



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

Reference: HOHP/PF/13/0326

**Re: Property at Fidra Avenue, Burntisland, Fife, KY3 0AZ ("the Property")**

**The Parties:-**

**Mr Jonathan Law, 16 Fidra Avenue, Burntisland, Fife, KY3 0AZ ("the Homeowner")**

**Collinswell Land Management Limited, Collinswell House, Aberdour Road, Burntisland, Fife, KY3 0AE ("the Factors")**

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

**Committee Members:**

Maurice O'Carroll (Chairman)  
Carolyn Hirst (Housing Member)

**Decision of the Committee**

The Factors have failed in their duty under s 14(5) of the 2011 Act to comply with the terms of Section 1,1.b of the Code of Conduct for Property Factors at parts A, B, C and E.

The decision is unanimous.

**Background**

1. By application dated 6 December 2013, the Homeowner applied to the Homeowner Housing Panel ("HOHP") for a determination of whether the Factors had failed to comply with the duties set out in sections 1, parts A, B, C and E of the Code of Conduct imposed by section 14(5) of the 2011 Act.
2. Notices of referral to the Committee were sent to the parties following a Minute of Decision by the Vice President of HOHP dated 20 August 2014. In response to the notices of referral, the Homeowner indicated that he wished the application to be dealt with by way of an oral hearing. The Factors for their part indicated that they did not wish to attend an oral hearing if one were to be fixed.
3. A hearing in relation to the application was held on 23 February 2015 within George House, George Street, Edinburgh. The Homeowner appeared on his own behalf without representation, accompanied by his wife as an observer. She

did not take any part in the proceedings before the Committee. The Factors did not appear and were not represented.

4. Prior to the Hearing a Committee of the Homeowner Housing Panel issued a Direction dated 12 November 2014 which required the Homeowner to lodge the title deeds to the Property which was duly complied with. The Direction also stipulated that the hearing would be concerned solely with the alleged failure of the Factors to comply with Section 1, parts A, B, C and E of the Code in respect of the Written Statement of Services ("WSoS") produced by them.
5. Under cover of a letter dated 1 September 2014, the Factors sent an undated copy of their WSoS to the Homeowner Housing Panel which they stated to have been drafted by their legal representatives and which they believed to be fully compliant with Section 1 of the Code. That WSoS formed the basis of the Committee's consideration of the Homeowner's application, although it had another undated version on file in substantially similar terms.

#### **Committee Findings**

The Committee made the following findings in fact pursuant to Regulation 26(2)(b)(i) of the 2012 Regulations:

6. The Homeowner is Mr Jonathan Law who resides at the address given above with his wife. He is the registered proprietor of 16 Fidra Avenue, Burntisland under Title Number FFE86197. The Homeowner and his wife have lived at that address since they purchased it in July 2007.
7. The Property is part of a large development at Collinswell Park, Burntisland, Fife which at the time of the hearing comprised 339 separate units. It can be seen from the Title Deeds that the development was originally produced by 4 separate developers, namely Stewart Milne Group, Collinswell Land Limited, George Wimpey East Scotland Limited and Mr Alexander Williamson. The latter owns the Common Ground (referred to as "Area 4" and as shown on the relative plan) with which this application is concerned. He is also the principal of the Factors, a Director of that Company and a Director of its sister company, Collinswell Land Limited which owns Area 2 of the development, as defined.
8. The Factor is responsible for managing and maintaining the common parts of the land on the development and the 339 owners contribute towards the maintenance cost of the common parts.
9. The Factor was registered as such on 6 March 2013 and its duties in terms of the Code arise from that date.
10. The version of the WSoS considered by the Committee makes reference to a meeting (presumably of the residents of the development) held on 4 December 2013. The Committee was not provided with any evidence that the WSoS was

actually supplied to the Homeowner as required by the Code. The Homeowner could not recollect receiving that document at any point prior to the hearing.

11. Despite repeated complaints to the Factors that their WSoS was not Code compliant, the Factors have refused or delayed to address that complaint to the satisfaction of the Homeowner.
12. The Committee found the evidence of the Homeowner to be wholly credible and reliable.

#### **Discussion of evidence and alleged breaches of duty**

##### *Section 1 of the Code*

13. Section 1 of the Code requires Factors to provide each homeowner with a WSoS setting out the terms of service and delivery standards in a simple and transparent way. It provides greater specification as to what the WSoS should set out in the ensuing paragraphs. In an email to the Factors dated 12 November 2013, the Homeowner correctly identified the relevant parts of the Code with which this application is concerned, and in doing so, notified them of his concerns. As the common parts of the development are owned by Mr Alexander Williamson, they are not owned in common by the proprietors of the development. Accordingly, the relevant requirements of the Code are as set out in Section 1.1b "Alternative standards for situations where the land is owned by a land maintenance company or a party other than the group of homeowners." All references to section 1 of the Code are in relation to this part of it. The ensuing parts of that section are discussed in turn below which should be read in conjunction with the full terms of the Code itself.

##### *Part A, Authority to Act*

14. The legal basis of the arrangement between the factor and the homeowner is not set out in the WSoS. Under the heading "Authority to Act" the WSoS makes reference to an unspecified meeting on 4 December 2013 and the result of an unspecified vote which does not contain the necessary information. The section should make specific reference (including title number and date of registration) to the relevant Title Deeds and the Deed of Conditions under which authority to act is provided. Further, it should also provide a description of the use and location of the area of land to be maintained, including a map. Section 1 at parts A.a and A.b is not complied with.

##### *Part B, Services Provided*

15. Both headings "Services" and "Additional Services" within the WSoS make reference to other documents. In order to comply with the aims of the Code, this provision and, as a general rule, the others referred to below ought to be self-contained. That is to say, that a reasonable reader ought to be able to understand what services will be provided by reading the document itself, i.e. the WSoS, without having to refer to another document for it to make sense.

16. The section should state all of the services that will be provided and should include the minimum service delivery standards that can be expected and the target times for taking action in response to requests for both routine and emergency repairs. Any work or services which are required by the property titles should be specifically mentioned. In any event, "the Maintenance Schedule" referred to in the WSoS in fact amounted to a list of operations as contained with the June 2011 newsletter, rather than being specifically part of the WSoS. Moreover, the maintenance schedule is unspecific and does not address the requirements mentioned in the preceding sentence of this paragraph. Grass cutting, which is a seasonal task is mentioned without stating the months in which it would be carried out. Others are simply stated as being "as required" without mentioning service standards or response times following requests for action to be taken. Accordingly, section 1.B.c is not complied with.

*Part C, Financial and Charging Arrangements*

17. Part C of section 1 of the Code is divided into 7 further parts. These are summarised below with the Committee findings in relation to each one as follows:
- d. how many properties contribute towards maintenance costs for the area of land maintained.** The WSoS does not contain this information.
  - e. confirmation that you have a debt recovery procedure which is available on request.** This requirement is covered under the heading "Debt Management Policy" within the WSoS.
  - f. any arrangements relating to payment towards a floating fund.** The WSoS does not contain any information whatsoever in relation to a floating fund.
  - g. any arrangements for funds for specific projects or cyclical maintenance.** The WSoS does not contain this information or make any such provision.
  - h. any services or works that may incur additional fees and charges.** Under the heading "Additional Services" within the WSoS it is stated that the Factors do not provide any additional services other than those stated in the Deed of Conditions. Anything within the Deed of Conditions which constitutes additional services which may incur additional fees and charges should be mentioned specifically in the WSoS. As observed above, it is not reasonable to expect all homeowners to consult the title deeds to their property in order to establish which services are covered under this heading. Any such services should be apparent from a reading of the WSoS itself.
  - i. how often you will bill homeowners and by what methods they will receive their bills.** The annual maintenance cost of £175 per owner is mentioned in the WSoS, together with the fact that charges are rendered quarterly and the means of payment. The method of how bills are received by homeowners is not, however, mentioned.
  - j. how you will collect payments.** This requirement is covered under the heading "Costs and Billing" within the WSoS.
- Accordingly, section 1.C at parts d, f, g, h and i. is not complied with.

*Part E, Declaration of Interest*

18. As noted above, Mr Alexander Williamson is the principal of the Factors (much of the correspondence on behalf of the Factors is issued in his name), a Director of that Company and a Director of its sister company, Collinwell Land Limited which owns Area 2 of the development. Further, he is the owner of the common parts of the development as revealed in the title deeds. As such, the Committee considered that he had a beneficial interest in the decisions taken by the Factors, whether directly as owner of the common parts, or indirectly in his capacity as director of the Factors and Collinwell Land Limited. In the view of the Committee, that interest ought to have been disclosed in the WSoS.
19. Incidentally, the Committee noted that in a letter in relation to a meeting due to take place on 3 November 2014, supplied by the Homeowner under cover of a letter dated 18 November 2014, it is stated that CLML, that is Collinwell Land Management Limited, the Factors, own the landscaped land (understood to be the common areas). That is an inaccurate statement and contrary to section 2.1 of the Code. However, that section of the Code is not part of the present application and the Committee makes no finding in respect of it. If true, that statement would have given rise to a very clear indication of an interest which ought to have been declared in terms of Part E of Section 1.1b of the Code. However, even although the statement is incorrect, there was still a requirement to disclose an interest within the WSoS for the reasons noted above.
20. The Committee also notes that in terms of a decision by another Committee in relation to Case HOHP/PF/13/0328 it was found that there had been no failure to disclose an interest given that Collinwell Land Limited is a separate legal entity from the Factors. However, that decision is not binding on the present Committee and, with respect, the present Committee does not agree with that particular finding in the circumstances of the present case. Accordingly, if finds that section 1.1b at part E.n has not been complied with.

**Decision**

21. In all of the circumstances narrated above, the Committee finds that the Factors have failed to comply with their property factor's duties in terms of s 14(5) of the Act in relation to Section 1.1b of the Code at parts A, B, C and E, specifically at parts a, b, c, d, f, g, h, i and n.

The Committee therefore proposes to issue a Property Factor Enforcement Notice in terms of s 19 of the Act, which is provided separately.

**Appeals**

22. The parties' attention is drawn to the terms of s 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..."

**Signed**

M O'Carroll  
Chairperson

**Date** 3 March 2015