



**Decision of the Homeowner Housing Committee issued under the
Homeowner Housing Panel (Applications & Decisions)(Scotland)
Regulations 2012**

HOHP/PF/14/0062

Re: Granary Cottage, 9 Temple Mains Steading, Innerwick, East Lothian, EH42 1EF

The Parties

James and Patricia Cassidy, 9 Temple Mains Steading, Innerwick, East Lothian,
EH42 1EF
("The applicants")

and

Cruz Property Management Ltd, a company incorporated under the Companies
Acts (SC407963) having their registered office at 15 Glenorchy Road, North
Berwick, East Lothian, EH39 4PE and having a place of business at Dalmatian
House, Spott Road, Dunbar, EH42 1LE
("The Respondent")

**Decision by a Committee of the Homeowner Housing Panel
In an Application under Section 17 of the Property Factors (Scotland) Act
2011**

DECISION OF THE COMMITTEE

The Committee, having made such enquiries as it saw fit for the purposes of
determining whether the Respondent has

- (a) Complied with the property factor's duties created by Section 17 of the
Property Factors (Scotland) Act 2011 ("The 2011 Act") &

(b) Complied with the Code of Conduct, as required by Section 14 of the 2011 Act

Determined that the Respondent has not breached the Code of Conduct for Property Factors, nor has the respondent failed to carry out the property factor's duties.

Committee Members

Paul Doyle (Chairperson)
Mike Links (Surveyor Member)
Irene Kitson (Housing Member)

Background

- 1 By an application dated 16 April 2014, the applicants applied to the Homeowner Housing Panel for a determination as to whether the respondent has failed to comply with the code of conduct imposed by Section 14 of the 2011 Act and separately failed to comply with the property factor's duties.
- 2 The application stated that the applicants considered that the respondent failed to comply with the property factor's duties and also failed to comply with Section 1, Section 2.1, 2.2, 2.3, 2.4, 2.5, Section 3.5, Section 4.1, 4.3, 4.6, 4.8, 4.9, Section 5.2, 5.3, 5.4, 5.6, 5.9, Section 6.9, Section 7.1 and 7.2 of the code of conduct.
- 3 By letter dated 5 August 2014, the President of the Homeowner Housing Panel intimated a decision to refer the application to a Homeowner Housing Committee. The Homeowner Housing Panel served notice of referral on the parties, directing the parties to make any further written representations.
- 4 The applicants expanded on their application in e-mails dated 26 April, 4 June, 16 June, 25 June and 13 July, all 2014. The respondent submitted written representations with supporting documents on 8 August 2014. Further representations were received by email from the applicants on 7th October 2014.
- 5 Neither party has requested an oral hearing. The Committee were satisfied that this case could be justly determined on the available documentary evidence.

Findings in Fact

- 6 (a) The applicants purchased the property at 9 Temple Mains Steading, Innerwick, East Lothian, EH42 1EF on 27 November 2009. Title to the property was taken in the applicants' joint names. The property at 9 Temple Mains Steading, aforesaid, forms one of a group of 11 domestic dwelling-houses in a steading development. The management of the communal areas has been handled by property factors since completion of the development in 2009. Until October 2013, the property factors were a management company from Edinburgh. The appointment of the property factors is the responsibility of a residents' association known as "Temple Mains Steading Residents' Association". One of the property factor's duties is to arrange the care and maintenance of the common parts under instructions of the management committee of Temple Mains Steading Residents' Association, and to arrange for buildings insurance for all properties within the Association. The applicants are members of Temple Mains Steading Residents' Association.
- (b) Temple Mains Steading Residents' Association decided to change property factors in or about September 2013. They invited tenders and, after competition, appointed Cruz Property Management Ltd (The respondent) as property factors. Cruz Property Management Ltd were the property factors for all of the dwelling-houses within Temple Mains Steading from 1 October 2013 until they resigned office on 31 March 2014. Cruz Property Management Ltd registered as property factors in April 2013.
- (c) On 1 October 2013, the respondent was appointed as property factors by Temple Mains Steading Residents' Association. On appointment, the respondents provided a copy of their code of conduct (which incorporates a written statement of services) and a copy of the contract appointing them (signed on behalf of Temple Mains Steading Residents' Association) to each of the proprietors in each of the dwelling-houses in Temple Mains Steading.
- (d) The contract between the respondents and Temple Mains Steading Residents' Association was signed on 4 and 5 September 2013. On 30 September 2014 (six months after the respondents resigned agency and five and a half months after the applicants made their complaint to HOHP), a director of the respondent company incorrectly stated in an e-mail that he believed that the contract had been signed at the end of September 2013.
- (e) On a number of occasions during November and December 2013, the applicants telephoned the offices of the respondent, making various complaints. The applicants spoke to a Miss Thompson, one of the

respondents' employees. The applicants adopted a hostile tone and harangued Miss Thompson. The telephone conversation was overheard by a director of the respondent company who instructed Miss Thompson to terminate the telephone conversation.

- (f) Throughout the period that the respondents were the property factors for the development at Temple Mains Steading, the property factors corresponded with the applicants, using their own headed notepaper which contained the respondents' full address, their telephone number, their website and e-mail address. The respondent provided the applicants with a 24 hour contact number which could be used out-with business hours and provided mobile telephone numbers for staff members. Those details also feature in the respondents' code of conduct, a copy of which was provided to the applicants.
- (g) In the six months that the respondents were the property factors for the development at Temple Mains Steading, no unusual or additional works were instructed by the property factors and no unusual costs were incurred on the instructions of the property factors.
- (h) The applicants are members of Temple Mains Steading Residents' Association. The constitution of Temple Mains Steading Residents' Association provides (at 4H), "*the Chair will act as single point of contact with the factors for all issues pertaining to care and maintenance of the common parts*". Despite that provision in the constitution of Temple Mains Steading Residents' Association, the applicants insisted in repeatedly attempting to contact the respondents directly by both telephone and e-mail, and, on occasion, adopted a hostile and hectoring tone when attempting to contact the respondents. The respondents politely asked the applicants to raise any concerns that they may have with Temple Mains Steading Residents' Association, so that they could be properly raised with the respondents. The applicants chose not to do so.
- (i) When the respondents took up office of property factors on 1 October 2013, a bank account was opened with the Dunbar branch of the Royal Bank of Scotland. The floating funds for Temple Mains Steading Residents' Association were credited to that account.
- (j) In terms of the burdens contained in the applicants' land certificate and in terms of the constitution of Temple Mains Steading Residents' Association, the respondents were responsible for arranging buildings insurance for the Temple Mains Steading development and for the common parts of the Temple Mains Steading development. For five years until 1 October 2013, the previous property factors had arranged buildings insurance and insurance for the common parts. The premium for the common policy for insurance was then divided equally amongst the 11

proprietors of the dwelling-houses at Temple Mains Steading. When the respondents arranged the common policy of insurance in October 2013, they divided the premium equally amongst the 11 proprietors of Temple Mains Steading. They were not asked to arrange any other scheme of division.

- (k) There is no provision in the burdens section of the applicants' land certificate for a scheme of division of the common insurance premium. The applicants have not yet paid their share of the common insurance premium. On 1 October 2013, the respondents wrote to the applicants, enclosing an invoice narrating the total costs of the common insurance premium and apportioning the applicants' share and asking for payment.
- (l) On 30 October 2013, the respondent wrote to the applicant noting that payment had not been received, stating that payment was overdue and asking for payment. The letter of 30 October 2013 included a statement of account.
- (m) On 13 November 2013, the respondent wrote to the applicant warning them that if payment was not received, court action might be necessary. On 9 December 2013, when the applicants had still not made payment, a court action would be raised against the applicants in the Sheriff Court.
- (n) When the respondents arranged the block insurance policy, they neither received nor claimed commission, administration fee or rebate.
- (o) Neither repairs nor maintenance were carried out to Temple Mains Steading (other than grass cutting by a gardener appointed by the Temple Mains Steading Residents' Association) between 1 October 2013 and 31 March 2014.
- (p) The respondents' code of conduct (copies of which were distributed to all homeowners within Temple Mains Steading, including the applicants) contains a clearly defined complaints procedure.

Reasons for Decision

7 (a) The applicants submitted their application on 16 April 2014. The respondents had resigned agency on 31 March 2014, so that the application comes two and a half weeks after the respondents resigned agency. In completing the application form, the applicants confirm that their complaint does not relate to the management of the common parts of the building used for residential purposes; nor does it relate to the payment of a management fee for factoring services; nor does it relate to the management or maintenance of land, either owned in common or adjoining the applicant's property. At Section 7 of the application form, the applicant is asked to provide "*details of your complaint*". The

applicants simply state “see separate sheet” and attach 166 sheets consisting of written statements of complaint, focusing on each of the sections of the code (listed at Paragraph 2 above) together with documentary evidence relied on by the applicants. The applicants state (in the final part of Section 7 of the application form) that they seek compensation and focus on a dispute over block insurance.

(b) The applicants complain that the respondents have failed in every aspect of Section 1 of the code of conduct and state that they were not provided with the written statement of services from the respondents. In the written submissions received from the applicants on 7 October 2014, the applicants complain that even when they were embroiled in civil litigation at Haddington Sheriff Court, they still had difficulty in recovering a copy of the written statement of services.

(c) In their written submissions, the respondents explain the process of their appointment by the Temple Mains Steading Residents’ Association and state “*a copy of our code of conduct and the signed contract were supplied to all households*”. In their response to the respondents’ written submissions (received 7 October 2014) the applicant’s deny that the code of conduct was sent to them. However, in the summary of their application contained in the detailed e-mail dated 4 June 2014, addressed by the applicants to the respondents, the applicants depart from their complaint that they have not received a statement of services and argue that the respondents were invalidly appointed and so acting without mandate. The applicants make reference to the respondents’ “*...poor letter of introduction*” and produce a letter from the respondents dated 1 October 2013 (before going on to complain about the contents of that letter).

(d) In the documents attached to the application form, the applicants set out their complaint that the respondents have breached Section 1 of the code of conduct and produce the respondents’ letter of 1 October 2013 addressed to the applicants. Contrary to what the applicants say, the letter of 1 October 2013 does provide a full, but simple, description of the terms of appointment and the services to be provided. Weighing all of the evidence placed before the Committee, the Committee comes to the conclusion that the respondents have provided a written statement of services timeously and so have fulfilled the requirements of Section 1 of the code of conduct.

(e) In the written submissions delivered by the applicants on 7 October 2014, the applicants expand on their complaint in relation to Section 1 of the code of conduct and complain about the period of notice the respondents gave in terminating their agreement. The Committee find that they cannot consider the fresh complaint made by the applicants because it did not form part of the original application and because the applicants had not put that complaint to the respondents - so that the fresh aspect of this complaint does not fulfil the requirements of Section 17(3) of the 2011 Act. In any event, if the Committee were to consider the period of notice given by the respondents, the Committee

would take account of the facts and circumstances surrounding the termination of the agreement. The Committee would bear in mind the applicants' insistence that the respondents had never validly been appointed and would come to the conclusion that the difference between the contractually agreed period of notice and the actual period of notice given is immaterial.

(f) The applicants complain that the respondents breached every aspect of Section 2 of the code of conduct (which relates to communication and consultation). It is here that the applicants raise properly their complaint about the period of termination of contract. It is beyond dispute that the respondents' statement of services specifies a period of three months' notice and that, in this case, the respondents terminated their contract without giving three months' notice. It is also a matter of concession by the respondents that the respondents' director told the applicants that the contract for services was signed at the end of September 2013, when as a matter of fact, it was signed on the 4 and 5 September 2013. The Committee finds that it is not sufficient to simply look at the written statement of services and the contractual terms in this case. By considering each strand of evidence, it is clear that what started out as a poor relationship between the applicants and the respondents broke down entirely in a short period of time. When the Committee considers the weight of evidence, the Committee comes to the conclusion that the respondents made a sensible business decision in terminating a relationship which was not working, and was unlikely to work, immediately, rather than prolonging a poor relationship for a further three months. The Committee takes account of the short duration of the contract and concludes that the Temple Mains Steading Residents' Association accepted the respondents' immediate termination of the contract. Their acceptance meant that the respondents were no longer bound to provide three months' written notice. Consensually varying the terms of the contract is not the same as providing false or misleading information.

(g) The applicants rehearse a series of letters and telephone conversations, and accuse the respondents of providing misleading information and communicating in an abusive and intimidating way. Once again, the Committee considers each strand of evidence in this case and comes to the conclusion that reliance can be placed on the submission of the respondents. The weight of evidence indicates that the respondents have dealt with the applicants in a courteous manner in the face of increasing hostility, and that whilst the applicants' passions are raised, the respondents have dealt with the applicants (and with other residents within the Steading development) in a business-like way. It is clear that there was one telephone conversation where communication was flawed. The applicants claim that one of the respondents' employees was abrupt and abusive. It is the respondents' position that the applicants were agitated and hostile. The submissions of the applicants and the documentary evidence placed before the Committee make it clear that there is a difference of opinion between neighbours, that there has been police involvement and that there is some form of civil litigation involving residents of the Temple Mains

Steading development. Against that background, it is far more likely that the respondents' recollection is accurate. The Committee therefore come to the conclusion that the respondents have not provided false or misleading information and that the respondents have not been either abusive, intimidating or threatening in their communications with the applicants.

(h) The applicants claim that they were not provided with adequate contact details so that Section 2.3 of the code of conduct is breached. The respondents produce documentary evidence that they had provided contact numbers, including a 24 hour mobile number, to the applicants. In their written submissions, received 7 October 2014, the applicants at least imply that they had received that information by 25 November 2013. There is no foundation in the applicants' complaint that Section 2.3 of the code of conduct is breached.

(i) The applicants complain that Section 2.4 of the code of conduct is breached and complain that there was no procedure to consult groups of homeowners to seek approval for providing work or services. Both parties agree that, in the brief period the respondents were the property factors for Temple Mains Steading Residents' Association, there were no additional works or services. The applicants complain that the respondents were prepared to carry out any such additional works or services (if required) on a verbal instruction following a majority vote, when they were required to seek written approval. The difficulty for the appellants is that the circumstances did not arise. The respondents cannot have breached the code of conduct because Section 2.4 of the code of conduct was never tested. The Committee cannot make a finding that the respondents would have carried out additional works without written approval.

(j) The applicants complain that Section 2.5 of the code of conduct is breached. The respondents explain that their contract with Temple Mains Steading Residents' Association specifies "*the chair will act as a single point of contact with the factors*". Taking an holistic view of the evidence in this case, the Committee finds that the applicants (and other homeowners) contacted the respondents direct. The weight of evidence indicates that the respondents dealt with each of the enquiries of the applicants and that, when it became clear that relationships were breaking down, the respondents tried to pour oil on troubled waters by referring the applicants to the chair of the Temple Mains Steading Residents' Association. The focus of the applicants' complaint is that they wanted a copy of the contract signed between the Temple Mains Steading Residents' Association and the respondents. The applicants produce a copy of that contract with their application.

(k) The Committee considers the terms of Section 2.5 of the code of conduct and, after considering each strand of evidence, can only come to the conclusion that the respondents responded to enquires and complaints without delay and that they tried to deal with the applicants' enquires comprehensively. We consider the exchange of correspondence by letter and e-mail and we consider

the reports of telephone conversations and come to the conclusion that each enquiry was responded to in a business-like way; that no enquiry was left ignored; that each enquiry was responded to promptly. The respondents have not breached Section 2.5 of the code of conduct.

(l) The applicants complain that the respondents breached Section 3.5 of the code of conduct and did not honour their financial obligations. The respondents produce adequate documentary evidence to show that homeowners' funds are kept in a separate account. The applicants' submission really amounts to a refusal to believe what the respondents say. The respondents say that on the day of appointment, a client account was set up. The documentary evidence indicates that the client account was set up. There is no suggestion that funds have been misappropriated. The Committee reminds itself that the standard of proof is the balance of probabilities. On the balance of probabilities, the homeowners' floating funds were maintained in the bank account set up specifically for the purpose of holding the homeowners' floating funds. The clear evidence before the Committee is that that bank account is a client account and is therefore separate from the funds of the property factor. The property factor has adhered to the requirements of Section 3.5 of the code of conduct.

(m) The applicants' attention turns to Section 4 of the code of conduct (debt recovery). Section 4.1 places an obligation on the respondents to have a clear written procedure for debt recovery. The Committee have a copy of the "code of conduct" prepared by the respondents and issued to the applicants. The Committee consider the terms of the code of conduct. There is a section headed "*invoices*" which sets out a clear written procedure for debt recovery. The applicants make a clinical exegesis of the respondents' code of conduct in the section headed "*invoices*" in the arguments they present to support their complaint. The Committee find that the respondents have (and had, at the time they were property factors to the applicants) a clear written procedure for debt recovery. The Committee finds that the terms of the respondents' debt recovery procedure set out in their code of conduct is clear, comprehensive and unambiguous.

(n) Section 4.3 of the code of conduct states "*any charges that you impose relating to late payment must not be unreasonable or excessive*". The applicants complain that the respondents do not set out a scale of charges for late payment. That is correct, but the respondents are not required by the code to set out a scale of charges for late payment. The respondents are required not to make unreasonable or excessive charges. In this case, no charges have been made. The respondents cannot therefore be in breach of Section 4.3 of the code of conduct.

(o) The applicants complain that the respondents have breached the "*data protection code*" and accuse the respondents of discussing their non-payment with other neighbours. There is no reliable evidence before the Committee

that the respondents have discussed the applicants' affairs with another. The respondents explain that the applicants have misinterpreted an e-mail written by somebody other than the respondents. There is clearly a dispute between the applicant and the respondent about the contents of the e-mail. The applicants do not direct the Committee's attention to any provision of the Data Protection Act 1998, nor do the applicants specify what exactly is meant by the "*"data protection code*". The Committee's jurisdiction is to consider the property factor's duties and the code of conduct. Section 4.6 of the code of conduct is in the following terms:

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

Taking an holistic view of the evidence placed before the Committee, the Committee can only come to the conclusion that the respondents have not breached Section 4.6 of the code of conduct.

(p) The applicants complain that the respondents breached Section 4.8 of the code of conduct, which is in the following terms, *"you must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention"*. The applicants' focus is on the respondents' own code of conduct and statement of services - in which the respondents state that, before court action commences, the applicants will receive a letter from the respondents' solicitor warning that if payment is not received within seven days court action will commence. It is beyond dispute that in this case, before a small claims action was raised against the applicants, solicitors did not send a "seven day letter".

(q) The Committee find that there is no substance in the applicants' complaint. It is true that the respondents' code of conduct & terms of service states that a warning letter will be sent from a solicitor, but in this case, the applicants knew that they had not paid an invoice. The respondents sent letters on 1 October, 30 October and 13 November, all 2013, to the applicants. The applicants complain that because they were abroad, there was a delay in receiving at least one of those letters but the respondents cannot be held responsible for the applicants' absence from the address at which the respondents are expected to correspond with them. In any event, after the appellants' return to the UK by the end of October 2013, three further letters (30 October, 13 November and 9 December, all 2013) were sent to them. The last two letters from the respondents to the applicants (13 November and 9 December, both 2013) threatened court action. On the applicants' own evidence, in the course of their telephone conversation with the respondents' employee in November 2013, the prospect of court action was discussed.

(r) The applicants were therefore given fair notice that continued delay in paying a significantly overdue invoice would result in court action being raised. A

solicitor's "seven day letter" would have done nothing to improve the quality of the notice that the applicants had been given of the prospect of court action. There is no evidence placed before the Committee from which the Committee can make a finding that the respondents did not instruct solicitors to send a seven day letter. The Committee cannot find that the lack of a seven day letter is the fault of the respondents. In any event, the notice afforded by a solicitor's "seven day letter" was given to the applicants. It is not for the Committee to consider the terms of the code of conduct in a Kafkaesque manner. It is for the Committee to consider the meaning and the spirit of the code of conduct. Taking an holistic view of each strand of evidence, the Committee finds that the respondents adhered to each sub-section of Section 4 of the code of conduct.

(s) The applicants' attention turns to Section 5 of the code of conduct and it is perhaps here that the Committee comes to the central issue of the dispute between the applicants and the respondent. The applicants believe that the respondents have breached Sections 5.2, 5.3, 5.4, 5.6 and 5.9 of the code of conduct. The applicants' complaint, in reality, is a complaint about the manner in which the common insurance premium was divided. It is beyond dispute that for the five years from 2009 to 2013 the common insurance premium had been divided equally. The documentary evidence placed before the Committee indicates that the respondents provided each household, including the applicants, with a statement showing the total premium for the year and the manner in which the premium was divided. The applicants concede that that is the case because the applicants' complaint is that they should not be held liable for an equal share as there is a B listed property in the development, which is larger than the applicants' house. The applicants rely on one of the burdens specified in their title deeds relating to insurance and argue that the division of the insurance premium should not be on the basis of "equal shares".

(t) The Committee considers the terms of Sections 5.2, 5.3, 5.4, 5.6 and 5.9 of the code of conduct. The weight of evidence indicates that the respondent provided clear information showing the basis of calculation of insurance premium and the manner in which the premium is divided between the various proprietors of the development. The weight of evidence indicates that the respondent made a full and frank disclosure of any commission, administration fee or rebate that applied. The strange aspect of this case is that the respondents chose to only charge £5 per household per month. The applicants appear to be complaining that they make such a modest charge. The level of charge is academic. The fact is that the applicants themselves concede that there is disclosure of the administration fee.

(u) Section 5.4 commences with the words "*if applicable...*" The weight of evidence in this case indicates that homeowners are not responsible for submitting insurance claims. The weight of evidence also indicates that the respondents had a procedure in place for submitting insurance claims.

(v) Section 5.6 of the code is in the following terms:

"On request you must be able to show how and why you appointed the insurance provider, including any cases where you decided not to obtain multiple quotes"

The weight of evidence in this case indicates that the respondent acted directly on instruction from Temple Mains Steading Residents' Association. The weight of evidence indicates that the respondent were entitled to do. The weight of evidence also indicates that after the respondent resigned agency, they became aware that there was some dispute between the applicants and their residents' association, and some dispute between neighbouring proprietors within the development. The respondent was not a party to those disputes. When the Committee considers the terms of the submission made on 7 October 2014 by the applicants, it is clear that the applicant's complaints are complaints about the residents' association and it may be that their complaints should, more appropriately, be raised with the residents' association than with the respondents.

(w) The applicants rely on the terms of the burdens section of their land certificate. Clause six of the burdens section deals with insurance and contains the following phrase,

"declaring that in the event of any owner using any unit for any purpose which shall occasion an increase in the rate of any premium, the owner or owners causing such increase or increases shall be bound to pay the whole of such increase or increases in the insurance premium and to relieve the remainder of owners thereof..."

The applicants interpret that clause as meaning that an owner of a B-listed property is responsible for an increase in the level of insurance and should be bound to pay that increase.

(x) The flaw in the applicants' argument is that the insurance provision of the burdens section of the applicants' land certificate relate to an increase based on the use of property, rather than the character of property. There is no reliable evidence before the Committee to indicate that an increase in the buildings premium has been occasioned by a proprietor's use of property.

(y) The applicants rely on Section 5.6 of the code of conduct, arguing that the respondents failed to obtain more than one insurance quotation from potential insurance providers. The Committee have sight of a succession of e-mails which indicate that the Temple Mains Steading Residents' Association office bearers had obtained several quotes for buildings insurance and provided copies of those quotes to the respondent, together with instructions to accept one quotation in particular. In the particular circumstances of this case, the respondent was given clear instructions from the Residents' Association after the Residents'

Association themselves carried out enquiry and obtained more than one insurance quotation. The respondent adequately demonstrates how and why they accepted one particular insurance quotation and arranged the contract of insurance.

(z) The applicants incorrectly cite Section 5.9 of the code of conduct, which relates to a land maintenance company. The evidence before the Committee indicates that the common property in this case is not owned by a land maintenance company. Section 5.9 of the code of conduct is not engaged.

(aa) The applicants argue that the respondents failed in their duties to carry out repairs and maintenance, and rely on Section 6.9 of the code of conduct, but before Section 6.9 of the code of conduct can be engaged, the respondent would have had to instruct a contractor to carry out work - and that work would have to be defective. The clear evidence before the Committee is that no works were instructed and no contractors were engaged by the respondent and that it was not necessary for the respondent to either instruct works or engage contractors during their brief period as property factors.

(ab) The applicants are not happy with the way the respondent handled their complaint and rely on Section 7 of the code on conduct ("Complaint Resolution"). Section 7.1 of the code of conduct imposes an obligation on the respondents to have "...a clear written complaints resolution procedure...". The respondent produces their own "code of conduct". That code of conduct contains a section headed "complaints procedure". The Committee consider the contents of the respondents' code of conduct and find that under the heading "complaints procedure", an adequate written complaints procedure setting out the steps and timescales for their complaints procedure is prepared by the respondent, forms part of their code of conduct and was timeously intimated to the applicants.

(ac) Section 7.2 of the code of conduct is in the following terms:

"when your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Homeowner Housing Panel."

The applicants state that the respondents have breached Section 7.2, but do not specify in what way the respondents breach Section 7.2. In their additional submission (received on 7 October 2014) the applicants re-visit their complaint and state that the respondents failed to respond to a number of their letters until they delivered one by hand and complained that the response they received to their hand delivered letter did not include details of how to apply to the Homeowner Housing Panel.

(ad) The Committee members, once again, consider the terms of the respondents' "code of conduct" and find that under the heading of "Complaints Procedure", the respondent states:

"If you feel like a property factor is not handling a complaint appropriately, and application can be made to the Homeowner Housing Panel, Europa Building, 450 Argyle Street, Glasgow, G2 8LH."

(ae) With the documents supporting the applicants' claim (annexed to the section of the applicants' claim that Section 7.2 of the code of conduct is engaged) there are copies of the e-mail exchanges and correspondence between the applicants and the respondent. It is clear from that exchange of e-mails that the applicants raised matters with the factors that they should, more appropriately, raise with their own Residents' Association. It was not until 21 February 2014, that the applicants made the respondents aware that they were considering raising a complaint ("before I raise this matter as a formal complaint..."). The communication from the respondent to the applicants dated 25 February 2014 states "...we will not provide copies of any further requests for communication between the committee as you need to ask them for copies". At that stage, the applicants had not raised a complaint against the respondents. It was not until 25 February 2014 that the applicants delivered a letter headed "complaint delivered by hand" to the respondents.

(ad) Although the applicants state that they received a response to that complaint, the Committee members do not have a copy of that response. The weight of evidence therefore indicates that because of the complete breakdown in relationship and because the respondent resigned agency, the complaints procedure did not reach its conclusion. In any event, it is clear from the code of conduct that the respondent was aware of the Homeowner Housing Panel and, six months before any complaint was raised, had provided the applicants with details of the Homeowner Housing Panel. As the response to the applicants' letter dated 25 February 2014 is not produced before the Committee, the Committee cannot find that Section 7.2 of the code of conduct for property factors has been breached.

(ae) We consider carefully both the terms of the 2011 Act and the Code of Conduct. When we take an holistic view of each strand of evidence, we can only come to the conclusion that the respondent has not breached the terms of the Code of Conduct.

Decision

8 The committee therefore finds that the respondent has not breached the Code of Conduct for property factors. The committee refuses the application. No property factor enforcement order will be made in response to this application.

Appeals

9 The parties' attention is drawn to the terms of section 22 of the Property Factors (Scotland) 2011 Act regarding their right to appeal and the time limit doing so. It provides:

"...(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee.

(2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

Paul Doyle

Signed
Chairperson

Date 21/10/2014