not settlement had occurred. The Committee also took the view that if the property factor had considered that it was so important to have confirmation of actual settlement before changing records and carrying out an apportionment it could have included an appropriate sentence in its email of 16th October 2014 which made it clear that no changes to the records or actual apportionments would be made before confirmation of settlement had been received. It is also significant that the property factor responded to an email from the homeowner in January 2015 with regard to a repair. The Committee accepted that in such circumstances a competent property factor's priority would be to deal with the repair but it did consider that there should have been some cross checking to ensure that the intimation had come from an owner.

The most unusual aspect of this case is that the previous owner continued to pay quite substantial payments for management charges for eighteen months after the sale. The property factor clearly would have been alerted had the original owner stopped all payments after the sale.

The Committee found it surprising that the property factor dealt with the Italian Centre as a commercial development rather than residential. It considered that it was for the property factor to decide how it would manage the particular contract but it was a significant failing that the property factor did not comply with the terms of the 2011 Act in respect of forty residential units.

The Committee had difficulty in accepting that the homeowner knew little or nothing of his obligations. The Italian Centre has a number of aspects to it which any purchaser would recognise as being common. The homeowner's position is that he knew Speirs Gumley dealt with the insurance and that he left his details with them after he bought in October 2014 but that no one had got in touch with him. The Committee considered it unusual that the homeowner seemed content to leave it at that without doing something to ensure that the property was insured. He did nothing about payment of the insurance premium until he was contacted by the property factor in May/ June 2016. If the homeowner had made a telephone call to the property factor after buying the Property, the Committee considered it reasonable for him to have pursued the matter had he not heard anything in response to that call. The Committee considered it rather disingenuous of the homeowner to represent that he thought that Speirs Gumley dealt only with the insurance. In January 2015 he had contacted Speirs Gumley about a repair.

The Committee consider it appropriate to set out what it understands the role of a solicitor acting for a client in the purchase of a flat such as the Property. The solicitor would receive the Title of the property and would usually provide a copy to the client together with an explanation of the title conditions and obligations. In this case the title would include the Deeds of Conditions. It is entirely possible that the homeowner has not seen the Deeds of Condition in the form as lodged by the property factor because these now will be incorporated into the Land Certificate/ Title Sheet and it would be surprising if the homeowner's solicitor had not provided him with a copy. The solicitor acting for a purchaser would also ascertain the position regarding factoring, apportionment of charges and insurance. This information would be given to the client. The Committee thought it unreasonable that any purchaser in a development such as the Italian Centre would not have factored into any decision to purchase the fact that there would be service charges. Such charges would have been disclosed in the Property Questionnaire which forms part of the Home Report which any seller is obliged to provide.

The Committee considered that the property factor had not complied with the sections of the Code as referred to in the Decision and had not done so during the homeowner's ownership of the Property. The Committee considered that the homeowner should be compensated in respect of this and that management charges which had been charged to the homeowner should be refunded and proposes to make a property factor enforcement order requiring that the property factor pay

compensation to the homeowner of £300. It determined that such compensation should be paid by the property factor by crediting the account that the homeowner has with the property factor in respect of service charges.

Prior to coming to its decision the Committee considered the preliminary matter raised by the property factor in relation to whether or not the complaints process had been exhausted. Whilst it considered that the property factor may have valid point, the written statement of services had only been sent to the homeowner on 4th November 2016. The Committee considered that the property factor could do nothing to change the position that it had not complied with the Code since the homeowner purchased the property and that it was in the interest of both parties to have the matter resolved now rather than re engage in a complaints process.

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...."

Regulation 26 (3) indicates that the decision is made "by giving notice of the decision" to the parties.

Chairman of Committee

Date 24th November 2016

Martin J. McAllister