



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 ref: HOHP/PF/16/1/0032

Re: 1/9 Lochinvar Drive, Corinthian Quay, Edinburgh EH5 1GJ (the property)

The Parties:

Mrs Samantha Gordon, 11 Monks Meadow, Prestonpans EH32 9GP (the homeowner)

Dunedin Canmore Enterprises, 8 New Mart Road, Edinburgh EH14 1RL (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: Sarah O'Neill (Chairperson), David Hughes-Hallett (Housing member)

Decision of the committee

The committee determines that the property factor has not failed to carry out its property factor's duties as defined in section 17 (5) of the Act.

The committee does, however, make a number of observations in its decision about issues which it considers may have potentially given the homeowner cause for complaint under the code of conduct for property factors.

The committee's decision is unanimous.

Background

1. By application received on 23 March 2016, the homeowner applied to the Homeowner Housing Panel ('the panel') to determine whether the property factor had failed to comply with its duties under the Act. In her application form, the homeowner complained that the factor had failed to carry out the property factor's duties as defined in section 17(5) of the Act.
2. She enclosed with her application form copies of the following:
 - Emails to the panel dated 5 January and 16 March 2016.

- A ‘timeline of events’ produced by the homeowner relating to her complaints, supported by various emails between her and Dunedin Canmore Property Management (DCPM) / Wheatley Group dated between 14 January 2014 and 23 October 2015.
 - Copy ‘letter of introduction’ from the property factor to the homeowner and her now husband dated 30 November 2012.
3. On 11 April 2016, the homeowner wrote to DCPM by email and letter, notifying it why she believed it had failed to carry out its property factor’s duties in terms of section 17(5) of the Act. On 18 April, a copy of DCPM’s written statement of services was received from the homeowner.
 4. On 20 June 2016, the Convener with delegated powers under section 96 of the Housing (Scotland) Act 2014 and section 16(8) of the Act issued a minute of decision to both parties, stating that she considered that in terms of section 18(3) of the Act there was no longer a reasonable prospect of the dispute being resolved at a later date; that she had considered the application paperwork submitted by the homeowner, comprising documents received in the period of 23 March to 8 June 2016; and intimating her decision to refer the application to a panel committee for determination. On 30 June 2016, the President issued a notice of referral and hearing to both parties, advising that a hearing would be held on 31 August 2016, and requesting written representations by 21 July 2016.
 5. Written representations were received from the property factor on 25 July. On 26 July, written representations were received from the homeowner, in which she advised that she would be away on holiday on the proposed hearing date, and requested that a new hearing date be fixed. On 2 August, the committee issued a direction to the parties, advising that the hearing date would be postponed in light of the homeowner’s written representations, and a new hearing date would be fixed. A new hearing date was subsequently fixed for 29 September 2016.
 6. On 19 August, the committee issued a second direction to the parties. In this direction, the committee set out a list summarising what it believed the homeowner’s complaints to be; required the homeowner to confirm this and to provide a variety of further information; and required the property factor to provide some further information. The parties were required to respond to the direction within 21 days of receipt. Responses were received from the property factor on 24 August and from the homeowner on 26 August.

The hearing

7. A hearing took place before the committee on 29 September 2016 at Riverside House, 502 Gorgie Road, Edinburgh EH11 3AF. The homeowner represented herself and gave evidence on her own behalf. The property factor was represented by Alison McDiarmid, Factoring Services Director, Wheatley Group; Scott Hardie, Complaints and Member Services Manager, Wheatley Group; and Chris Lyon, Factoring Services Team Leader, Dunedin Canmore Property Management, who gave evidence on its behalf. Neither party called any other witnesses to give evidence on their behalf.

Preliminary issues

8. Firstly, the committee chairperson noted that there were two separate property factors registered to the same address, namely Dunedin Canmore Enterprise Limited (DCE) and Dunedin Canmore Housing Association Limited (DCHA). She asked the property factor to clarify 1) which was the registered property factor responsible for factoring the development at Corinthian Quay, and 2) the nature of the relationship between this property factor and both DCPM and the Wheatley Group.
9. Ms McDiarmid confirmed that the registered property factor was in fact DCE, and that DCPM was the factoring agent which carried out the factoring role on its behalf. The committee chair pointed out that this was contrary to what was stated in the property factor's written representations of 21 July, which said that DCHA was the registered property factor, on behalf of whom DCPM carried out the factoring role. Ms McDiarmid stated that this was incorrect and that DCE was the registered factor. She also confirmed that DCE had become a subsidiary of the Wheatley Group in April 2015.
10. Secondly, the committee chair reiterated to the homeowner that, as she had been previously advised in correspondence from the panel, the committee was unable to consider issues of alleged negligence, and that this was a matter for the sheriff court.

The homeowner's complaints

11. The homeowner had raised a number of separate, but related complaints, regarding various alleged failures to carry out the property factor's duties. All of these related to the common buildings insurance arranged by the property factor on behalf of homeowners within the development, in line with the Deed of Conditions. The complaints related to the insurance policy arranged by the property factor for the periods 1 May 2013 - 30 April 2014, 1 May 2014 - 30 April 2015 and 1 May - 31 December 2015.

12. The homeowner told the committee that the cost of her annual insurance premium (around £600) under the DCPM policy from 1 May 2013 was almost double that which she had paid under the policy arranged by the previous factor. She confirmed she was happy with the current insurance arrangements which had been put in place through Your Place Property Management (also a subsidiary of Wheatley Group) from January 2016, under which her annual premium was around £150.
13. The homeowner had first complained to DCPM about the cost of the insurance in January 2014, and there had been protracted email correspondence between her and DCPM (and latterly Wheatley Group) between then and October 2015. She had become a member of the residents' committee for the development in 2015, and said that she had made her application as an individual on behalf of that committee. She said that many residents within the development were very upset and angry about how DCPM had handled the common insurance policy, and felt that they had been 'ripped off' due to the high cost of the insurance premiums.
14. The homeowner explained that she dealt with insurance companies as part of her job with a commercial property company. On the basis of that experience, she believed that DCPM had no insurance expertise and as a result had failed to manage the risks well or to get the best deal for homeowners.
15. The primary source of duties which the homeowner believed had been breached was a letter sent by the property factor to the homeowner on 30 November 2012, which she termed its 'letter of introduction'. This letter enclosed the property factor's written statement of services (WSS), and set out information on various matters, including the Property Factors (Scotland) Act, information about costs and payment; the property officer responsible for the development; block buildings insurance; and information about final accounts from the previous factor and float deposits.
16. The majority of the homeowner's complaints had been considered by Wheatley Group in its stage 2 complaint letter dated 19 November 2015 and its response of 29 April 2016 to the homeowner's notification letter of 11 April 2016 (which was also dealt with as a stage 2 complaint.) Some of the complaints were upheld by the property factor. The homeowner was not, however, satisfied with these responses to her complaints.
17. The homeowner agreed that her six complaints, as summarised by the committee in its second direction, were as follows:

- 1) The property factor has failed to provide a suitable, market competitive premium, resulting in residents being overcharged. This was contrary to the statement by the property factor in its letter of introduction dated 30 November 2012 that it saves its insurance clients money on their premiums.
- 2) The property factor has not provided an appropriate insurance policy for private residential flats, as it caters for social housing tenants. This led to homeowners paying an overpriced premium.
- 3) The property factor used a broker to arrange the insurance policy, despite stating in its letter of introduction that it did not use a broker. This resulted in owners being charged an additional broker administration/commission fee as part of their premium.
- 4) Homeowners were charged a percentage based administration fee in respect of the insurance. This was contrary to what the property factor stated in its letter of introduction, which said a flat administration fee would be charged.
- 5) The property factor has not provided FCA standard documentation to show what residents have been charged for.
- 6) The property factor did not monitor claims being processed as stated. The property factor did little more than place the cover with the broker, who managed the premium and claims, for which it was paid a fee. The property factor should not therefore charge a fee for this.

Findings in fact

18. The committee makes the following findings in fact:

- a) The homeowner is the joint owner (together with her husband Colin Gordon) of the property at 1/9 Lochinvar Drive, Corinthian Quay, Edinburgh, EH5 1GJ.
- b) The property is situated within a development known as Corinthian Quay, Granton, Edinburgh, which includes six blocks within two buildings, comprising 91 flats and a commercial unit.
- c) Clause (Twenty third) of the Deed of Conditions by Holyrood Services Limited dated 24 November 2004 (Land Register No: MID54065) relating to the development provides that the proprietors of the flats and the commercial unit '*shall be bound to concur with each other in effecting through the Factor with an established Insurance Company and keeping in force*' in respect of the blocks and the common parts, a policy or policies of insurance against a) Property Owners' liability in the names of the proprietors or of the factor on their behalf for the sum of £2 million or

- such greater sum fixed at a meeting of the proprietors; b) loss or damage by fire, explosion, storm and tempest etc for the full rebuilding value and c) accidental damage, breakdowns, explosion and collapse and damage to surrounding property relating to lifts, the recycling centre, the water tank etc.
- d) Clause (Twentieth) of the Deed of Conditions provides that the factor is entitled to collect the insurance premiums from the proprietors and to make payment of these to the insurance company.
 - e) DCPM (as factoring agent for DCE) was appointed by homeowners as the property factor for the development as at 1 December 2012.
 - f) As at that date, there was an existing common buildings insurance policy in place which had been arranged by the previous factor, Charles White Limited, which expired on 30 April 2013. From 1 May 2014, the insurance for the development had been placed on the group policy taken out by DCHA in respect of all of its properties. This policy had been selected by DCHA following a tendering process carried out in late 2012. The most competitive quote from the four companies which had tendered was selected, and the policy was agreed for a three-year period.
 - g) DCE became a registered property factor on 21 November 2012. Its duties as a property factor in terms of the 2012 Act therefore took effect from that date.
 - h) DCE (and therefore DCPM) became a subsidiary of the Wheatley Group in April 2015.
 - i) The property factor's contractual duties regarding the management and maintenance of common areas within the development are set out in:
 - i. the said Deed of Conditions
 - ii. its WSS

Statement of reasons for decision

19. It was clear to the committee that at the heart of the homeowner's complaints lay her dissatisfaction with the level of cost of the insurance which had been arranged by DCPM between 2013-15. Her other complaints stemmed largely from this primary complaint. The committee considered each of her complaints in turn, and the statement of its reasons for its decision on each of these complaints is set out below.

Complaint 1

The property factor has failed to provide a suitable, market competitive premium, resulting in residents being overcharged. This was contrary to the statement by the property factor in its letter of introduction dated 30 November 2012 that it saves its insurance clients money on their premiums.

20. It was clear from the evidence before the committee that the insurance premium which the homeowner was charged from May 2013 - December 2015 was considerably higher than both the premium she had been paying prior to April 2013 and the premium she has paid since January 2016. It was also clear that the homeowner was very unhappy about the level of the premium which she had been charged. The question before the committee, however, was whether there had been any breach of duty by the property factor in this respect.
21. The homeowner argued that the terms of DCPM's 'letter of introduction' sent to her and Mr Gordon dated 30 November 2012 created a duty on the property factor to provide a market competitive premium. She relied in particular on the following paragraph on page 3 of the letter: '*We deal direct with our provider rather than use an insurance broker and do not add any commission onto our premiums- only a flat administration fee. Working this way not only saves our insurance client money on their premiums, but allows us to monitor the type and number of claims being processed.*' The homeowner confirmed that the foregoing words highlighted in bold formed the basis of this particular complaint.
22. The committee considered that the property factor's duties in relation to arranging the insurance were set out in a) the Deed of Conditions for the development and b) section 5 of its WSS. Clause (twenty-third) of the Deed of Conditions requires the homeowners within the development to effect a common insurance policy with an established insurance company through the property factor in respect of the blocks within the development and the common parts, as set out in more detail at paragraph 18 of this decision. It appeared to the committee that this had been done, although the homeowner told the committee that she could not be sure that everything set out in the Deed of Conditions was covered by the policy because she believed it was the wrong policy (see Complaint 2 below).
23. Section 5.1 of the WSS states that where specified within the titles/Deed of Conditions, the property factor will effect comprehensive insurance for the full replacement value of all buildings and erections on the property, including the development areas. It also states that the insurance shall be effected by a common policy in the name of the Dunedin Canmore Group on behalf of all homeowners. Section 5.6 states: '*The group insurance policy is formally tendered every 3 years in line with our procurement policy to ensure that the most competitive rates, best terms and value for money is achieved.*'
24. The homeowner said that she and other homeowners were angry that they had been 'tied in' to an expensive premium for three years. It was clear from the terms of the property factor's WSS, however, that the group policy would

be re-tendered every 3 years. Ms McDiarmid told the committee that this was common practice for Registered Social Landlords (RSLs) which provide factoring services. This was also the practice of Wheatley Group, which currently had a 3-year contract for its group insurance policy. She argued that in carrying out this tendering process, and selecting the most competitive quote, the property factor had carried out its duties under the WSS.

25. In April 2014, the homeowner had asked a broker used by her employer to find a comparative quote for the common insurance for the development. They had found a quote based on the information she had provided at a total cost of around £12000 less than the group policy for the whole development. DCPM sent this to its own broker, and negotiated a reduced premium for the development for 2014-15 at a saving of around £9000. The homeowner remained unhappy, however, with the level of the premiums for 2013-14 and 2015. In particular, she was concerned that, despite a lower level of claims in the previous year, there had been no reduction in premiums for 2014- 15.
26. She believed that the factor had a duty of care to homeowners to provide a competitive insurance policy. She had found cheaper quotes, and thought that the property factor should have challenged the broker to reduce the premiums on this basis. The committee notes, however, that while, with her assistance, the property factor did manage to achieve a reduction in the premium for 2014-15, any negotiations would have had to take place within the context of a 3-year policy which had already been agreed in line with the tendering process. The committee also observes that the alternative quotes were obtained at a later date, and under different conditions to those which prevailed at the time when the insurance contract was tendered. It was not therefore possible to determine whether cheaper quotes could have been obtained at that time.
27. The committee has considerable sympathy with the homeowner regarding the sharp increase in the cost of her premiums during the period in dispute. It also notes that the homeowner has spent a huge amount of time and effort corresponding with the property factor in an attempt to reduce the premiums paid. While Ms McDiarmid admitted that the insurance premium was expensive, however, the committee agrees with her point that the reasons for this were not clear, and that this did not in itself indicate a failure of duties.
28. The property factor was under a duty in terms of the Deed of Conditions and its WSS to 1) organise a common insurance policy for the development and 2) go out to tender for that policy on a three-yearly basis, and it had done both of these things. The committee takes the view that the words highlighted by the homeowner in the property factor's letter of 30 November 2012 did not create a duty on the property factor. This was clearly a covering letter which

had been sent to the homeowner together with a copy of the WSS, and set out various practical matters. It was not a contract, or part of the WSS, and did not therefore create legal obligations on the property factor.

29. In any case, the words in question did not specifically oblige the property factor to save money on premiums. Rather, they were a statement of the benefits of dealing direct with the insurance provider (although they did not in fact do this, as discussed below). It would in any case have been very difficult to quantify the extent of this duty. These words simply suggest that, by not using a broker (which it did), the property factor would save homeowners money on their premiums, but not how much or in relation to what, such as the premium previously paid, which appeared to be the homeowner's interpretation.
30. The committee was satisfied on the basis of the evidence before it that the property factor had complied with its duties in terms of the Deed of Conditions and its WSS. It therefore determined that the property factor has not failed to carry out its property factor's duties in relation to this complaint.

Complaint 2

The property factor has not provided an appropriate insurance policy for private residential flats, as it caters for social housing tenants. This led to homeowners paying an overpriced premium.

31. The homeowner argued that the reason the insurance premiums for the years in question were so high was that the insurance policy was not appropriate for homeowners. She said it was clear from the wording of the summary of cover that the policy was intended to cover social landlords, rather than homeowners. Her argument was essentially that the policy was the wrong one, and that she was concerned that it would not pay out if there was a claim by a homeowner.
32. She believed that the high cost reflected the higher risk profile of social rented property, and that lumping homeowners' properties in with the social rented properties managed by the property factor had increased their insurance costs. This belief appeared to be based on firstly, her own opinion given her experience of dealing with insurance companies, and secondly, the view of a relative of a residents' committee member who worked in insurance that the group policy was inappropriate for homeowners. She said that, on realising that the policy covered social rented properties, the committee had asked to have the policy put onto a different policy. They had been told, however, that this was not possible as the insurance contract between the property factor and the broker was for a three-year period.

33. The homeowner thought the property factor should separate the policy into two, one for owners and one for the social rented properties. She believed that the social housing aspect was the reason why a limited number of brokers were willing to tender for the group policy.
34. Ms McDiarmid told the committee that the group policy was appropriate for both social housing and homeowners' properties. She also stated that it was not in fact more expensive to insure social housing. She pointed out that RSLs are required to satisfy the Social Housing Quality Standard, which meant that they were more likely to carry out repairs and maintenance than private owners. She said that it might actually be more expensive to split a group insurance policy according to whether housing was social or privately owned, as this would bring additional administrative costs.
35. Ms McDiarmid told the committee that while RSLs took different approaches, it was fairly common within the sector to place the insurance for factored homeowners on a group policy alongside the social rented properties managed by the RSL. She also pointed out that the current insurance policy for the development, which had been put in place by Wheatley Group, and which the homeowner had said she was happy with, was a group policy which included both social rented and privately owned properties.
36. She argued that homeowners were aware at the time DCPM was appointed as the factor for the development that it was an RSL, and that it was made clear in both the WSS and the property factor's 'letter of introduction' that the insurance for the development would be placed on the group policy. The homeowner conceded that she had been aware that the insurance policy was a group policy, but said that she had been unaware at the outset that it included social rented properties, as well as privately owned properties.
37. The committee observes that this could have been made clearer by the property factor. The 'letter of introduction' stated: '*As part of the Dunedin Canmore Group with an umbrella policy covering a housing stock of over 5,000 we benefit from excellent rates of insurance*'. Section 5.1 of its WSS states: '*The insurance shall be effected by a common policy in the name of Dunedin Canmore Group on behalf of the proprietors of all the dwelling houses*'. It appears to the committee that neither of these documents made it as explicit as might be desirable that all of the property factor's social housing stock is also covered by the group policy. The property factor may wish to consider clarifying this further in its documentation in the future.
38. While the committee has sympathy with the homeowner given the high cost of the insurance, it notes that the premium payable by the homeowner under the current group policy, which also includes Wheatley Group's social rented

housing, is lower than both the DCPM policy and the policy arranged by the previous private sector factor. The committee found that, aside from the homeowner's opinion, there was no evidence before it to support a conclusion that the inclusion of social rented properties made the policy unsuitable or led to higher costs for homeowners. It therefore determines that the property factor has not failed to carry out its duties with regard to this complaint.

Complaint 3

The property factor used a broker to arrange the insurance policy, despite stating in its letter of introduction that it did not use a broker. This resulted in owners being charged an additional broker administration/commission fee as part of their premium.

39. The homeowner argued that the property factor had a duty not to use a broker to arrange its insurance policy, which it had breached. She cited as the source of this duty the following sentence on page 3 of the property factor's letter of introduction of 30 November 2012: '*We deal direct with our provider rather than use an insurance broker and do not add any commission onto our premiums- only a flat administration fee.*'
40. The property factor did not dispute that it had in fact used a broker to arrange the group policy. In its stage 2 complaint letter of 29 April 2016, Wheatley Group confirmed that DCPM had been using an insurance broker since 1 January 2013, having appointed a broker to provide insurance services to it after they were successful in their tender for the procurement of insurance services. The homeowner's complaint that DCPM had used an insurance broker to obtain buildings insurance, contrary to what was stated in the letter of 30 November 2012, was therefore upheld by the property factor.
41. The question before the committee was whether, by using a broker to arrange the insurance, when it had stated that it did not use one, the property factor had failed to carry out its duties. The committee did not consider that the statement included in the property factor's 'letter of introduction' created a duty not to use a broker, for the reasons stated in relation to complaint 1. It appeared that the property factor's policy in this regard had changed between the issuing of the 'letter of introduction' and the appointment of the broker the following month.
42. It was clear, however, that the information provided had been incorrect, as the property factor had conceded. The committee observes that the provision of the incorrect information may have given rise to a complaint that the property factor had provided false or misleading information under section 2.1 of the code of conduct for property factors. The committee was unable to consider this issue as there was no complaint under the code, but noted that the

homeowner's complaint about this matter had already been upheld by the property factor.

43. The second part of the homeowner's complaint was that she believed the broker had charged a commission or fee for setting up the policy, which had been added to the cost of homeowners' premiums. She said that her employer used the same broker, and that it charged them a fee, which was included in the total premium. She therefore believed that, as the property factor also charged homeowners an administration fee, they were being charged twice for the administration of the policy.
44. It was clearly stated in section 5.9 of the property factor's WSS that it received no commission or payment from the company providing insurance cover. The property factor had produced in its evidence a copy of a letter from the insurance broker dated 20 February 2015 which confirmed this. Mr Lyon told the committee that the broker had charged a fee of 0.5% of the total premium in 2014, although the committee saw no written evidence of this. The homeowner said that she did not accept this, based on her experience of the insurance industry. She indicated that she believed this broker typically charged a 'hidden' fee of 15-20% of the premium.
45. While it appeared that homeowners may have been charged a very small broker's fee as part of the premium, the committee concluded that there was no clear evidence before it to support the homeowner's assertion that homeowners had been charged a fee of 15-20% of the premium. In any case, the sentence relied on by the homeowner as the source of the alleged duty stated only that the property factor did not add commission onto its premiums, which was clearly the position. The committee therefore determines on the basis of all the evidence before it that the property factor has not failed to carry out its duties with regard to this complaint.

Complaint 4

Homeowners were charged a percentage based administration fee in respect of the insurance. This was contrary to what the property factor stated in its letter of introduction, which said a flat administration fee would be charged.

46. The homeowner argued that the property factor had a duty to charge a flat administration fee in terms of the same paragraph of the 'letter of introduction', as set out at paragraph 39 of this decision, which it had failed to carry out. The property factor had in fact charged a fee based on a percentage of the insurance premium, initially at a rate of 20%, which was later reduced to 10%. Section 5.9 of the WSS states that an administration fee is to be charged by DCPM, but does not give further details about this fee,

other than to say that details of the fee are detailed on the homeowners' invoice and available upon request.

47. Again, Wheatley Group had upheld this complaint in its stage 2 letter of 29 April 2016, finding that the 'letter of introduction' was not sufficiently clear in explaining that the administration fee charged by DCPM would be a flat percentage of the insurance premium, and not a fixed fee. While again, this matter may have given rise to a complaint under section 2.1 of the code of conduct, no complaint had been made about this, and this could not therefore be considered by the committee. It was clear in any case that the property factor had upheld the homeowner's complaint about this matter.
48. The committee did not consider that the wording of the letter of introduction relied on by the homeowner created a duty on the property factor to charge a 'flat' administration fee, for similar reasons to those set out in relation to complaints 1 and 3 above. It therefore determines that the property factor has not failed to carry out its duties with regard to this complaint.

Complaint 5

The property factor has not provided FCA standard documentation to show what residents have been charged for.

49. It was clear from her evidence that one of the homeowner's main complaints was that she had not been provided with clear information about the common insurance policy. She pointed to a copy of the policy schedule which she had been provided with in relation to the insurance arranged by the previous factor. This set out clearly the individual address of her property, the annual premium payable, the individual level of cover for her property and other details. She told the committee that, despite asking DCPM for more detailed information a number of times, she had only been provided with a summary of cover.
50. She said that the detailed schedule she had previously received had allowed her to check what she was being charged for and whether her property was adequately insured. She had been concerned that the reason the premium was so high was that the cover was incorrect. She had been unable to check this, however, as she had not been provided with the necessary information to do so, despite having requested this.
51. Her complaint was that DCPM had not provided her with 'FCA standard documentation'. She had stated in her response to the committee's second direction that she had contacted the Financial Conduct Authority (FCA) in January 2014. She had been advised that there was a legal requirement on an insurance provider to provide the insurance payee with a certificate of insurance stating the sum insured, reinstatement value and the cost of the insurance

insurance. The FCA had told her, however, that only the policyholder can make a complaint about an alleged failure to comply with this, and that the policy holder here was the property factor, not the homeowner. She told the committee that she had asked DPCM to request the certificate from its brokers and suggested that if this was not forthcoming they should make a complaint to the FCA, but it had not done so.

52. The committee is unable to uphold the homeowner's specific complaint, as she has not shown that the property factor had a duty to provide 'FCA standard documentation' to her. It appears that in fact, the duty to do so existed between the broker and DPCM, rather than between DPCM and herself.
53. The committee observes, however, that on the basis of the evidence before it, the homeowner does not appear to have been provided with the information which is required under section 5.2 of the code of conduct for property factors. This requires the property factor 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 may apply, the name of the company providing insurance cover and the terms of the policy.*' It goes on to state that '*the terms of the policy may be supplied in the form of a summary of cover*'. This wording suggests that the summary of cover is not of itself sufficient to comply with section 5.2, but can only be used to evidence the terms of the policy.
54. The homeowner told the committee that she had not been provided with any information about the policy, despite having asked for this several times, until she received a copy of the summary of cover in April 2014, a year after the start of the policy. Mr Lyon said that the summary of cover had first been sent to her in May 2013 and, following the hearing, sent to the committee a copy of a letter sent to the homeowner confirming this. Regardless of when the information was provided, however, it appears on the basis of the evidence before the committee that the only information about the policy which had been sent to the homeowner was the summary of cover.
55. The property factor's representatives pointed out that section 5.1 of its WSS states that policy details can be found at Appendix C, in the form of a copy of the summary of cover. It also states that a copy of the group policy is available for inspection at its offices, or a copy provided at a cost of £10 plus VAT. While this is compliant with section 5.2 of the code to an extent, it does not of itself satisfy the requirements of that section. The committee also observes that the summary of cover annexed to the copy of the WSS dated 27 April 2016 as supplied by the property factor is incorrect, as it relates to an earlier policy which expired on 31 December 2012.

56. The committee observes that the evidence before it suggests that the property factor may have failed to comply with section 5.2 of the code of conduct, but is unable to make a formal determination on this, as the homeowner did not make a complaint under that section of the code.

Complaint 6

The property factor did not monitor claims being processed as stated. The property factor did little more than place the cover with the broker, who managed the premium and claims, for which it was paid a fee. The property factor should not therefore charge a fee for this.

57. This complaint again related to the following paragraph on page 3 of the 'introduction letter' of 30 November 2012: '*We deal direct with our provider rather than use an insurance broker and do not add any commission onto our premiums- only a flat administration fee. Working this way not only saves our insurance clients money on their premiums, but allows us to monitor the type and number of claims being processed.'*'
58. The homeowner confirmed to the committee that the words highlighted in bold above formed the basis of her complaint. She said that she did not believe that DCPM had monitored claims, and that aside from DCPM putting the policy in place, she believed that the broker had done all the work involved in setting up the policy and managing claims. This was again related to her complaint that she had been charged two fees – she argued that as the broker had done all the work, it should receive a fee for this, but that DCPM was not also entitled to charge a fee.
59. She told the committee that she was aware of instances where homeowners had been told to speak directly to the broker regarding a claim. She cited this as evidence that DCPM did not handle claims. Mr Lyon advised, however, that the property factor only handled claims about common issues, as stated in its WSS. Where a homeowner had a claim relating to their own individual property, they were required to pursue this themselves.
60. The homeowner also said that she had asked DCPM for details of the level of claims for the development, but that they did not have this information, and had to request this from the broker. She cited that this as evidence that DCPM had not managed or monitored claims. She also made reference to a claim related to the car park, which appeared to be a common property issue, and said that the factor appeared to have been unaware of this.
61. For the reasons set out elsewhere, the committee did not consider that the wording of the letter relied on by the homeowner created a duty on the property factor. In any case, the committee notes that the words relied on actually relate

to the statement that the property factor does not use a broker. The letter states that 'working this way' i.e. direct with the provider 'allows us to monitor the type and number of claims being processed.' As previously established, DCPM did in fact use a broker. This suggests that the monitoring of claims may in fact be the broker's role.

62. As regards the fee charged by the property factor, section 5.9 of its WSS states that it charges an administration fee for: '*administering of the policy, arranging for the provision of cover, issuing of policy documents and for submitting insurance claims relating to repairs to common elements of the building on behalf of owners*'. There was no evidence before the committee to suggest that this administrative work had not been done by the property factor. The committee therefore determines that the property factor has not failed to carry out its duties in relation to this complaint.

Observations by the committee

63. While the committee does not find that the property factor has failed in its duties in terms of the complaints made by the homeowner, it has made a number of observations regarding issues which the property factor may wish to consider. These include matters the committee has identified as potentially giving rise to complaints under the code of conduct, as set out in more detail at paragraphs 34, 42, 47 and 53-56 of this decision.
64. It is clear that, whatever the reasons for the high premium charged to homeowners during the periods in question, the homeowner is very unhappy about this. She told the committee that homeowners within the development do not trust the property factor as a result of this. The committee noted Ms McDiarmid's offer at the hearing to meet the homeowner to discuss her concerns, and hopes that this may help to improve the relationship between the property factor and homeowners within the development.

Right of appeal

65. The parties' attention is drawn to the terms of section 22 of the 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 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.

Sarah O'Neill
Chairperson Signature

Date... 26/10/16