



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

**HOHP reference: HOHP/PF/16/0022**

**Re: Flat 33, Falcon House, 91 Morningside Road, Edinburgh EH10 4AY ('the property')**

**The Parties:**

**Mrs Ethel Thomson, residing at Flat 33, Falcon House, 91 Morningside Road, Edinburgh EH10 4AY ('the homeowner');**

**and**

**Places for People Scotland, incorporated in Scotland (Company registration Number 278428) and having its Registered Office at 1 Hay Avenue, Edinburgh EH16 4RW ("the property factor")**

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

**Committee members:**

**George Clark (chair) and Mary Lyden (housing member)**

**Decision**

**The Committee has jurisdiction to deal with the Application.**

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

**The Decision is unanimous.**

## **Introduction**

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

The property factor became a Registered Property Factor on 12 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the application by the homeowner received on 24 February 2016, with a covering letter and 31 items of supporting paperwork; an amended Part 7 of the application, attached to a letter from the homeowner to HOHP dated 17 March 2016 (received on 23 March 2016); an e-mail dated 18 April 2016, from the property factor’s Head of Property Services, Angela Kirkwood, to which is attached a detailed response from the property factor to the homeowner’s letter of complaint dated 16 March 2016 and e-mailed letter of complaint dated 18 March 2016; a copy of the property factor’s Written Statement of Services and a copy of the homeowner’s Land Certificate, both sent by the homeowner to HOHP on 16 March 2016.

## **Summary of Written Representations**

The following is a summary of the content of the homeowner’s application to HOHP:- The property factor had failed to comply with Sections 1.1a.A.b, 1.1a.C.k, 1.1a.D.l, D.m, 2.1, 2.2, 2.3, 2.4, 2.5, 3.3, 3.5, 5.2, 5.3 and 6.9 of the Code and had failed to carry out the Property Factor’s duties.

### **Section 1: Written Statement of Services**

**Part 1a.A.b of the Code** states that the written statement of services should set out, where applicable, a statement of any level of delegated authority, for example, financial thresholds for instructing works, and situations where the factor may act without further consultation. Although £2,350 had been set aside for “Specific Projects or Cyclical Maintenance”, no financial threshold had been specified for “arranging and carrying out improvements and adaptations to communal areas where authorised by the requisite number of owners of the Development” in the written Statement of Services. The property factor had not consulted with owners or sought their written approval before fitting window bars and locks to cupboard doors in the kitchen of the residents’ lounge, costing £630. The homeowner

accepted that the safety bars might have been a necessary expense on health and safety grounds, but the new locks were unsuitable for cupboard doors used by elderly people.

**Section 1.1a.C. part k of the Code** covers Financial and Charging Arrangements and provides that the written statement of services should set out how the factor will collect payments, including timescales and methods (stating any choices available). The homeowner complained that the written statement of services did not show the options on methods of payment.

**Section 1.1a.D. part l of the Code** covers Communication Arrangements and states that the written statement of services should set out the factor's in-house complaints handling procedure and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of the in-house complaints handling procedure. The homeowner's complaint was that the written Statement of Services did not include the address of the Homeowner Housing Panel and that the e-mail addresses of the people with whom the group of homeowners communicated seemed to indicate that they were not employees of Places for People Scotland, but were employed by Castle Rock Edinvar.

**Section 1.1a.D. part m of the Code** also requires the written statement of services to include the timescales within which the factor will respond to enquiries and complaints received by letter or e-mail. The homeowner said in the application that timescales were missing in the written statement of services and that the Managing Director of the property factor had failed to acknowledge recorded delivery letters of complaint dated 26 April 2015 and 10 August 2015.

## **Section 2. Communication and Consultation:**

Part 2.1 of the Code states that property factors must not provide information which is misleading or false. The homeowner stated in the paperwork supporting the application that Angela Kirkwood had stated verbally on 7 May 2015 that the balance of funds held on behalf of the owners of Falcon Court could not be ascertained because "it all goes in one pot" and had stated on 25 September 2015 that the property factor was unable to produce a Development Statement of Surplus or Deficit, but in a letter of 11 November 2015, Mr Jennings , Head of Property, had stated that the property factor held all customer money in a separate bank account and that this was separate from the company accounts. The homeowner contended that it was false to say that the property factors offered a number of payment options, as this was not included in the written Statement of Services, and bank details for setting up Standing Order payments were not readily available, resulting in these details having been given to the homeowner in a handwritten note. Mrs Kirkwood had said in a letter of 21 August 2015 that the contractor had confirmed an increase in window cleaning charges, but that this had not yet been applied, but the increase had in fact been applied in the accounts for June-September 2015. There had been a delay of 3 months in

issuing Minutes of the Annual General Meeting of 17 June 2015, and when a draft Note was issued on 28 September 2015, pages and paragraphs were not clearly numbered and there were many errors, omissions and false statements. The Direct Debit letters issued by the property factor referred to “your rent charge”, when the flats in Falcon Court were all privately owned and there were several misleading or false statements in a document entitled “Quarterly Invoice and Annual Factoring Charges” issued by Angela Kirkwood on 1 July 2015. Despite Mr Jennings having stated in his letter of 11 November 2015 that the property factor could provide the Residents’ Committee with a reconciliation of current funds if requested, Angela Kirkwood had declined, despite protracted e-mails, to produce such a reconciliation of the Falcon House Maintenance Fund for the Annual General Meeting of 8 March 2016.

## **Section 2:**

**Part 2.2 of the Code** also states that property factors must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that the property factor may take legal action). The homeowner’s complaint was that when the homeowners queried a large number of interim charges for window cleaning, Mrs Kirkwood had said that if the owners would prefer to withdraw from having this service and organise themselves locally, the property factor could notify the contractor to cease the service. The property factor had also suggested at the June 2015 AGM that homeowners were free to consider alternative factoring services. The homeowner was of the view that these were intimidating statements to elderly owners who paid a significant amount each month to be free from the stresses of managing property. In addition, the property factor was applying continuous pressure to homeowners to pay by Direct Debit, and owners who preferred to set up a Standing Order would feel threatened by this pressure, which included repeated references to “direct debit amounts” rather than “monthly amounts”.

## **Section 2:**

**Part 2.3 of the Code** requires property factors to provide homeowners with their contact details, including telephone number. The homeowner’s complaint was that there was no telephone number given in the written Statement of Services.

## **Section 2:**

**Part 2.4 of the Code** requires property factors to have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where the factors can show they have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as emergencies). The homeowner’s complaint in this

regard is related to the foregoing complaint under Section 1.1a.A. Authority to Act, part b of the Code.

### **Section 2:**

**Part 2.5 of the Code** provides that property factors must respond to enquiries and complaints received by letter or e-mail within prompt timescales. The homeowner's application stated that her complaint had not been acknowledged by the property factor.

### **Section 3: Financial Obligations**

**Part 3.3 of the Code** requires that property factors must provide to homeowners 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, property factors must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. The homeowner complained that there was lack of clarity in both invoices and statements relating to the accounts and that the homeowners had been invoiced for work that had not been carried out.

### **Section 3:**

**Part 3.5.b of the Code** also stipulates that '*If you are a Registered Social Landlord*' homeowners' floating funds must be accounted for separately from your own funds, whether through coding arrangements or through one or more separate bank accounts. . The homeowner stated in the paperwork supporting the application that with the large number of tenants/homeowners and groups who engaged the services of Places for People and Places for People Scotland, it would be expected that there would be an account for each group of homeowners.

### **Section 5 : Insurance:**

**Part 5.2 of the Code** states that if the agreement with homeowners includes arranging any type of insurance, the factor must provide each homeowner with clear information showing the basis on which their 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 homeowner complained that no information had been given by the property factor as to how the share of the cost of the group insurance policy to Falcon House residents had been calculated. The property factor had also failed to explain at an AGM a 97% increase in insurance costs.

### **Section 5:**

**Part 5.3 of the Code** also requires property factors to disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit they receive from the company providing insurance cover. In the application, the homeowner stated that

details of Public Liability Insurance had not been issued. There was no specific allegation that the property factor had received any benefit from the insurance company that had not been disclosed to the homeowners.

### **Section 6: Carrying out Repairs and Maintenance**

**Part 6.9 of the Code** requires that property factors must pursue the contractor or supplier to remedy any defects in any inadequate work or services provided. The homeowner's complaint was that the property factor had not pursued a contractor who had caused a fault and had charged the cost to the group of homeowners. This related to a fire alarm call-out charge made by Honeywell. The contractor's invoice for this suggested that the fault had been caused by a detector in front of the lift shafts at basement level not having been located properly in the detector base by the lift engineers who, at the time of the call-out, were installing a new lift car.

The Committee did not receive, in advance of the hearing, any written submissions from the property factor, but the supporting papers submitted by the homeowner included the property factor's written response dated 18 April 2016, to the homeowner's letter of complaint of 16 March 2016 and e-mailed complaint of 18 March 2016 and can be summarised as follows:-

**Section 1.1a. A.b.** The Deed of Conditions for Falcon House was silent in relation to the amount that can be charged for maintenance work and the section on "Arrangement for Collecting Payment for Specific Projects of Cyclical Maintenance" in the written Statement of Services referred to the agreed value under which Places for People Scotland had authority to act. That sum had been set in a Service Level Agreement which had since been replaced by the written Statement of Services and the value had been carried over to ensure an appropriate level of control was in place. The value of the work on window bars and cupboard doors had been less than the authorised limit of £2,350, so it was not necessary to seek permission from owners.

**Section 1.1a.C.k.** The current payment methods available to customers were listed on the back of invoices and statements of account and the property factors would update the written Statement of Services to inform customers of where they could find out this information.

**Sections 1.1a.D.l and 1.1a.D.m.** The provision of the complaints procedure on request was to ensure that customers had the most up-to-date version, with the correct information on processes and timescales, as well as methods for escalation if a complaint had not been resolved. The written Statement of Services would be improved to make this clearer for customers and the address of the Homeowner Housing Panel would be added. The property factor did not address the alleged failure of the Managing Director to respond to 2 recorded delivery letters, but, in a letter to the homeowner dated 22 May 2015, Angela Kirkwood had stated her view that the property factor had conformed with its internal complaints

procedure, although she acknowledged that it would perhaps have been more appropriate to have provided the homeowner with a written acknowledgement given that the homeowner had sent a recorded delivery letter to the Managing Director.

**Section 2.1.** The property factor had identified the complaint as relating to late provision of the homeowner's account information; a statement in a letter to the homeowner dated 22 May 2015; the use of the word "rent" in statements and the fact that the homeowner's Direct Debit payment was to be made to Places for People Homes, but the Standing Order payments were to Places for People Scotland. The property factor said that the account information would have been in the Welcome Pack issued to the homeowner when she became a customer of Places for People Scotland and, when she had alerted the property factor to say it had not arrived, it had been immediately reissued. No debt of £600 due by the previous owner had been added to the homeowner's account. The letter from Angela Kirkwood to the homeowner dated 22 May 2015, had included the explanation that the previous owner had had work done to that value and had paid in full, but when reviewing the cost of providing a factoring service for 2015/16 to the property address this appeared as part of the forecasting analysis and had been included in error in the calculation of the Direct Debit payments for that year. The property factor apologised for this error and for the use of the word "rent" in statements. That had been raised with the property factor's IT provider with a request that the wording be changed.

The property factor apologised if the different names of the bank accounts had been confusing and explained that Places for People Scotland is a subsidiary of Castle Rock Edinvar Housing Association, which is part of the Places for People group. All financial transactions are managed by Places for People on behalf of all the group companies and subsidiaries. The property factor assured the homeowner that all Direct Debit and Standing Order payments, when processed, went straight in to the homeowner's individual account.

**Sections 2.2, 2.3, 2.4 and 2.5.** The property factor was sorry if the homeowner considered any of the correspondence to be intimidating, as it was not the property factor's intention for that to be the case. Places for People Scotland do not release statements regarding individual accounts to any credit agency, so any apparent arrears shown on the statements would not have a negative impact on the homeowner's credit rating.

It was not the property factor's intention to pressurise any owner into making payments by Direct Debit and it was for that reason that the property factor provides a number of payment options. The letter of 11 March 2016 had specifically referred to Direct Debits as this had been the focus of the discussion at the AGM.

When issuing letters to customers, the property factor's staff would provide their contact details and it was not the property factor's intention to create confusion with the use of different e-mail addresses for staff. Places for People Scotland was a subsidiary of Castle Rock Edinvar Housing Association and, although staff working within the subsidiary had e-

mail addresses for both, any e-mails addressed to them at either of their e-mail addresses would reach them. The property factor's headed notepaper was provided by the Company secretary and staff were encouraged to add their own contact details.

The property factor was sorry that no formal acknowledgement of the homeowner's complaint had been issued, but this was in line with the property factor's Complaints Procedure in terms of dealing with Stage 1 Complaints.

**Section 3.3 and 3.5a.** The property factor had identified the complaints as relating to timing of notification for Direct Debits; no Invoice being issued for October-December 2014 and clarity on charges associated with this; incorrect Direct Debit amounts; compliance with title deeds; details of Standing Order payment mechanism; incorrect charges that should have come from the cyclical fund; non-reimbursement of telephone line charges; charges for the call-out of the fire alarm contractor; charges for a TV licence; and timing of Standing Order payments to reach the homeowner's account.

The property factor stated that notification informing the homeowner of her Direct Debit had been issued on 1 September 2014 and this set out the Direct Debit payments due for the rest of the 2014/15 financial year. An Invoice had been issued to the homeowner dated 31 October 2014, providing all the detail in relation to the costs of the factoring service. The property factor had acknowledged in response to the homeowner and at the 2015 AGM that some customers had not received the written communication regarding changes to Direct Debits for 2015/16. A full internal investigation had taken place, the conclusion of which had been that the letters intimating the changes had been passed to Royal Mail for despatch, but it appeared that some owners had not received their letters. The property factor had offered to cover any bank charges that had occurred as a consequence. The amount taken from the homeowner's bank account on 1 April 2015 would have been referred to in that letter.

The homeowner was correct in stating that the title deeds required existing balances to be taken into account when calculating figures for the next financial year and the property factor apologised for this mistake. All balances within the development had been reviewed and instructions had been issued to refund any credits as appropriate.

At the property factor's meeting with the homeowner in May 2015, the homeowner had mentioned that she was awaiting details on how to pay her standing order. The property factor had immediately taken action to obtain this information for the homeowner and had not been aware that the homeowner had not been happy with that response.

The property factor had checked the Minutes and action points from the 2015 AGM and could not find any reference to a reimbursement of telephone charges. The property factor had checked and confirmed that all telephone line charges in the homeowner's invoice were for the correct amount, but accepted that there had been an error in the descriptions within

invoices in that they wrongly referred to the same time period. The property factor apologised for that error.

The charge made by Honeywell for the fire alarm call out had been valid and was not related to the lift upgrade work, but Honeywell had, in any event, agreed after discussion to credit the invoice and the relevant amount would be credited to homeowners.

The property factor apologised for the fact that the homeowner had been charged for a TV licence. The error would be addressed in the next statement of account and steps taken to ensure it did not happen again.

The property factor also confirmed the position regarding the timing of Standing Order payments. The statement showed that the payment was processed in to the homeowner's account on the 3<sup>rd</sup> of the month, but it was effective from the date on which payment was received and that had been the 1<sup>st</sup> of the month.

The property factor pointed out that it was Section 3.5b and 3.6b of the Code that applied in this case as the property factor was a Registered Social Landlord. There was no requirement to hold funds in a separate account, as they could be accounted for separately through coding arrangements.

**Sections 5.2 and 5.3.** The property factor set out, for the avoidance of doubt, the basis on which the insurance was charged to the individual homeowners. Each owner was charged an equal share, in this case 1/30<sup>th</sup>. The premium was calculated by the insurers based on a number of factors, including reinstatement value and claims history. The cost of insurance had risen across all of the properties managed by the property factor and the sum for Falcon House was in line with the rest of the portfolio owned or managed by Places for People. The homeowner had requested on 15 October 2015 a copy of the full insurance document and this had been e-mailed to her. The property factor did not issue paper copies to all owners, due to the cost that this would involve.

The question of public liability insurance had been discussed at the AGM and the property factor had confirmed then that it was not a separate policy, but was included in the buildings policy. The property factor attached to the response a copy of the relevant section of the policy. There was a charge levied of £1 per quarter per household and this related to the administration involved in putting the insurance cover in place and administering any public liability claims.

**Section 6.9.** The complaint under this heading had already been dealt with under Sections 3.3 and 3.5 above.

## **THE HEARING**

A hearing took place at George House, 126 George Street, Edinburgh on 12 July 2016. The homeowner was present at the hearing and was accompanied by Miss Audrey Currie, Flat 1. The property factor was represented at the hearing by Richard Jennings, Head of Property Services.

### **Summary of Oral Evidence**

The chairman told the parties that they could assume that the Committee members had read and were completely familiar with all of the written submissions and the documents which accompanied them. He then invited the homeowner to address the Committee with reference to her complaints under each Section of the Code and in relation to the alleged failure to carry out the Property Factor's duties.

The homeowner began by telling the Committee that the residents at Falcon Court had a good relationship with the resident manager and local staff. The problem had been with financial matters. A major reason for moving to retirement flats was to get away from the risk of unscrupulous tradesmen and the residents paid for that comfort.

The title deeds provided that any surplus or deficit should be taken into account in setting monthly instalments for factoring charges, but this had not happened in 2014. Owners had had to ask for refunds, rather than receive them automatically.

When flats within Falcon House were sold, 0.25% per annum, up to a maximum of 5% of the sale price was payable to the Cyclical Fund. Two flats had been sold in late 2015 and the moneys had not shown as having been received when the Cyclical Fund Statement was distributed at the AGM in March 2016.

The residents had asked for individual accounts for Falcon House, because the quality of reporting on the Cyclical Fund had been very poor, especially in 2011 and 2012 and, in relation to the Maintenance Fund, the residents had contributed £60,000 in the last financial year and expenditure had been £58,500 (although £1,700 was in dispute), but the residents had no idea how much of their money the property factor was holding at any given time.

The most frustrating part was lack of clarity and transparency in accounting procedures. The property factors dismissed errors as minor mistakes and the residents had only found out about some of them by asking for copy invoices. For example, a bill relating to an entirely different development, in Haddington, had been charged in error, and charges for lift maintenance had been made during a period when there was no working lift in the building. Further charges had been incorrectly made when the new lift was still under guarantee. The cost of the 5 year electrical test had also been charged twice.

Capital work in relation to the lift installation which should have been charged to the Cyclical Fund had been charged as maintenance. At the 2015 AGM it had been agreed that this was incorrect, but the necessary accounting adjustment had still not been done. The installation of the window bars and locks on cupboard doors had been charged as maintenance. These errors inflated the apparent cost of maintenance and would result in higher monthly payments. It was just bad book-keeping.

Invoices were usually sent out a month after the end of the quarter, but the residents had had to remind the property factor that they had not received the December 2015 statement and again in June that they had not received the March statement.

There had been an issue with the communal television licence for the development. 27 out of the 30 residents were over 75, so did not require to pay for a TV licence. The resident manager had collected £7.50 from each of the remaining 3 residents, but, in 2015, £22.50 had been charged to all residents. Refunds had since been made, but it had been a real battle.

The cost of insurance in 2013/14 had been £14.93 per flat, but the following year it had risen to £29.17. At an AGM, the residents had been advised that the property factor had a group policy covering all of its developments in Scotland and that costs had gone up for 2015 as a result of claims. The residents at Falcon Court had been told at the 2015 AGM that the property factor owned or managed 140,000 properties and the homeowner was concerned to know that the residents of Falcon House were not being penalised due to high incidences of claims elsewhere.

The homeowner then turned to the complaints process. She told the Committee that the property factor did not seem to have a designated complaints manager and she was particularly surprised that the person who investigated her complaint asked for any response to be sent in the first instance to that person's personal e-mail account and that, when she had been sent a copy of the Complaints Handling Procedure on the day after she requested it at a meeting with Angela Kirkwood, the covering letter had asked her not to copy and distribute the leaflet as this was a confidential procedure and only available to owners upon request.

The homeowner told the Committee that the various other items of complaint were fully set out in the papers before the Committee and she hoped the Committee would be able to help the residents of Falcon Court to resolve the complaints against the property factor and that the representatives of Places for People Scotland and its Board would be able to meet after the hearing date to work out the best way forward for all.

The property factor then responded to the evidence led by the homeowner. Mr Jennings began by outlining the history of the organisation. The original factor for Falcon House had been Castle Rock Housing Association. When it came together with Edinvar, it became part

of Places for People and used Lothian Homes as its subsidiary. Lothian Homes then became Places for People Scotland, which is, therefore, a wholly-owned subsidiary of Castle Rock Edinvar which, in turn, is part of Places for People. Staff can use both Castle Rock Edinvar or Places for People e-mail addresses, but everyone is employed by Places for People, albeit branded as Places for People Scotland. Places for People Scotland had just over 2500 customers across 60 developments. It had the full-time equivalent of 4.5 staff in its factoring team, plus administrative support. It utilised the asset management team within Castle Rock Edinvar and their human resources and finance teams, so it had a combination of group resources, local resources and company resources. This was the first occasion on which there had been expressed to them any doubt as to who the factor actually was, the homeowner having raised the issue in relation to the use of Castle Rock Edinvar e-mail addresses by staff of Places for People Scotland. Approximately one-half of the property factor's customers are Castle Rock tenants, so the name had been retained due to the mixed nature of the various developments in Scotland.

The Committee asked the property factor if it always acknowledged complaints that were received and the property factor said it did, but when the homeowner said that her complaint had not been acknowledged within 3 days, accepted that this was the case, due to staff shortages at the time and apologised to the homeowner, although it was not, strictly speaking, necessary to issue an acknowledgement.

Mrs Currie then told the Committee that Castle Rock had been the factors since the development was built in 1988. Everything had gone well at first, but the residents had decided that they needed a committee when the builders were carrying out repairs to building defects. Things had then run smoothly for a long time, but more recently, it appeared that the property factors were unable to get the timing of finances right and there were statements showing 4 incoming payments from residents but only 3 months of charges being debited. This was very confusing for residents.

The homeowner added that in March 2015, she had received a factoring charge for £212.87, rather than the £168 she had expected following discussion at the most recent AGM. On investigation, she had been told that a charge of £600, being a debt due by the previous owner, was shown on the account. This matter had been sorted, as the debt had been cleared when the property was sold, but, as a result of the confusion this caused, she stopped paying by Direct Debit and moved to Standing Order. Her money went to the property factor on the 1<sup>st</sup> of the month, but it was the 3<sup>rd</sup> of the month before it showed up at the finance department in Preston. As a result, she had started paying on the 28<sup>th</sup>, so that it showed up by the 1<sup>st</sup> of the following month and was, therefore, included within the statement for the correct quarter. The issue was that, otherwise, when statements were sent out, the account appeared to be in arrears, as it did not show the most recent payment. Residents in retirement developments were of a generation who were worried about money and always very concerned not to be in debt, so the apparent arrears shown

on statements were very upsetting. The homeowner also added that her March 2016 statement had included her payments in to the account, but had no charges set against it.

The property factor told the Committee that payments made by Direct Debit were instantaneous, but Standing Orders had to be individually processed and this could take up to 2 days. This had been explained to homeowners who choose to pay by Standing Order. The property factor accepted that there had been delays and mistakes made in the issuing of accounts, but told the Committee that a new finance IT system had been introduced earlier in the year and that, whilst statements were sent out quarterly, any homeowner who asked for it could be given an instantaneous printout of his or her account. Mr Jennings added that he had asked to see the statements and invoices before they are sent out in the present quarter, so that he could be sure the new system was working properly.

The homeowner expressed the view that the section of the written Statement of Services which threatened late payment charges was threatening behaviour and should not apply to Falcon House, where everyone pays monthly.

The property factor then turned to the complaint that Falcon Court moneys were not held in a separate bank account, telling the Committee that Falcon House had a Cyclical Fund which was held separately from company funds, with an annual statement being issued. There was no Falcon House collection account. Maintenance costs were wrapped up in the monthly/quarterly maintenance items. All work was paid for by Places for People Scotland and then re-charged to the appropriate development. It was not possible to provide a total of the amount held on behalf of the Falcon Court residents, as it was the accumulation of confidential data held for individual homeowners, but there was no possibility of Falcon Court cross-subsidising other developments, as the homeowner appeared to suggest. The homeowner repeated that the residents would like their own account, but the property factor said that it was not possible to provide individual bank accounts for individual developments.

The property factor acknowledged that accounting mistakes had been made and that, had it not been for the diligence of the homeowners, some of the errors would not have been picked up so quickly, but felt that the company had been open and honest when errors were discovered. The process of calculating monthly payments was that the property factor took the previous year's figures and, taking advice from the finance team, produced the annual budget. The individual Direct Debit or Standing Order payments should then be calculated, having regard to any surpluses or deficits, as required by the title deeds. The property factor acknowledged that this had not happened on one occasion in 2014, but this would have been adjusted at the mid-year point. Mr Jennings said that there were various reasons for these lapses, but they were not excuses.

The property factor then turned to the statement by the homeowner that the 0.25% of sale prices had not been received in respect of two property sales in 2015, confirming that all

such moneys went to the Cyclical Fund, but that there could be long delays in receiving payment if, for example, the property was being sold by executors winding up an estate.

The property factor rejected the homeowner's suggestion that errors were dismissed as simple mistakes. There had been mistakes made, such as an entry for a lift maintenance visit to Knox House in Haddington, which had been mis-posted by a member of staff. It indicated a visit to Falcon House, albeit at nil cost, which had not taken place. With regard to electrical tests, there were 2 tests required every 5 years, one for the landlord's supply (covering such things as stair lighting) and one for the communal supply. The property factor accepted that the cost of the test of the communal supply (£403.64) had been entered twice and had had to be refunded. The property factor also told the Committee that it had a group contract for lift maintenance and that there was one occasion when the bill had, as usual, been apportioned across all the developments, but no portion of the charge should have been allocated to Falcon Court, as a new lift was being installed at the time.

With regard to the Honeywell fire alarm call out charge, the property factor told the Committee that the call out had been made in good faith, but Angela Kirkwood had asked the company to waive the charge as a gesture of goodwill. Honeywell had done that and the charge had been refunded.

The property factor then told the Committee that the window bars and cupboard locks were not capital items. They were both health and safety requirements, so had been charged to the general fund rather than the Cyclical Fund, but, as the group of homeowners had requested it, it had been agreed that this particular item would be adjusted and charged to the Cyclical Fund.

The property factor told the Committee that the title deeds were silent on the question of a threshold below which the property factor did not have to seek prior approval for works. The threshold was contained in a Service Level Agreement which predated the Act's requirement for a written Statement of Services. The property factor was in the process of reviewing the title deeds and Statements of Services for all of its developments to ensure they reflected the needs of each development. The homeowner expressed the view that the Falcon Court titles were dated but not far wrong.

The property factor then addressed the issue of the TV licence and said that the collection of £7.50 from each of only 3 owners was not cost-effective. The money was collected in cash, but a purchase order still had to be raised and the cost re-charged to the development. The property factor accepted that this was not sufficiently transparent and wished to review the process.

In relation to insurance, the property factor said that cover was calculated on a reinstatement basis, with each development being valued separately. The insurance contract was competitively tendered in accordance with EU procurement law. There had

been increases, but there was no question of cross-subsidy by Falcon Court. The homeowner had suggested that the property factor was straying into the area of giving advice merely by saying a better deal was obtained by bulk-buying, but the property factor stressed that it bought insurance, it did not issue insurance. The homeowner stated that she was still not confident that the property factor was making the effort to shop around properly.

Mr Jennings concluded by telling the Committee that the property factor knew that its written Statements of Services needed to be reviewed and he had commissioned work in order to have this done in the present financial year. He was, however, of the view that there was a clear complaints procedure, under which attempts were made by individual members of staff to resolve complaints at first stage. A review was then carried out by a manager in the business and any contact with the Managing Director would have been fed back down to the relevant member of staff. It was never the intention of the property factor to say or do anything which was misleading or threatening and Mr Jennings did not think the language used had been misleading or threatening. Mistakes had been made and the property factor was carrying out extensive reviews, knowing where it had gone wrong and taking the necessary action.

The homeowner reiterated that this was a very serious matter and there should be Board input, as it is in everyone's interest to sort matters out and to know that the people the residents at Falcon Court are trusting are doing a good job. She hoped that the residents could meet with senior management to ensure a constructive relationship in the future.

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

#### **The Committee makes the following findings of fact:**

- The homeowner is the owner of the property at Flat 33, Falcon House, 91 Morningside Road, Edinburgh EH10 4AY, part of a block of flatted dwelling houses erected by the Miller Group Limited for Lothian Homes in 1987/1988, with shops on the ground floor and retirement flats and communal facilities applicable to a retirement complex on the upper floors.
- The Deed of Declaration of Conditions recorded by Lothian Homes on 3 June 1987 relates to the block of shops and flats 85 to 95 Morningside Road, of which the property forms part. The title deeds confer on the owner of each shop or flat a right of common property with the owners of each of the other shops and flats in the block in, amongst other things, the foundations, outside walls, gables and roof, sewers, drains, water and soil pipes, rhones and gutters and each of the owners is responsible for a share of the expense of maintaining the common parts. In addition,

the owners of the flats have rights of ownership of the common parts of the retirement complex, including entrance doors and hallways, the lift, fire alarm system, common television aerial system and all items used for the benefit of the flats. The owners of the flats are liable to meet insurance premiums in respect of the flats, remuneration of the manager and all other costs pertaining to the administration of the flats, the costs being borne equally.

- Clause (ELEVENTH) of the Deed of Declaration of Conditions provides that the administration of dealing with the upholding and maintenance, re-erection and restoration of the common parts of the retirement complex shall be conducted through the medium of Castle Rock Housing Association Limited, the cost of whose services will be met equally by the respective proprietors of the flats.
- The property factor, in the course of its business, manages the common parts of the development of which the Property forms part. The property factor, therefore, falls within the definition of “property factor” set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”)
- The property factor’s duties arise from a written Statement of Services, a copy of which has been provided to the Committee.
- The date from which the property factor’s duties arose is 1 October 2012. The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- The date of Registration of the property factor was 12 November 2012.
- The written Statement of Services provides that when a property is sold or there is a transfer of ownership, 0.25% of the sale price per annum (up to a maximum of 5%) is due to the Development Cyclical Fund.
- The homeowner has notified the property factor in writing as to why she considers that the property factor has failed to carry out its duties arising under section 14 of the Act.
- The homeowner made an application to The Homeowner Housing Panel (“HOHP”) received by HOHP on 24 February 2016 under Section 17(1) of the Act.
- On 27 April 2016, a Convener of HOHP with delegated powers decided to refer the application to a Homeowner Housing Committee. This decision was intimated to the parties by letter.

### **Reasons for the Decision**

The Committee considered the application, with its supporting papers, the written representations of the homeowner, the response by the property factor to the homeowner’s letter and e-mail of complaint and the evidence given by the parties at the hearing. The Committee made the following findings:

1. The Committee has not seen the Service Level Agreement which preceded the written Statement of Services, but the homeowner did not contest the evidence given by the property factor that it contained a threshold figure below which the property factor can instruct works without prior approval from the group of homeowners and the written Statement of Services provides that maintenance work over £2,350 will be paid from the Cyclical Maintenance Fund. This implies that works costing less than that amount will not be charged to the Cyclical Maintenance Fund. The property factor told the Committee that the cost of the works referred to in the complaint (installation of window bars and locks on cupboards) was under that threshold. The Committee was told that the property factor did not regard these as capital items, but that it had now been agreed that they should be charged as such. The Committee is, however of the view that, at the time of instructing the work, the property factor was entitled to charge the cost as a maintenance item and that, as the cost fell below the threshold, it would not be charged to the Cyclical Maintenance Fund and is not covered by the “Arrangement for Collecting Payment for Specific Projects or Cyclical Maintenance” section of the written Statement of Services. The written Statement of Services does not in fact contain a provision that prior approval for or consultation with owners regarding works other than cyclical maintenance to common areas has to be obtained. Accordingly, **the Committee did not uphold the complaint under Section 1.1a.A.b of the Code of Conduct.**
2. As the homeowner’s complaint under section 2.4 of the Code refers to the same matters as that for Section 1.1a.A.b of the Code, **the Committee also did not uphold the complaint in respect of Section 2.4 of the Code.**
3. The Committee is satisfied that the homeowner was given sufficient information as to the choice of methods available to residents for making factoring payments. The property factor stated that the information was on the reverse of its invoices and the homeowner did not seek to contradict that in evidence. The property factor was entitled to state that its preferred method of payment was by Direct Debit. The Committee accepts that references in Angela Kirkwood’s letter of 11 March 2016 to the homeowner to “Direct Debit payments” should more correctly have been to “monthly payments”, but accepts that she used a shorthand phrase as the large majority of the group of homeowners paid by Direct Debit. **The Committee did not, therefore, uphold the complaint under Section 1.1a.C.k of the Code of Conduct.**
4. The Committee accepted the evidence that the property factor’s complaints handling procedure document did not contain a reference to the Homeowner Housing Panel. Section 1.1a.D.1 of the Code provides that the written Statement of Services should set out the property factor’s in-house complaints handling procedure and how homeowners may make an application to HOHP if they remain dissatisfied following completion of the in-house complaints handling procedure. Section 7.2 of The Code of Conduct also, however, specifically requires property factors to provide, in their final decision letter when the in-house complaints procedure has been

exhausted, details on how the homeowner may apply to HOHP. The view of the Committee is that this implies that some reference to HOHP must appear in the complaints handling procedure document. The property factor's written Statement of Services states that "If we have refused to resolve your complaint or have unreasonably delayed attempting to resolve your complaint, you can make an application to the Homeowners Housing Panel for a determination on whether we have failed to carry out our duties or failed to comply with the Code of Conduct. A copy of our Complaints Procedure is available on request". The Committee also noted, amongst the supporting paperwork, a print taken from the Internet of the Castle Rock Edinvar Complaints Procedure, which does not make reference to HOHP, but refers those not satisfied with the decision or with the way in which the complaint was dealt with to the Scottish Public Services Ombudsman. The Committee was able to establish, from its own enquiries, that this statement remains on the Castle Rock Edinvar Housing Association website and it is clearly misleading and incorrect as regards the property factor's role. **Accordingly, the Committee upheld the complaint under Section 1.1a.D1 of the Code.**

5. The Committee accepts that the written Statement of Services does not set out within the section on "Complaint Handling Procedure" specific timescales within which the property factor will respond to enquiries and complaints received by letter or e-mail, but under the section on "Customer Service Standard" it states that the property factor will acknowledge all communications received within 5 working days of receipt and that its aim is to respond fully to enquiries within 20 days. These timescales are the same as those set out in the Internet print referred to in the immediately preceding paragraph. The property factor accepted that the two letters to the managing Director had not been acknowledged at all. **Accordingly, the Committee upheld the complaint under Section 1.1a.D.m of the Code.** Further, as the homeowner's complaint under Section 2.5 of the Code was the failure to acknowledge the letters to the Managing Director, **the Committee also upheld the complaint under Section 2.5 of the Code.**
6. The homeowner contended in her application that Angela Kirkwood's statement to her on 7 May 2015 that the balance of funds held for Falcon Court owners could not be ascertained because "it all goes in one pot" was misleading and false because Mr Jennings, in his letter of 11 November 2015 had stated that the property factor held all customer money in a separate bank account which was separate from the company accounts. Having heard the evidence given at the Hearing, the Committee did not agree with the homeowner's view. The reference to "one pot" was intended to make it clear that incoming funds relating to all the property factor's customers went into a single account, so Falcon Court could not be separated out and this is envisaged in Section 3.5.b of the Code of Conduct and is entirely in accordance with the terms of the letter from Mr Jennings, which also stated that "there is one account for customer funds", although he did add that the Residents' Committee

could be provided with a reconciliation of current funds, if requested. The homeowner had also said in the application that it was false to say that the property factor offered a number of payment options. The Committee accepted that the preferred method of payment from the property factor's perspective was Direct Debit, but held that, as the evidence from the property factor that the various payment methods were set out on the reverse of statements was not challenged, the homeowner's contention could not be upheld.

The Committee saw the letter of 21 August 2015 in which Angela Kirkwood advised the homeowner that the window cleaners had increased their charges by 2.5% for 2015/16. She stated that "as yet they have not applied this". The supporting paperwork includes extracts from invoices and it appears that the window cleaning charges from June 2015 forwards were £60.28 per month, compared with £58.50 in March 2015. Angela Kirkwood's statement was, therefore, incorrect.

The homeowner also complained that it had taken 3 months to issue the Minutes of the AGM of 17 June 2015 and that when a draft Note was issued on 28 September 2015 it contained errors, omissions and false statements. The Committee noted that, firstly, it was a draft note and, secondly, that the property factor in response to the homeowner's letter and e-mail of complaint pointed out that a revised version was sent with the papers for the 2016 AGM, incorporating all the amendments and corrections that customers had asked for.

The Committee accepted that Direct Debit letters had referred to "your rent charge", and that this was incorrect, given that the flats at Falcon Court are all privately owned, but determined that, whilst the matter should be addressed by the property factor and it was a source of annoyance to the residents, it was not a false statement which would merit a finding that the property factor had failed to comply with Section 2.1 of the Code. The Committee also noted that in the letter dated 11 March 2016 to the homeowner the property factor confirmed that the homeowner had been provided with a reconciliation of the Cyclical Maintenance Fund and that there was no need to produce a separate reconciliation of the income and expenditure for the maintenance of Falcon House as it was already held at individual account level. On the basis of the written documentation and the evidence provided at the Hearing, **the Committee upheld the complaint under Section 2.1 of the Code** insofar as it related to the incorrect statement made by Angela Kirkwood in relation to the window cleaning charges.

7. The homeowner contended that the statements by Angela Kirkwood that the owners could organise the window cleaning themselves if they were unhappy with the window cleaning charges and, at the June 2015 AGM, that the residents had the right to appoint different factors were threatening and intimidating. The homeowner was also of the view that the residents were being intimidated into paying by Direct Debit. The Committee has already held that the property factor was entitled to express a preference for Direct Debit payments and the Committee saw nothing in

the actions of the property factor which could reasonably have been regarded as communicating with the group of homeowners in any way which was abusive or intimidating or which threatened them. The Committee could understand that elderly residents would be anxious about the prospect of having to make alternative factoring arrangements, but the property factor was entitled to point out that this was an option, if the residents were unhappy with the service or with the responses to their concerns. The Committee also determined that the property factor was entitled to point out in documentation, including its written Statement of Services, the consequences of late payment, even where residents were paying by monthly Direct Debit or Standing Order. That was normal commercial practice. Accordingly, **the Committee did not uphold the complaint under Section 2.2 of the Code.**

8. The homeowner's complaint under Section 2.3 of the Code was that the written Statement of Services did not contain a telephone number for the property factor. The Committee found this to be correct and the property factor had said that this would be included in the review of written Statements of Service that had been commissioned. The Committee noted, however, from examination of letters and e-mails from the property factor to the homeowner that every communication contained the contact telephone number of the author. Section 2.3 does not require the telephone number to be in the written Statement of Services and, accordingly, **the Committee did not uphold the complaint under Section 2.3 of the Code.**
9. The reasons for the Committee's decision not to uphold the complaint under Section 2.4 of the Code and to uphold the complaint under Section 2.5 of the Code have been set out in numbered paragraphs 1-5 above.
10. The complaint under Section 3.3 was that there was lack of clarity in both invoices and statements relating to the accounts and that the homeowners had been invoiced for work that had not been carried out. The issue of the window cleaning charges has already been dealt with in numbered paragraph 7 above. The property factor admitted that there had been an error in relation to the fire alarm call-out charge, but the Committee was satisfied that the property factor had dealt with the issue by negotiating the cancellation of the invoice from Honeywell. The mechanism for charging for the communal TV licence was under review and the issue of whether the installation of window bars and cupboard locks was a capital or maintenance item had been resolved by the property factor agreeing to the request by the residents that it be charged to the Cyclical Maintenance Fund. The Committee accepted that the property factor did not agree that it was capital expenditure, but noted that it had been adjusted to comply with the residents' wishes.
11. The Committee was unable to make a finding in relation to non-reimbursement of telephone charges, as the evidence indicated that, whilst there were incorrect descriptions within the invoices, in that they wrongly referred to the same period, the actual amounts charged were correct. The property factor had apologised for the mis-posting which had resulted in an entry relating to a different development

appearing in the Falcon Court accounts, but it had shown a nil amount. The property factor had also accepted that an error had been made in relation to lift maintenance charges being applied at a time when there was no working lift in the building. The Committee accepted the explanation given by the property factor that the written communication regarding changes to Direct Debits for 2015/16 had been investigated and appeared to be the fault of Royal Mail and noted that the property factor had agreed to reimburse any consequential bank charges incurred by residents. The Committee also noted that the property factor had admitted a failure to take account of individual surpluses and deficits when assessing the monthly payments for 2015/16.

12. The Committee accepted the evidence given by the property factor regarding the delay of up to 2 working days in payments received by Standing Order appearing as a credit in the homeowner's account and that, depending on whether the homeowner instructed the payment at the beginning of a particular month or towards the end of the previous month, a statement taken to the first day of the month would show Direct Debits received on that day, but would not disclose Standing Order payments. This could produce an apparent deficit in the account and the Committee understood that this would cause anxiety to residents who chose to make payments by this method. The homeowner had brought forward by a few days her Standing Order payments, to avoid the statements showing her account as apparently being in arrears.
13. A statement is a snapshot of an account taken on a particular date and time and the view of the Committee is that those residents paying by Standing Order have more control over payments being made, but they have to recognise that this results in payments having to be picked up and then processed by the property factor's finance department and a two-day delay is a reasonable period to allow for that to happen. Payments made by Direct Debit are automatically processed.
14. The Committee accepted that the property factor had, in general, responded properly when accounting errors had been pointed out. The Committee was, however, concerned that so many errors, which had been picked up by the residents and, in particular, the homeowner, had occurred and that the homeowner felt the necessity, therefore, to go over every account with a fine tooth comb. Trust is essential for a good working relationship between homeowners and property factors and sloppy accounting, with mis-postings, double charging and errors in description of work erode that trust, resulting in homeowners feeling they have to micro-manage the work which they are paying property factors to carry out on their behalf and the accounts that the property factors issue for that work. **The Committee, therefore, upheld the complaint under Section 3.3 of the Code** and would expect the property factor now to undertake a review of its processes and to carry out such staff training as is necessary to provide its customers with the assurance that, whilst

occasional errors are inevitable in a complex business, these are kept to an absolute minimum.

- 15. The homeowner made a complaint under Section 3.5a of the Code. The property factor pointed out that, as a registered social landlord and not a private sector property factor, it was Section 3.5b that applied. The Committee accepted that this was the case and, as the Committee was satisfied that the Falcon Court homeowners' floating funds were accounted for separately from the property factor's own funds through coding arrangements, **the Committee did not uphold the complaint under Section 3.5 of the Code.****
- 16. The Committee did not uphold the complaint under Sections 5.2 or 5.3 of the Code.**  
The Committee accepted the evidence given by the property factor that the insurance cover had been put in place following competitive tender in accordance with EU procurement regulations and regarded it as reasonable to obtain a group policy covering multiple developments, in order to achieve the benefit of economies of scale. The property factor had given assurances that the residents at Falcon Court were not cross-subsidising other developments and had explained to the satisfaction of the Committee the basis on which the insurance premium applicable to each resident at Falcon Court was calculated. The Committee also accepted the statement by the property factor that the cost of insurance had risen sharply in recent years. There was no evidence before the Committee to suggest that the property factor had failed to disclose any commission or rebate that it received from the company providing insurance and the homeowner had received the information she had requested about public liability insurance.
- 17. The matter complained about under Section 6.9 of the Code was the Honeywell fire alarm call-out invoice and the property factor had negotiated its cancellation, so **the Committee did not uphold the complaint under Section 6.9 of the Code.** At the time of the call-out, engineers had been replacing the lift and, on the basis that, if Honeywell's diagnosis was correct, the detector was relocated by the contractors to its correct position as part of the installation works, there was no further action required of the property factor in this regard. The Committee noted, however, the statement by the property factor that the problem had not related to the installation of the new lift.**
- 18. The Committee proposes to make a Property Factor Enforcement Order, as detailed in the accompanying Section 19(2) Notice.**

#### **19. Appeals**

*The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides "(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing*

*Panel or a Homeowner Housing Committee. (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made ... "*

G Clark

Chairperson Signature ...

Date 5 September 2016