

**Platinum Point Owners' Association
Annual General Meeting
26 September 2007**

Report from the PPOA Committee

1. Purpose of this Report

This report is intended to brief proprietors on the work of the Committee and dealings with the Factor and other bodies over the 12 month period from October 2006 to September 2007, and how the Factor's particular relationship with Gregor Shore (GS) has influenced our relationship with them. The Committee's dealings with Charles White Limited (CW) have been with their Property Managers (we are now dealing with the third Property Manager allocated to us, two having resigned during the course of the year). The Property Manager has responsibility for day-to-day management of Platinum Point (PP). Half way through the year we were also given direct access to CW's Projects & Technical Manager, since the original intention for all dealings to go via the Property Manager was proving too burdensome and ineffective.

The PPOA Committee does not have a formal relationship with the Developer. What little contact there has been with GS has been at the request of, or on the advice of, CW staff.

2. Factor's Dual Role

Firstly, five or six years ago CW entered into partnership with GS to manage the PP development, which included in its remit the adoption of common areas on behalf of the proprietors. Secondly GS appointed CW as the first Factor for PP. CW's obligations in this latter regard comprise the power to instruct and supervise common repairs and maintenance, and to apportion the cost of same among the proprietors, for which service the proprietors pay an annual fee. This remit is defined in the Deed of Conditions (the Deed) dated 22/06/2004, which governs the relationship between the Factor and each proprietor.

Insofar as areas of the development offered for adoption to CW by GS may not reach an acceptable standard for proprietors to be prepared to take on maintenance at their own expense, a conflict of interest can arise. On the one hand there is an expectation on the part of GS for CW to adopt areas offered to them, in pursuance of their management role, while on the other hand CW cannot force that decision on the proprietors because their factoring role implies that they will serve the proprietors' best interests in regard to common repairs and maintenance. Moreover there is nothing in the CW / proprietor relationship defined in the Deed that refers to a delegated role in regard to the adoption or take-over of new areas.

Put another way, GS's expectation of CW is as agent for the proprietor in all common issues in the development, whereas each proprietor's obligation is limited to the stipulations of the Deed, with anything outside that obligation falling to the proprietors as individuals, or their elected representatives, but not the Factor.

It needs to be stated that CW appear to work on the basis that their role in respect of the proprietors per the Deed is somehow augmented because of their role in respect of GS. This has been a source of conflict which came to a head in meetings on 29 August (when CW asked to meet the whole Committee) and 31 August when our Chairman met CW's MD. We were able to remind CW that they are in a Service Company / Client relationship with the proprietors, in exchange for an annual fee. Were it not for a delay clause in the Deed which temporarily protects their tenure, their continuing appointment would be a matter for the proprietors to decide upon in an annual review. Both sides agreed that the PPOA does not yet have the powers of a properly constituted body of the proprietors per the Deed, but that it can voice the collective rights of the proprietors that the Deed guarantees.

3. Property management personnel

As already indicated, we are now under the auspices of our third Property Manager. In September 2006 Alison MacGregor was managing PP but was overwhelmed by the task.

We ascertained in October 2006, once we were becoming concerned about level of service, that PP is one of 22 sites managed by the same individual. The Development Director imposed a set of criteria on Alison for response to letters, emails, telephone requests etc., and some attempt was made by her to adhere to these criteria but they were soon abandoned. CW had accepted that PP should receive a disproportionately high level of service compared to the other 21 sites, on account of continuing building on site but nevertheless the situation seemed untenable, even as far back as October. Various emergencies at other sites over the Christmas / New Year holiday, mostly due to high winds, came at a time when our Manager was on holiday. Front office staff, which we later discovered to be agency, had no brief over alternative cover. On return from holiday our Manager necessarily had to give priority to these emergencies at other sites.

We even suggested to Alison that she should tell her management she was overloaded with work but she was reluctant to do so. Graffiti on the Western Harbour Breakwater plinth was a case in point. Reported to CW on 31 December; discussed in a review meeting on 16 January; reminded in a further email on 16 February; reported to us as removed on 22 February, but on inspection it was still visible and reported by us to this effect on 25 February; no response; reminder email sent by us on 14 March and only advised as resolved on 25 March. Alison was replaced by Sarah McGill on 10 April.

Coincident with Sarah's arrival, CW reorganised, interposing an extra layer of management by appointing Lynsay Hunter, Senior Property Manager, as Sarah's manager. Formerly Alison had reported direct to the Development Director. Lynsay was also to become Sarah's deputy to stand in during her absence. Over the next 4 months Sarah did much to move things on and impressed us greatly through her drive and efficiency. She took the attitude that there were tasks that needed to be completed, even if that meant working over the odds. She was the first, and only, Property Manager who acknowledged that CW was there to serve us, and we felt at last that PP was in capable hands. Sadly Sarah resigned her post on 8 August. Lynsay Hunter has taken over, but initial signs are that her absences due to her senior post have left us with gaps in our service, without the deputising arrangement that Sarah and Lynsay together were able to afford.

4. Common repairs and maintenance (excluding Factor dealings with the Developer)

This refers to adopted areas of the site only, for which the proprietors have responsibility through the Factor. Working clockwise from 4 Western Harbour Place as Stair 1, the following stairs out of a total of 11 have been adopted: 1, 2, 3, 4, 6 & 7. Most of the courtyard planting, but none of the basement planting, nor Western Harbour Place or Western Harbour Way planting have been adopted. The basement car park under the Quay Block has been adopted, but not the part under the Park Block, nor have either of the automatic gates.

Routine appointment of contractors has worked well, and where those contractors have defaulted, appropriate action has been taken by the Factor. The cleaners were replaced due to misconduct on the part of one of their operatives, and the present company, ARC, are doing a good job. The gardener has been replaced once already due to unsatisfactory work, and will possibly be replaced again in December after further tenders have been sought. Occasional emergencies have been dealt with efficiently, although that was not the case for ad-hoc requests prior to the change in management on 10 April.

5. Financial (except insurance)

In September 2006 we had to alert CW to the fact that invoices issued to proprietors were incorrectly calculated. Several months passed before they were re-issued, although buildings insurance premium errors came to light later (see below).

In essence there were two types of problem relative to the requirements of the Deed: (i) an incorrect algorithm was being used to calculate the apportionment of stair-related costs, which ought to have been in the ratio of floor area within each stair; and (ii) the divisor used for costs overall should have been the total number of flats, not the number of flats sold. Costs relating to unsold flats should have been allocated to GS but were actually being borne by the proprietors.

While there have been continuing minor inaccuracies in subsequent invoices, they have been generally apportioned accurately since.

In accordance with the requirements of the Deed, on 19 June we gave CW 2 months' notice to provide year-end accounts for the 12 months ending 23/06/07. Our Property Manager's resignation intervened on 8 August, but an initial draft was received. At the time of writing (24/09/07) we were still awaiting sight of the bank reconciliation which should verify that the cash account has been prepared correctly. We had expected that CW would be distributing copies of the Cash Account to the proprietors before this meeting but now understand that they will be tabled at the meeting.

6. Financial (insurance)

The insurance year runs from 1 May until 30 April. Since 01/05/04, with the exception of year beginning 01/05/06, CW have been collecting premiums and passing them to our Broker, Bruce Stevenson Risk Management (BSRM). (In 2006 BSRM had to collect premiums direct due to a rule change in the Financial Services Authority, which was subsequently relaxed for 2007 onwards).

A chance investigation by us into widely differing premiums charged to two identical flats unearthed a number of errors and anomalies through direct discussion with BSRM. These errors dated back to the beginning when the first flat was sold in 2004. BSRM were extremely helpful in untangling the errors and generating accurate premium figures. They then advised proprietors on 6 June 2007 the correct amount to pay to CW (net of any refund). Sadly CW do not appear to have corrected their own accounts, and despite having received premium payments in June 2007 have perpetuated the errors by issuing successive letters to over 100 proprietors, the most recent being in September threatening referral to a debt collection agency and placement on a credit black list.

7. Factor representation of proprietor concerns to the Developer

This has fallen into four parts: (i) deleterious Developer activity; (ii) site security; (iii) disputes over use and ownership of the common areas; and (iv) snagging of adopted areas:

- (i) Over the year, proprietors have asked CW to intervene in such matters as obstructions caused by contractor vans; dropped screws in the basement causing punctures; contractors joy-riding on the fork-lift truck in the basement; use of passenger lifts for carriage of building materials; site noise outside permitted hours (Monday–Saturday, 7.00am–7.00pm); and sequestration of areas of the development already part of proprietors' adopted property. Some limited progress has been made, but CW's stated position has been that "the Developer will do what they want". In some instances the Committee, and occasionally other proprietors, have made successful approaches to bodies such as the City of Edinburgh Council (CEC), the Health & Safety Executive and the local MSP.
- (ii) There are numerous key fobs in issue, and/or disclosure of door codes to contractors, but no record has been kept. There have been a number of instances of theft and vandalism in the basement and a few flat break-ins, but so far CW have not managed to rectify the situation by commissioning code changes and fob reprogramming as has been requested, and recommended by the police. We have heard recently that the Developer has commissioned a security report by the police, since some of their own property has been stolen too.
- (iii) There have been two instances of the Developers taking over parts of the adopted basement for their own purposes. CW's advice was to contact the Developer's solicitor, which the committee has done on two occasions. Some progress has been made in one of the instances.
- (iv) Our expectation via their brief in the Deed has always been that CW should represent PP proprietors' best interest, but there has been a growing perception that they were taking the Developer's side. Typically CW was too ready to accept handover of stairs and other common areas when they were patently not ready. Anyone with minimal experience could see that the stairs were unfinished at the time of handover.

Examples were emergency lights not working, electrical sockets hanging off walls, numerous areas of timber damage, missing door fittings, live power cabinets with open connections, and carpets permanently damaged with mastic.

In the basement car park, post-adoption, there were numerous screws on the concrete floor and it was necessary to take the Property Manager round to demonstrate the level of the problem. Builders' work on the ceiling trunking was an on-going source of further screw drops. The writer of this report had three punctures while other owners had whole tyres replaced. Several open rainwater outlets in the basement ceiling were left unfinished and are only just being worked on one year later.

The Committee appointed two of its members with specific responsibility for liaising with CW to move forward the issue of outstanding snagging. We made our own lists by examining every adopted area of the site, and invited CW to do the same. We reached an agreed position with CW, but there the matter stuck. It wasn't until March that we were allowed direct access to CW's Projects and Technical Manager, and even then there was virtually no progress. CW reported to us that they had made all the appropriate representations to the Developer, and that is where the matter stood until the meeting on 29 August (mentioned above. See *Factor's Dual Role*).

At that meeting CW's MD proposed that CW obtain an estimate from an independent contractor to correct all outstanding snagging work, and present it to GS for them to finance. This proposal was warmly received by the Committee.

8. Planning Enforcement

CW have been advised that there are four conditions attaching to the Developer's planning grant by the CEC that have not yet been discharged, and which are under investigation by the CEC Planning Enforcement section:

- (i) Provision of recycling facilities (a prerequisite for occupation).
- (ii) Provision of a minimum of 60 basement car parking spaces to be communally available.
- (iii) Provision of secure cycle lockers in the basement (the Deed indicates that there should be one cycle storage space per flat).
- (iv) Noise protection for flats overlooking the Sports Centre (a prerequisite for building to start).

The CEC planning grant also requires there to be an approved "fully detailed landscape plan, including details of all hard and soft surface and boundary treatments and all planting". CW have been asked to check all landscaping and planting against this plan prior to adoption. So far the committee has been unable to gain sight of the plan. Its approval by the CEC was a prerequisite for landscaping to start.

9. Factor Remuneration

When GS appointed CW as the first Factor for PP, they set the annual fee chargeable to proprietors. The Deed expressly prohibits the Factor from setting their own fee. In this context the committee discovered that the Factor was receiving commission on the insurance premium, and although paid by BSRM it nevertheless represented a levy on the proprietors and was inconsistent with the requirements of the Deed.

This commission arrangement was withdrawn on 1 May 2007, resulting in a 23% reduction in buildings insurance premium. The Committee had hoped to re-negotiate the Factor's fee during this meeting of proprietors, but it has been pointed out to us that we do not yet have that right.

10. Liaison with various bodies

We have a liaison with the 'Leith Harbour and Newhaven Community Council', and have made visits to Forth Ports and CEC offices to examine planning papers to confirm that PP conforms in every way. PC Pennycook of Lothian & Borders Police has joined committee

meetings from time to time and was instrumental in helping us set up a Neighbourhood Watch scheme at PP and providing advice on security.

Chubb Security promised at one time to demonstrate their 'Redcare' fire security system installed in each stair, together with fire evacuation procedures with a view to our passing the information on to residents via the Newsletter, but it has not yet taken place.

In view of the indirect drinking water holding tank and pumping facility at PP, we have corresponded with the Drinking Water Quality Regulator over proprietor liability for the quality of the internal supply at PP. Scottish Water's responsibility ends at the boundary valve to PP, and thereafter responsibility for quality rests with the proprietors, together with the Developer while there remain unsold flats. Water analysed from one of the flats passed all tests.

11. Summary and Recommendations

Since the founding meeting your Committee has met in each other's homes on 13 occasions, delegating work amongst themselves in accordance with their personal skills. Communication to the proprietors has been via a quarterly Newsletter, *Platinum Points*, and via our website *ppowners.com*.

We have had notable successes in certain areas, particularly in bringing about accurate invoicing of management costs and insurance premiums. We have also brought about a radical reduction in the buildings insurance premium, through the abolition of the Factor's commission which amounted to a levy on the proprietors.

The exertion of pressure on CW to check thoroughly before adopting areas of the development seems to have had some success, but little progress has been made in the snagging of stairs and other common areas already adopted before the PPOA was formed last September. We await news of the third-party contractor proposed by CW.

We have also had correspondence with the Health & Safety Executive over (i) the inappropriate use of Fire Service lifts for the carriage of building materials; and (ii) unprotected sheer drops from the upper level of duplexes before balustrades were installed, via direct access from the stair landing where doors have been left open unattended. In both cases residents, and particularly young children, were exposed to significant risk.

There would be no gain in making any recommendation about the Factor, because their position is protected for at least the next three years, and possibly longer, through a clause in the Deed. We propose therefore to continue with the status quo, hoping that their service will improve in respect of (i) finance and accounting; and (ii) the unbiased service to the proprietors required by the Deed.

On behalf of the PPOA Committee

Nick Timmins

Chairman

24 September 2007