

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

DECISION: Property Factors (Scotland) Act, section 19

Chamber Ref: FTS/HPC/PF/16/1002

**Flat 0/2, 154 Jamieson Street, Glasgow, G42 7HW
("the Property")**

The Parties:-

**Mr Robert Gilmour, 45 St Andrews Drive, Bearsden, Glasgow, G61 4NW
Represented by Mr Raymond Heath, Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch, G66 1HB
("the Applicant")**

**Govanhill Housing Association Limited, Samaritan House, 79 Coplaw Street, Govanhill, Glasgow, G42 7JG
Represented by its agent, T C Young Solicitors, 7 West George Street, Glasgow, G2 1BA
("the Respondent")**

Tribunal members

**Susanne L M Tanner Q.C. (Legal Member)
Kingsley Bruce (Ordinary Member)**

DECISION

- 1. The Respondent has not failed to carry out its property factor's duties.**
- 2. The Respondent has failed to ensure compliance with the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") in that it did not comply with subsection numbers 6.1, 6.3 and 6.6 of the Code.**
- 3. The decision of the tribunal was unanimous.**

Procedural Background

4. The Respondent became a Registered Property Factor on 14 November 2012 and its duty under **section 14(5) of the 2011 Act** to comply with the Code arises from that date.
5. The Applicant is the owner of the Property (Title number GLA170471) which is a flatted property in a block of six properties, with "Common Parts" which are defined in the **Deed of Conditions for the Property** which was registered on 19 May 2003 by The Glasgow Housing Association Limited.
6. The Respondent is the registered factor with responsibility for the management of the "Common Parts" of the building in which the Property is situated. The Respondent owns and manages the other five properties in the building.
7. The Applicant lodged an **Application dated 24 November 2016** ("the application") with the former Homeowner Housing Panel ("HOHP"), now "the tribunal", on 30 November 2016.
8. The Applicant's complaint is that there has been a failure on the part of the Respondent to comply with the **Code, Sections 1.1a A and B, 2.1, 2.2, 2.4, 3, 4.1, 4.8, 6.1, 6.3, 6.6 and 7**; and a failure to carry out its property factor's duties.
9. The Applicant enclosed some written documentation with his application, including correspondence between the Applicant and the Respondent relative to the installation of a door entry system in the building in which the Property is situated.
10. A copy of the Applicant's letter of complaint to the Respondent dated 8 February 2017, stating reasons why the Respondent has failed to comply with the Code of Conduct and failed to carry out its property factor's duties, was sent to the tribunal on 8 February 2017. Said letter was considered to meet the terms of **section 17(3)(a) of the 2011 Act**.
11. The Applicant later submitted a copy of the **Land Certificate** for the Property; a copy of the Respondent's **Written Statement of Services** for the building in which the Property is situated (undated); a letter received from the Respondent responding to the Applicant's complaint dated 3 March 2017 and a copy of the Respondent's **Complaints Handling Procedure** (undated) [now lodged as **Respondent's Production number 6**].
12. On 18 April 2017 the application was referred to the tribunal in terms of **Section 18A of the 2011 Act**.

13. A hearing on the Applicant's application was fixed for 14 June 2017.
14. On 11 May 2017 the Applicant confirmed that he wished to attend the hearing but did not wish to submit written representations.
15. On 17 May 2017 the Respondent submitted written representations together with an **Inventory of Productions for the Respondent** containing nine productions.

Directions and requests for postponement of hearing

16. Directions in terms of **The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016** ("the Rules"), para. 20, dated 26 May 2017, were issued by the tribunal, although due to a delay by the tribunal they were not received by the parties until 7 June 2017. The **First Direction** required the Respondent to do certain things and the **Second Direction** required the Applicant to do certain things, all no later than seven days prior to the hearing.
17. On 1 June 2017 the Applicant's representative requested a postponement of the hearing due to his own business commitments. The date of the hearing was retained but the time for the hearing was re-scheduled by the tribunal.
18. Following responses from both parties requesting additional time for compliance with the said **Directions**, the hearing was postponed to 22 June 2017.
19. On 8 June, the Respondent responded to the **First Direction**:
 - 19.1. In response to parts a. and b., the Respondent submitted the **Respondent's Second Inventory of Productions** containing two additional productions, numbers 10 and 11. The Respondent did not provide confirmation that either document was attached to the letter which was sent by the Respondent to the Applicant on 27 August 2015;
 - 19.2. In response to part c. the Respondent did not produce written evidence but confirmed that the Respondent owns the remaining properties in the block in which the Applicant's Property is situated and the Respondent's vote represents a majority vote in favour of the "major works" which form the subject matter of the application.
20. On 13 June the Applicant's representative responded to the **Second Direction** as followed:

- 20.1. He submitted the cover sheet for an **Inventory of Productions for the Applicant**, although he did not attach any numbered Productions, as specified in the **Second Direction** part b.
- 20.2. He submitted a one page document - which was in identical terms to the content of the said initial complaint letter to the Respondent dated 8 February 2017 - but did not provide written submissions clearly specifying in what ways he says that the Respondent has breached each section of the Code to which the Applicant refers and in which what way(s) the Respondent is in breach of its property factoring duties, all as required in terms of the Tribunal's **Second Direction**, part a.
21. The tribunal wrote to the Applicant and his representative on 19 June 2017 to request that written submissions and a full Inventory, including numbered productions be lodged prior to the new hearing date. Nothing was received prior to the hearing date.

Summary of the Issues to be determined by the tribunal

22. The issues to be determined by the tribunal are whether the Respondent has complied with the **Code** in terms of **Section 14(5) of the 2011 Act**, in particular **Sections / subsections 1.1a A and B, 2.1, 2.2, 2.4, 3, 4.1, 4.8, 6.1, 6.3, 6.6 and 7**; and whether the Respondent has failed to carry out its property factor's duties.
23. The factual background to the complaint related to the proposed installation by the Respondent of new front and back doors and a new door entry system in the building in which the Applicant's property is situated.

Hearing – 22 June 2017

24. A hearing took place at Wellington House, 134 Wellington Street, Glasgow on 22 June 2017.
25. The Applicant attended with his representative, Raymond Heath, Housing Advice Worker from East Dunbartonshire Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch, G66 1HB.
26. Mr Alan McDonald, Housing Services Manager from the Respondent attended, together with the Respondent's representative, Claire Mullan, Solicitor from T C Young Solicitors, Glasgow.

Preliminary issues – Applicant’s failure to comply with Directions

27. A preliminary issue was raised by the Respondent and by the tribunal in relation to the Applicant’s failure to comply with both parts of the **Second Direction**, in that he did not produce to the tribunal and to the Respondent no later than seven days prior to the Hearing:
- a. written submissions which clearly specify in what ways he says that the Respondent has breached each section of the **Code** to which he refers and in what way(s) the Respondent is in breach of its property factoring duties; and
 - b. an Inventory of Productions upon which he intends to reply at the Hearing, together with numbered Productions.
28. The Applicant and his representative had received the said further communications from the tribunal on 19 June 2017 advising them that there had been a failure to comply with its terms and requesting that the specified matters be done by the date of the hearing.
29. The Respondent’s representative wrote to the tribunal on 19 June 2017 asking if anything had been submitted by the Applicant and was advised that nothing had been lodged and the further request had been sent to the Applicant.
30. At the hearing, the Applicant produced a bundle of documents as listed in the **Applicant’s Inventory of Productions** but had not brought copies for the Respondent or the tribunal.
31. The Applicant did not produce any written submissions prior to or at the hearing.
32. Ms Mullan observed that the single page document which had been lodged for the Applicant on 13 June 2017 was a duplication of the letter sent by the Applicant’s representative to the Respondent on 8 February 2017. The tribunal confirmed this to be the case. Ms Mullan submitted that it was still not clear what specific issues arose in the Applicant’s complaint with reference to the **Code** and factor’s duties and further submitted that she may require to request an adjournment of the hearing should something arise in the Applicant’s submissions which was unexpected.
33. The Applicant’s representative was asked by the tribunal for his position on the failure to comply with the terms of the Direction despite the reminder on 19 June 2017; and for his response to Ms Mullan’s submissions about the lack of written submissions. He simply referred again to the terms of the letter of 8 February 2017 and appeared to be under the apprehension that re-lodging this as a

document on 13 June 2017 satisfied the terms of the **Second Direction**. He said that he had not seen an email from the tribunal on 19 June. He made no further submissions.

34. Having heard submissions, the tribunal arranged for copies to be made of the Applicant's bundle of documents and adjourned in terms of **Rule 23(6) of the Rules**, in order that the Respondent and Ms Mullan, as well as the tribunal, could consider the terms of the documents.
35. After the adjournment, Ms Mullan for the Respondent confirmed that there were no documents in the bundle which had not previously been seen by the Respondent and that no objection was taken to the late lodging of the **Applicant's Inventory of productions**.
36. The tribunal determined that it would allow the documents in the **Applicant's Inventory of Productions** to be lodged late in terms of **Rule 19(2) of the Rules**.
37. In relation to the failure of the Applicant to lodge written submissions, Ms Mullan indicated that she was content to proceed with the hearing under reservation of her right to object should a new point or points arise in the Applicant's oral submissions. Having regard to the overriding objective to deal with the proceedings justly, in terms of **Rule 3 of the Rules**, the tribunal agreed that the hearing could proceed on that basis.

Oral submissions and witness evidence on behalf of the Applicant

38. Mr Heath and the Applicant made oral submissions on behalf of the Applicant and witness evidence was given by the Applicant.
39. During submissions the Applicant's complaints in terms of the following sections/subsections of the **Code** were withdrawn: **1.1a A, 1.1a B, 3.1, 3.2, 3.4, 4.1, 4.8 and 7.**
40. In relation to the remaining aspects of the complaint in terms of **subsections 2.1, 2.2, 2.4, 3.3, 6.1, 6.3 and 6.6 of the Code**, the Applicant's submissions and evidence were as follows:
41. **Section 2. Communication and consultation.** Under this Section of the Code the Applicant made complaints in terms of **subsections 2.1, 2.2 and 2.4.**
42. **Subsection 2.1 of the Code** provides that the factor "must not provide information which is misleading and false".

42.1. The Applicant had two separate factual complaints which he said each amounted to a failure to comply with **subsection 2.1 of the Code**.

42.2. The Applicant sent a completed mandate to the Respondent dated 28 August 2015 by recorded delivery (**Applicant's Production number 4** contains the mandate and the recorded delivery receipt). The Respondent has stated on a number of occasions that they had not received the recorded delivery letter. The Applicant raised the issue at the meeting with the Respondent on 22 February 2016. It was submitted on the Applicant's behalf that in denying that they had received the letter the Respondent had provided the Applicant with information which is misleading or false and that non-compliance with **subsection 2.1 of the Code** should therefore be upheld.

42.3. The second submission under **subsection 2.1** was that at the meeting on 22 February 2016 the Applicant had asked for six quotes to be provided and had been told verbally by the Respondent's representative that six quotes would be provided. Reference was made to the **Respondent's production number 11**, which is a quotation from a single contractor. The applicant said that the six quotes that had been obtained during the tender process had never been provided to the Applicant and that the first the Applicant knew of the other quotations was when the Respondent's written submissions and productions were lodged with the tribunal and sent to him. It was submitted that the information provided was misleading or false and that non-compliance with **subsection 2.1 of the Code** should therefore be upheld.

43. **Section 2.2** provides that a factor "*must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from a reasonable indication that [the factor] may take legal action)*".

43.1. The Applicant had two meetings at the Respondent's offices. The first was in February 2016. The **Applicant gave evidence** as to what had happened at the first meeting. It was arranged that he would meet with Ann Lear from the Respondent. When the Applicant attended Ann Lear was present along with a male. The Applicant was not expecting two people to be present. He did not know the male although he was told during the meeting who the male was and that he was involved in maintenance. If the Applicant had known that there were going to be two people present from the Respondent he would have brought someone else to the meeting. The male sat in the corner of the room. The Applicant's view was that the way the room was set up and the seating arrangement was designed in order to intimidate the Applicant. The Applicant said the way that Ann Lear spoke to him was intimidating and that she was making false statements such as telling the Applicant that she had received an email from him saying that the

Respondent should go ahead with the work. Ann Lear said the Applicant should be aware of who they were and who he was and that he should do what he was told. She told him that they were a Housing Association with all these different properties and that he was just a small landlord. The male in the corner did not say much. Legal action was threatened. They seemed intent to get him to pay rather than dealing with the issues that the Applicant had raised. The Applicant thought it would have been more appropriate to deal with the issues that he had raised about the tender process. This was the first meeting that they had with the Applicant after his complaints were raised and it was therefore an unreasonable indication that they might take legal action. He never refused to pay the bill. The Respondent could have considered the information that had been requested by the Applicant and then come back to the Applicant. The Applicant said he would describe what he would have expected as treating customers fairly.

43.2. The Applicant was unsure of the date of the second meeting with the Respondent. Ann Lear was again present at the second meeting, this time with Heather Batchelor from the Respondent. The male was not at the second meeting. The meeting with the ladies was not as bad as the first one. There was nothing intimidating or threatening from the Applicant's perspective.

44. **Subsection 2.4 of the Code** provides that the factor "*must have a procedure to consult with a 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 services. ...*"

44.1. The Applicant submitted that this was an extra cost in addition to core services and that he had requested further information about the work which was to be carried out. It was submitted that the Respondent may say that there is a procedure but the procedure was not followed. The Applicant was supposed to be provided with quotes and be allowed to vote on that. No quotes were sent with the letter of 27 August 2015 which was sent to the Applicant (in **Applicant's Production number 4**). The Applicant's representative initially submitted that the mandate had been sent on its own. The tribunal asked the Applicant himself what his position was on this. The Applicant initially said that the form may have been sent with a covering letter that said 'please fill in and return'. As far as the Applicant is aware he received it by post on 28 August 2015 and signed it the same day he received it. The Applicant returned the form disagreeing with the proposal going ahead.

44.2. The tribunal asked for additional submissions on the item lodged as **Respondent's Production number 1**, which is a two page letter and

accompanying mandate. The Applicant said that was exactly what was received by him on 28 August 2015. There were no other documents in the envelope. There was no separate quotation. He only got the letter and mandate and did not know who would be doing the works until a later date. After completing the mandate on 28 August 2015 he photographed it on his phone and sent it by recorded delivery to the Respondent on the same date.

45. **Section 3** of the Code relates to **Financial Obligations**. The Applicant confirmed that the only complaint under **Section 3** related to **subsection 3.3**, which provides that: the factor “*must provide to homeowners, in writing 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, you must also supply supporting documentation and invoices or appropriate documentation for inspection or copying. ...*”

45.1. It was submitted that the Applicant requested copies of quotations and information about the tendering process and how the vote was carried out and that he did not obtain any documents from the Respondent. No documents were offered at meetings. He was not offered the opportunity to inspect. Supporting documentation has never been provided for works that have been invoiced, even after reasonable requests.

46. **Section 6** of the Code relates to **Carrying out Repairs and Maintenance**. The Applicant has complaints in terms of **subsections 6.1, 6.3 and 6.6**.

47. **Subsection 6.1 of the Code** provides the factor “*must have in place procedures to allow homeowner to notify [it] of matters requiring repair, maintenance or attention. [The factor] must inform homeowners of the progress of this work, including estimated timescales for completion, unless [it] has agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*”

47.1. The Applicant said that he never got any update about what was happening. The work was “railroaded” straight through.

47.2. The tribunal enquired whether he had any request from the Respondent for access for wiring for entryphone inside the Property. The Applicant said that his tenant must have been asked for access because he had not been asked.

47.3. The Applicant turned up to get into the Property to do a repair and found that he could not get in because a new entry system and a new security door had been installed. The second meeting with the Respondent

took place after he had been out and found out that the new door had been put in.

47.4. He had replied with letter / mandate and had the 22 February 2016 meeting with the Respondent. He was expecting quotes to be provided to him. He could not recall if any invoices had been sent in the meantime. He could not afford to pay the whole lot in one go. Because of what was happening he said he was prepared to pay £150 a month because he did not want any defaults until it was resolved. £150 was nearly twice as much as what was requested by the Respondent by way of a monthly payment. He said to Heather Batchelor at the second meeting that he was prepared to pay on the basis that if it was later deemed that the Respondent is completely in the wrong, he would get the money back.

48. **Subsection 6.3 of the Code** provides that “*on request [the factor] must be able to show how and why they appointed contractors, including cases where [the factor] decided not to carry out a competitive tendering exercise or use in-house staff.*”

48.1. The Applicant stated that he requested information about tender process and how the contractor was appointed and that this has not been provided. He said that the request was first made at the first meeting in February 2016. He also asked about whether the Respondent had received commission and whether they owned the company which had been instructed. At no point have they shown how or why the contractor was selected.

48.2. The tribunal asked the Applicant about the document now lodged as **Respondent's production number 11**, which is a quotation from a single contractor WSS. He stated that he had not seen it before it was sent by the tribunal, after the Respondent lodged its second bundle. It was not sent with the letter of 27 August 2015.

49. **Subsection 6.6. of the Code** provides that “*If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request free of charge. If paper or electronic copies are requested [the factor] may make a reasonable request for providing these, subject to notifying the homeowner of this charge in advance.*”

49.1. The Applicant referred to his previous evidence about his request to the Respondent to see documentation in relation to the tendering process. The Applicant also referred to the **Applicant's production number 7** which includes, on the second last page, an example of what he would have

expected to see. This document is dated 15 November 2016 relates to close painting in the Applicant's building. Four contractors and their quotation prices were provided. As the Applicant could see that four quotes had been obtained in this case he advised the Respondent that he was happy to go ahead. The Applicant's representative submitted that the Applicant had made a reasonable request to see tender documentation for the entryphone works during the two meetings referred to. At that point the Applicant could have had sight of the documentation at the Respondent's offices or it could have been sent out to him. However, he did not receive any tender documentation from the Respondent.

50. The Applicant also complained that the Respondent had failed to carry out its **property factoring duties**. This complaint related to how the whole tendering process was done and carried out. The complaints procedure was handled poorly. The Applicant's representative adopted his submissions about what was said in relation to the complaints under the Code.
51. In closing his submissions the Applicant said that he likes to keep things simple. If he had been able to see an open tender process and been kept up to date this matter would never have come to the tribunal. He said that he was not an unreasonable person and felt that he had been unfairly treated.

Motion for adjournment / witness evidence on behalf of the Respondent

52. After hearing the evidence and submissions on behalf of the Applicant, Ms Mullan made a motion on behalf of the Respondent to adjourn the hearing until the afternoon in order that a **witness Katie Stewart**, an employee of the Respondent could attend and give evidence in relation to a new point which had been raised by the Applicant, namely the contents of the envelope sent to the Applicant on 27 August 2015 in that he was now saying that it did not contain the quotation referred to in the cover letter. Ms Mullan pointed to the lack of specification of the Applicant's complaint prior to the hearing and his evidence in relation to the letter he had received, together with a mandate (now lodged as **Respondent's production number 1**) but without the quotation referred to in the letter (now lodged as **Respondent's production number 11**).
53. Given the lack of specification of the Applicant's complaint the tribunal agreed that it was effectively a new point and that witness evidence from the witness should be allowed despite the witness not appearing on a list of witnesses for the Respondent in accordance with **Rule 19(1)(b) of the Rules**. As the witness was at another location in Glasgow the tribunal considered the terms of **Rules 23(6) and 26 of the Rules** and asked Ms Mullan whether the matter might be dealt with other than by way of an adjournment. Upon further enquiries being made by

the Respondent, Ms Mullan confirmed that the witness could attend at the hearing fairly quickly and agreed that no adjournment was required as she could make submissions on other matters and take the witness evidence after the witness arrived. The hearing thereafter continued.

Oral Submissions on behalf of the Respondent

54. The following submissions were made on behalf of the Respondent in relation to each of the alleged failures to comply with the **Code** and alleged failure of the Respondent to perform its factoring duties:

55. Section 2.1 of the Code.

55.1. In relation to the first allegation in terms of this subsection, the Respondent's position is that they have no record of receiving the mandate from the Applicant dated 28.8.15. The Respondent accepts that there is a recorded delivery receipt which is lodged but their position is that they have not received it. It was submitted that it is not misleading or false information, in that a recorded delivery receipt is proof that the item was sent but not 'track and trace'. Ms Mullan had checked on the morning of the hearing and no 'track and trace' details were available. In saying that it had not received the mandate the Respondent was simply making a statement. The **Respondent's Production number 4** is their mandated works procedure. If there is no majority agreement the Respondents should follow up with homeowners. In this case there was no response from the Applicant but a majority decision was made on the basis of five votes versus one. There was no reminder because there was majority agreement. Although the mandate was not received, the Applicant's objection was documented. Initially works were put on hold to investigate what had happened to the response. It was submitted that there was no prejudice to the Applicant in the lack of receipt of the document. Whilst his vote was relevant, he was out-voted.

55.2. In relation to the second "*misleading or false information*" allegation the Applicant has stated today that he was told by the Respondent that it would give him six quotes. Ms Mullan submitted that there is no evidence that the Respondent said that they would provide six quotations. She wondered if this came from discussion on 22 February 2016 when the Respondent advised the Applicant that there had been six responses to the tender. She submitted that at no point has the Respondent ever stated that they would provide six quotes to the Applicant.

55.3. The tribunal enquired whether the terms of the meetings with the Applicant were minuted.

55.4. Mr McDonald from the Respondent confirmed that no minutes were taken of the meeting with the Applicant on 22 February. He believed it to have been an *ad hoc* attendance with the Director. Mr McDonald also advised that the second meeting was on 19 May 2016 and the completion date for the entry system works was June 2016.

55.5. The tribunal enquired whether, following a meeting with a homeowner, it would be normal practice to write to the client to follow up on the meeting.

55.6. In response, Mr McDonald did not answer the question but stated that he was the male in the first meeting and that when they left meeting the Respondent's representatives thought that the matter had been resolved to the satisfaction of the Applicant as things had been clarified by them.

55.7. The tribunal noted that on the evidence and submissions of the Applicant there was disagreement as to what was discussed at the meeting and invited further submissions.

55.8. Ms Mullan referred to the **Respondent's Production number 3** which is a letter of 24 June 2016 and refers to a meeting on 19 May 2016.

55.9. Mr McDonald then confirmed that no letter was sent by the Respondent to the Applicant after the 22 February 2016 meeting.

55.10. Works were instructed before the meeting of 22 February, put on hold, then expected to be concluded by 14 June 2016.

55.11. **Mr McDonald gave evidence** about his recollection of the meeting on 22 February 2016. He said that the Applicant was very firm and affirmative at the meeting. He was challenging the Respondent's Director about her competencies and experience of running a housing association and a factoring service. The Applicant said he was a property manager with many properties. The Director explained her experience, knowledge and position in management of a property company. In Mr McDonald's view it was in no way meant to be the Director saying to the Applicant '*I am telling you what to do*'. The statement referred to by the Applicant in evidence was made in response to the suggestion that the Respondent did not know what it was doing in the tendering and management of property.

55.12. There was a discussion with the Applicant about where the prices came from. It was explained by the Respondent's Director to the Applicant that this had been subject to a wider procurement exercise which had identified 15 potential contractors who were willing to provide quotes for

portfolio of 400 common closes and responsive repairs and improvements. There was no discussion in the meeting regarding other approaches. The discussion was about the installation quote. The Applicant did not ask to see copies of quotations. Mr McDonald said it was commercially sensitive information. The Respondent had a schedule but the schedule was not shown to the Applicant. Mr McDonald and Ms Lear explained that it was through the Scottish portal that a contract was put in place. The Applicant was insistent that the Respondent should have provided him with three quotations. Mr McDonald and Ms Lear explained that there had been five responses and that the contract award was in place. That was the end of Mr McDonald's evidence.

55.13. Thereafter Ms Mullan made further submissions on behalf of the Respondent. From the Respondent's perspective, no undertaking was given to the Applicant regarding the provision of six quotes. It was not requested or discussed. She submitted that there seems to be some confusion between tendering information and quote information. The Applicant did not request sight of any information at the meeting.

55.14. The tribunal noted that Mr McDonald's evidence was that the Applicant had asked for quotes. Ms Mullan responded that the Applicant has not asked to have sight of any information about the tendering process.

55.15. In conclusion on this **subsection 2.1 of the Code** she invited the tribunal to find that there was no provision of false or misleading information.

55.16. As the submissions from both parties seemed to suggest that parties were at cross purposes when using the terms "quote" and "tender", the tribunal asked Mr McDonald whether he accepted that a layperson might confuse the term "quote" with the term "tender" when asking a factor for the provision of information. Mr McDonald said that he didn't think that a layperson would consider them to be the same thing. Mr McDonald added that it was explained to the Applicant that there were not three quotes. He also submitted that at the meeting on 22 February 2016, the Applicant did not attend the meeting as a lay person, with reference to the fact that the Applicant was a landlord with a number of properties.

55.17. The Respondent's position is that they did send information to the Applicant in the form of one quotation and the Applicant's position is that he did not receive the quotation.

56. Subsection 2.2 of the Code.

56.1. The Respondent does not accept that their representatives' behavior was abusive, threatening or intimating. They thought that the matter had been entirely resolved to satisfaction of the Applicant.

56.2. Further **evidence was given by Mr McDonald**. He said that at the meeting the Applicant advised that he could not pay up front. The Respondent's representatives said that they were happy to come up with a payment plan, preferably not over twelve months' duration. They said the ultimate sanction would be court action. Mr McDonald said that he was quite clear that they would be more than happy to have a payment plan. This discussion took place at the first meeting. His understanding is that it was agreed at second meeting. The Applicant suggested a higher payment plan. It is the Respondent's normal practice to support owners in blocks.

56.3. It was submitted that **subsection 2.2 of the Code** permits a reasonable indication of legal action to clarify recovery procedure.

56.4. The tribunal was invited to reject the complaint under **subsection 2.2 of the Code**.

57. Subsection 2.4 of the Code.

57.1. It was submitted that the Respondent has a mandated works procedure for works in excess of £1000. Reference was made to the **Respondent's production number 4**, which outlines the procedure to be followed when the Respondent receives notification of works in excess of £1000. It was further submitted that this procedure was followed. The Title deeds provide in Clause 6(b) that the Respondent has to report the matter to such proprietors and such work will be undertaken only if it is authorised by a majority of such proprietors. The requirement is simply to obtain majority consent. It does not require a meeting, simply a majority.

57.2. In the **Respondent's Written Statement of Services** it has restricted its delegated authority to £200 per property.

57.3. Ms Mullan invited the tribunal to reject the complaint under **subsection 2.4 of the Code**.

58. Subsection 3.3 of the Code.

58.1. Ms Mullan stated that she has not lodged copies of the Respondent's invoices because she was not aware that that invoicing was the issue.

58.2. The tribunal said that as far as they understood the Applicant is not saying he has not received invoices. The issue is the supply of supporting documents "*in response to reasonable requests*".

58.3. The Respondent's position is that no such information has been requested. The Applicant's complaint does not relate to a breach of **subsection 3.3 of the Code**.

58.4. The Respondent's fallback position is that evidence was supplied, as previously submitted.

59. Subsection 6.1 of the Code.

59.1. Ms Mullan submitted that the subsection had no application on a proper interpretation of **subsection 6.1**. From her perspective the works in connection with the door entry system were not works which the homeowner notified to the Respondent.

59.2. Thereafter a discussion took place with the tribunal about the interpretation of the subsection and in particular, the phrase "*this work*" where it appears in the third line. Without giving any concluded view, the tribunal observed that it was unlikely the draughtsperson intended to restrict the duty to inform owners of progress of work and timescales for completion of works to only those works which had been notified by a homeowner. The tribunal also noted that, if that was correct, there was no subsection imposing duties on factors to so inform owners for works which had been instructed by the factor. Ms Mullan accepted that that appeared to be the case and said that she could not comment on whether it was intended or not by those drafting the **Code**. She insisted on her argument that when it is not a notification made by the homeowner these duties do not arise to keep the homeowner informed of progress. She further submitted that the subsection had no application in the present case given that the works in question had not been notified by the Applicant.

59.3. The tribunal asked for her submissions in relation to this subsection were the tribunal to decide that she was wrong about the interpretation of the section.

59.4. She referred to the **Respondent's production number 2**, a letter of 20 May 2016 which informs the Applicant that door entry works are in progress.

59.5. The tribunal asked how access was obtained to the Applicant's Property in order to make the connection to door entry system.

59.6. Mr McDonald replied that the contractor normally makes arrangements with the close. The contractor liaises with occupant. He assumed that the owner would notify their tenant.

59.7. The tribunal observed that that would only occur if a homeowner was aware that the work was being done.

59.8. Mr McDonald advised that the Respondent would deal with the occupant of the property, because the contractor would work around them and it removes need for going through a "third party". The Contractor has operatives on site and can make direct arrangements with those in the close.

59.9. With reference to **Respondent's Production number 2**, the letter of 20 May 2016, the tribunal asked Mr McDonald: "if the homeowner said he wasn't aware that works were going ahead, is it reasonable to assume he would notify his tenant?"

59.10. In reply Mr McDonald stated that he would accept that the Applicant did not have a start date or a target completion date notified by the Respondent. The occupant of property would have been aware but he accepted that the occupant is not the Respondent's client

59.11. In summary on **subsection 6.1 of the Code**, Ms Mullan returned to her principal submission that in her interpretation this section does not apply and this aspect of the complaint should be rejected.

60. Subsection 6.3 of the Code

60.1. It was submitted that the Respondent's position about "how and why" they appointed contractors was never requested by the Applicant. All that was requested by the Applicant was three quotes and this was requested after the quotation had been sent out confirming the information in the quotation. From the Respondent's perspective three quotes were not required.

60.2. She did not actually think there was a request for three quotes until after 19 May 2016 meeting.

60.3. Reference was made by the tribunal to correspondence in the **Applicant's production number 5**, correspondence, specifically the Applicant's letter of 24 May 2016 which has as point 1/ the fact that at the meeting on 22 February 2016 the Applicant made a request for 3 competitive quotes for the new doors and it was agreed that these would be supplied to him but to date only one quote has been received.

60.4. Ms Mullan stated that the Respondent does not accept that three quotes were requested at the February 2016 meeting. At that meeting the Applicant sought information and that was satisfied on 22 February 2016. That meeting is when clarification was given regards the whole tender process. The Respondent believed that it had satisfied the applicant and no further information was expected. From the Respondent's perspective the meeting was concluded to the satisfaction of the applicant

60.5. The Respondent's first letter was sent on 20 May 2016.

60.6. The tribunal asked Mr McDonald whether he took any notes of the meeting at 22 February 2016. He replied that he was only noting action points that he may have to do. Following the meeting he conveyed verbally to the Respondent's factoring team that matter had been resolved.

60.7. The tribunal observed that there was no written evidence about what was agreed in meeting, in particular no minutes and no letter sent by the Respondent as follow up.

60.8. Mr McDonald said that the works that had been put on hold were recommenced after the meeting.

61. Subsection 6.6 of the Code

61.1. In relation to documentation relating to any tendering process Ms Mullan stated that the Respondent says that tendering documentation was not requested for inspection.

61.2. The tribunal enquired whether the Respondent offered or said that information could be available to the homeowner.

61.3. Mr McDonald replied that it wasn't offered at the meeting. They certainly had provided information at the meeting but they thought they had exhausted or clarified the issues. The only document produced was the quotation from WSS [now **Respondent's production number 11**].

61.4. The tribunal asked whether **Respondent's production number 10** was provided.

61.5. Mr McDonald replied that **number 11** had already been provided. It was extrapolated from schedule of rates in **number 10**, which is the more complex breakdown.

61.6. The tribunal noted that the Applicant had been asking for three quotes and what the Respondent provided in **number 11** is based on one price and does not necessarily show that there were other prices.

61.7. Mr McDonald replied that the schedule of rates was a component of what had been tendered for.

61.8. In relation to the painting work to which the Applicant had referred, it was stated that it was a different form of work which does not lend itself as easily to components.

61.9. It was accepted on behalf of the Respondent that **numbers ten and eleven** are two different way of showing the chosen contractor.

61.10. The Respondent stated that they had already covered the Scottish government procurement process. The tendering process had already been carried out in November 2014.

61.11. The new paintwork was a different process. The 'mini tender' nature of the work lends itself to a 'mini tender'. It is much more specific to each close.

61.12. Painting work was November 2016 in **Applicant's production number 7.**

61.13. The Respondent became the factor of the Property in January 2011 and these are the only two consultations with homeowners.

61.14. Miss Mullan submitted that the process for the painting work can add nothing because it is a different tender process. It is irrelevant. The **Code** does not require a particular tender process.

61.15. She further submitted that the quotation provided at the outset of the door entry works complied with the provision of documentation regarding the tender process. Further information was not requested by the Applicant. The quote was provided with letter of 27 August 2015.

62. Failure to carry out the property factor's duties.

62.1. In relation to alleged failure Ms Mullan stated that there was nothing to respond to from the application itself and nothing had been added in the Applicant's oral submissions.

63. The Respondent's position is that they have complied with their duties regarding the common parts. The duty is to manage the common parts and

the Respondent has done so and complied with the Code in terms of the mandated works, and instructed and carried out the works. In her submission no breach has been identified.

64. Following a short adjournment Witness evidence was then lead from Katie Stewart from the Respondent.

64.1. She has been a Factoring Assistant for Govanhill Housing Association for 2 years and 2 months The Factoring department covers mandated works, issuing invoices, phone call and email inquiries. They don't have "patches", they all deal with whole factoring stock.

64.2. She was asked about the letter which now forms **Respondent's Production number 1**, the letter to the Applicant dated 27.8.15. She said it is a standard template and she puts in information. In this case she put in information from the quotation provided by maintenance inspector, Stewart Wilson

64.3. The standard procedure for what would be sent with this form of letter would be a mandate, a free post envelope and a copy of the quote.

64.4. Such information was included in the Applicant's letter.

64.5. She was referred to the **Respondent's production number 11** and said this was the quotation for the works which were referred to in the letter. When asked by the tribunal how she knew that she replied that the property address is on the quotation.

64.6. For such letters she does a mail merge of the letter and prints it off. She looks for the mandate and prints it off. She puts the letter in envelope.

64.7. The quotation remains as a separate document in the system. Within folder there is a copy of the letter, the quotation and mandate.

64.8. When asked whether the quotation was included with the letter in this case she replied that "*It's something we always do, it's part of our procedure. It's something we do as standard. I always print off quotation and put it in. I'd be surprised if I didn't put the quotation in.*" She said that the Applicant is the only private owner in the close so on this occasion just one letter to deal with. This is the only quotation that is saved in the file.

64.9. The Applicant's representative Mr Heath was offered the opportunity to ask the witness questions but had no questions for her.

64.10. Ms Mullan made an additional submission following the evidence. She said that Miss Stewart was clear about the process for the mandated works, namely the letter, the mandate and quotation and the free post envelope. She does it regularly. She knows what is required. There was only one homeowner in this case. She invited the tribunal to find that the quotation was sent.

64.11. She stated that the Applicant was not sure initially that there was even a cover letter. The tribunal noted that it was the Applicant's representative who made that submission and he was corrected by the Applicant in his own evidence and submissions (as noted above).

64.12. She submitted that Applicant said it may well have had an accompanying letter which suggests his recollection is not particularly clear. and this Miss Stewart is quite clear what would go into that envelope.

Response from Applicant to Respondent's submissions and evidence

65. With reference to the evidence from Katie Stewart, Mr Heath submitted that the Respondent lodged **Respondent's production number 1** without the quotation and stated that if the quotation was part of the process why had it not been lodged with it. He also noted that Miss Stewart does the job but this was two years ago and was one letter. He submitted that that casts doubt on whether it was attached to letter sent to the Applicant at that time.

66. The Applicant remains of position that the quotation was not attached to the letter and mandate of 27 August 2015. The Applicant has requested the quotation on several occasions since the letter was sent, at meetings and in letters and emails to the Respondent. They could have supplied another copy if it was attached to his file. The Applicant stated that he would not have kept asking if this had been provided with the letter.

67. Mr Heath stated that the general feeling here is that the Applicant complained about tendering process and transparency. There are no minutes of meetings. No records were taken. If it is part of the complaints procedure there are no notes of anything done. The Applicant made a reasonable request about how the tender process was done and the information was never provided.

68. In relation to **Respondent's Production number 11**, six contractors had responded. There was an easy option to explain more to the Applicant. Even if there was commercial confidentiality, they could have provided a better breakdown.

69. The Applicant submitted that the complaint should be upheld on the Sections of the Code referred to today.
70. In response to the evidence from the Respondent it was submitted that the Applicant had a different recollection of the meeting. It was not resolved on 22 February. They had agreed that things would be carried out. It was not a closed matter.

Reasons for the Decision

71. The tribunal made the following findings-in-fact:

- 71.1. The Respondent became a Registered Property Factor on 14 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.
- 71.2. The Applicant is the owner of the Property (Title number GLA170471) which is a flat property in a block of six properties, with "Common Parts" which are defined in The Deed of Conditions for the Property which was registered on 19 May 2003 by The Glasgow Housing Association Limited and appears in the Burdens section of the title deeds (**Applicant's Production number 3**).
- 71.3. The Applicant is not the occupant of the Property. He resides elsewhere and lets the Property to residential tenants.
- 71.4. The Respondent is the registered factor with responsibility for the management of the "Common Parts" of the building in which the Property is situated. The Respondent owns the other five properties in the building.
- 71.5. Clause 6(b) of the Burdens Section of the title deeds for the Property (**Applicant's Production number 3**) provides that "*The Factor shall have full power and authority to instruct and have executed from time to time such works as he in his judgment shall consider necessary or desirable for the repair, maintenance, or renewal of the Common Parts or any part thereof, provided always that in a case of a major work, being a work the cost of which is estimated by the Factor to exceed Two Thousand pounds or such greater amount as from time to time may be fixed ...) the Factor shall, before instructing the same, report the matter to such proprietors and such work shall be undertaken only if it is authorised by a majority of such proprietors. The decision of a majority of proprietors on such a matter shall be binding on all of the proprietors*".

- 71.6. There is a **Written Statement of Services** (undated) for the building in which the Property is situated. Within its terms the Respondent has restricted its delegated authority to repair and maintenance work which will not exceed £200 per owner. For the Applicant's building the requirement would be for any proposed works with an anticipated cost over £1200 to be notified to the Applicant by the Respondent.
- 71.7. In or about June 2014 the Respondent had conducted a large scale tender exercise for a 3 year contract to undertake door entry installations to the Respondent's housing stock, including the building in which the Property was situated. Government public procurement procedure was followed. A PQQ scoring exercise was carried out with 15 companies, 8 of which passed. **Respondent's Production number 7** records the results of the PQQ scoring.
- 71.8. Tender documents were issued to eight and received from six parties. The Respondent carried out a tender evaluation process in or about November 2014 as contained in **Respondent's production number 8**.
- 71.9. On 19 December 2014 the contract was awarded to WSS Group, as per the Contract Award notice, **Respondent's Production number 9**.
- 71.10. On 11 June 2015 WSS Group provided a quotation for the close door replacement and replacement of the door entry system in the building in which the Property was situated (**Respondent's Production number 11**). This comprised: Quotations 1 for £1780 ex VAT and Quotation 3 for £1565.40 ex VAT, for replacement of the close front door entry system, totalling £3,345.40 ex VAT, £4014.48 inc VAT; and Quotation 3 for the replacement of the rear close door £1672 ex VAT, £2006.40 inc VAT.
- 71.11. The total cost of the proposed works was £6020.88 inc VAT, of which the Applicant's share in accordance with the title deeds [16.67%] would be £1003.48.
- 71.12. The cost of the proposed works meant that they qualified as "major works" in terms of the title deeds for the Property and would exceed the Respondent's £2000 threshold for delegated authority for the instruction of works (and in any event exceeded the Respondent's said modified delegated authority for works in excess of £1000).
- 71.13. In terms of the Respondent's factoring duties arising under the title deeds, Clause 6(c) (**Applicant's Production number 3**), it required, before instructing works, to report the matter to proprietors and obtain a majority in favour of the works in order to proceed.

71.14. The Respondent had a Mandated works procedure for notification of works in excess of £1000. (**Respondent's Production number 4**). This required the Respondent to issue a letter, mandate and quote to the Applicant with a prepaid envelope for return of the mandate; and thereafter to await confirmation from the majority of owners before instructing.

71.15. The Respondent reported the matter to the Applicant by letter of 27 August 2015, which letter enclosed a mandate seeking the Applicant's views (the letter and mandate form **Respondent's Production number 1**). The letter summarised the proposed works for replacement of the front and rear close doors and upgrade of door entry system and gave a breakdown of the total cost, making reference to the said three quotations referred to above. It did not name the contractor who had been awarded the contract.

71.16. The Applicant was asked in the Respondent's letter to complete the mandate and return it to the Respondent by 7 September 2015. The letter advised that works will proceed if a majority of the owners are in agreement in compliance with the title at the property and that the costs will be charged to your factor's account on completion of works. The letter advised that the Respondent would contact the Applicant again in due course to let him know if the works would proceed to enable him to begin to make provision for his payment of the share of the costs. The letter was signed by Katie Stewart, Factoring Assistant.

71.17. The tribunal was unable to find that no separate quotation was included with the letter and mandate of 27 August 2015 (**Respondent's Production number 1**). In any event, the content of the proposal and the prices thereof from a single contractor were included within the said letter.

71.18. The Applicant completed the mandate on 28 August 2015 (**Applicant's Production number 4**) indicating that he disagreed with the proposal by the Respondent in its capacity as factor of the Property to carry out the close door and door entry system replacement. He returned the mandate to the Respondent by recorded delivery.

71.19. It is not known whether the Respondent received the Applicant's signed mandate. There was no track and trace on the envelope. The Respondent states that it did not receive the letter.

71.20. Regardless of receipt of the Applicant's response, the Respondent held the other five votes and therefore had a majority vote in favour of the proposed works.

- 71.21. The Respondent instructed WSS as contractor to commence the said works.
- 71.22. The Applicant was advised by the Respondent by letter on 5 February 2016 that a majority vote had been obtained and that proposed works had been instructed (emails from the Applicant to the Respondent dated 5 February 2016 **lodged with Application**).
- 71.23. The Applicant contacted the Respondent's office by email and made an objection to the works. His objection was noted by the Respondent.
- 71.24. In emails of 5 February 2016 (**lodged with Application**), the Applicant reiterated his objection to the proposal. He requested sight of the voting. He requested sight of three quotes for the job. He also asked for confirmation as to whether the Respondent had any involvement with the company carrying out the works and asked whether any grant was being given to cover the cost of the work.
- 71.25. On 5 February 2016 (**lodged with Application**) Lily-Ann Mallon of the Respondent confirmed receipt of the Applicant's email. The requested information was not provided by the Respondent.
- 71.26. The Applicant contacted the Respondent's offices by telephone on 8 February 2016. He was offered a meeting with Ann Lear, Director of the Respondent. A meeting was arranged for 22 February 2016 at the Respondent's offices (confirmed in email correspondence in **Applicant's Production 5**).
- 71.27. On 22 February 2016 the Applicant had a meeting with Ann Lear, Director. Alan McDonald, Maintenance Manager was also present at the meeting. The Applicant was not expecting another representative of the Respondent to be present but accepts that he was introduced to Mr McDonald.
- 71.28. Mr McDonald was present in case any action points arose during the meeting that required to be followed up.
- 71.29. The Applicant was unhappy with the seating arrangement at the meeting and the fact that there were two representatives of the Respondent and he was on his own.
- 71.30. The Applicant was unhappy with the way that Ann Lear and Mr McDonald spoke to him in the meeting. The tribunal was unable to conclude that there was any intimidation by the Respondent.

- 71.31. During the meeting the Applicant asked for a number of things to be provided and questions to be answered.
- 71.32. The Respondent explained at the February 2016 meeting that a contract had been awarded following a tendering process which complied with relevant legislation. No detailed information was provided and no documents were provided relative to the tender process.
- 71.33. The Applicant's understanding of the matters to be followed up after the meeting is recorded in a letter from the Applicant to the Respondent dated 24 May 2016 (in **Applicant's Productions number 5**). The Applicant asked for three competitive quotes to be provided for the new door entry system and three competitive quotes for repairing the old door.
- 71.34. There were no minutes taken at the meeting on 22 February on behalf of the Respondent.
- 71.35. No documentation was provided to the Applicant during the meeting. He was not offered the opportunity to inspect any documentation at their offices.
- 71.36. The Respondent's representatives were of the view that all matters had been resolved to the Applicant's satisfaction at the meeting. The Applicant was not satisfied that all matters had been resolved at the meeting and was expecting to hear from the Respondent in relation to the matters discussed.
- 71.37. The Respondent did not follow up the meeting on 22 February with a letter or email to the Applicant.
- 71.38. The Respondent did not provide the Applicant with any paperwork or information following the meeting on 22 February.
- 71.39. The Respondent instructed works to go ahead.
- 71.40. The Respondent did not inform the Applicant of the proposed start date of works.
- 71.41. The Respondent did not liaise with the Applicant about the progress of the works.
- 71.42. The Respondent accessed the property to connect the door entry system by contacting or allowing its contractor to liaise with the Applicant's tenants.

- 71.43. On 19 May 2016 the Applicant attended at the Property to attend to repairs. He was unable to gain access. He contacted the Respondent's offices.
- 71.44. On 19 May 2016 the Applicant had an impromptu meeting with Ann Lear and Heather Batchelor of the Respondent.
- 71.45. No documents were provided to the Applicant at the 19 May meeting or following the meeting other than on 20 July 2016 as noted below.
- 71.46. On 6 June 2016 the Applicant made a formal complaint in line with the Respondent's Complaints Handling Procedure (**Respondent's Production number 6**).
- 71.47. On 24 June the Respondent wrote to the Applicant (**Respondent's production number 3**). The letter included a statement that the Respondent had explained at a meeting on 19 May that the quotation had been subject to a wider competitive tendering process; that the Respondent has no interest in the contractor and does not receive any commission or rebate and that there was no grant assistance.
- 71.48. On 4 July 2016 the Applicant wrote to the Respondent (**lodged with Application**). His letter requested information as to competitive quotes under the Freedom of Information Act.
- 71.49. On 20 July the Respondent advised that Applicant by letter (**lodged with Application**) that the procurement process was done in accordance with their policy and European procurement rules; the works were tendered to several contractors under a competitive framework and the works were awarded on a quality and price basis. No documentation was provided. A "works order record" for the time during which the Respondent has been factor was enclosed. The tribunal has not had sight of the "works order record" as it was not produced by either party and no evidence was lead as to its terms.
- 71.50. On 22 July 2016 the Applicant wrote to the Respondent (**Applicant's Production number 5**) noting that he had requested a copy of three quotes for repairing the old existing door and three quotes for a new door; the fact that the Respondent had not provided this and just went ahead without providing the information; and the whole point in having a tendering process is where multiple companies provide quotes he needs to see them.
- 71.51. The Applicant's complaint was not resolved by the Respondent.

71.52. Following further correspondence between the parties and the Applicant and the HOHP (now the tribunal) the application to the HOHP was made on 24 November 2016.

71.53. The Applicant's representative wrote to the Respondent on 8 February 2017 to notify the Applicant's complaint, as requested by the HOHP (now the tribunal).

71.54. The Respondent has not provided the Applicant with copies of any other quotes provided in connection with the tender process. The first sight the Applicant had of information relating to the tender process was after the complaint was made to the HOHP (now the tribunal) and the Respondent lodged productions.

72. The tribunal was satisfied that the Respondent has failed to comply with **subsections 6.1, 6.3 and 6.6 of the Code** in the following respects:

73. Subsection 6.1.

73.1. The tribunal rejected the Respondent's representative's submission on the proper interpretation of **subsection 6.1**. The tribunal is of the view that the requirement on factors to "*inform homeowners of the progress of this work, including estimated timescales for completion...*" refers to all "*matters requiring repair, maintenance or attention*", whatever way those works have been instructed, and that the subsection is not restricted to such works which were notified by homeowners. The tribunal is of the view that it cannot have been the intention of the draughtsperson to restrict it in the way submitted on behalf of the Respondent. The tribunal notes that there is no subsection which would impose a duty for "*other works*".

73.2. As a result of the tribunal's interpretation of the subsection, there is a duty on the Respondent to inform the Applicant of the progress of work, including estimated timescales for completion.

73.3. The tribunal accepted the Applicant's evidence that that was not done in this case and that the first the Applicant knew of the work being instructed was on 19 May 2016 when he attended at the Property to carry out routine maintenance work.

73.4. The Respondent produced no evidence to suggest that they advised the Applicant of progress or estimated timescales for completion. Mr McDonald from the Respondent accepted in evidence that they had not done so.

73.5. The tribunal was satisfied that the Respondent did not inform the Applicant of the progress of the work, including estimated timescales for completion and upheld a failure to comply with the Code subsection 6.1 on this basis.

74. Subsection 6.3.

74.1. The tribunal was satisfied that the Applicant had asked the Respondent both in meetings and in correspondence to have sight of competitive quotes and/or tenders. He may have used the terms interchangeably but he is a layperson it is clear from the documentation and his evidence that he wanted to be satisfied as to the tendering process which had been carried out.

74.2. The Respondent did not show the Applicant how and why they had appointed WSS as contractor.

74.3. The tribunal was satisfied that the Respondent failed to comply with the requirement to show how and why they had appointed contractors and upheld a failure to comply with the Code subsection 6.3 on this basis.

75. Subsection 6.6.

75.1. The tribunal was satisfied on the evidence that the Applicant made requests both orally in meetings and in writing for sight of the documentation relating to the tendering process leading to the appointment of the Respondent's chosen contractor and that the Respondent did not make any such documents (excluding commercially sensitive information) available for inspection by the Applicant.

75.2. The Respondent contended in submissions that the Applicant did not ask but that is at odds with other evidence in the case by the Respondent themselves and by the Applicant, which was accepted by the tribunal.

75.3. The tribunal upheld a failure to comply with the Code subsection 6.6 on this basis.

76. The tribunal found that the Respondent had not failed to comply with subsections 2.1, 2.2, 2.4 and 3.3 of the Code and rejects those parts of the Applicant's application.

77. Subsection 2.1

77.1. This complaint by the Applicant is rejected by the tribunal. There were two aspects to the complaint. The first related to the Respondent denying that it had received a recorded delivery letter sent by the Applicant. The evidence which was accepted by the tribunal was that although the letter was sent by recorded delivery, there is no proof that it was received by the Respondent and therefore no proof that the Respondent was lying when it was stated that the letter had not been received.

77.2. The second aspect of the complaint related to the Applicant's evidence that the Respondent undertook at the meeting on 22 February 2016 to provide him with 6 quotes and did not do so. Whether or not the Respondent gave such an undertaking the tribunal found on the evidence that the Respondent did not provide any information to the Applicant following the meeting. As such, the Respondent did not provide information which was misleading or false.

78. Subsection 2.2

78.1. This complaint is rejected by the tribunal. The behaviour complained of by the Applicant in relation to the meeting on 22 February 2016, namely the presence of Mr McDonald and the seating arrangement does not amount a communication which is intimidating. Any discussion about potential legal action which might be taken in the event of non-payment falls within the exception in the section namely a reasonable indication that the Respondent might take legal action.

79. Subsection 2.4

79.1. This complaint is rejected by the tribunal. The Respondent had a procedure for consultation with homeowners, in this case only the Applicant as they owned the other five properties in the building. The Respondent followed its procedure for consultation. It notified the Applicant of the proposed major works in line with its mandated works procedure. It obtained a majority vote by using its own five votes to out-vote that of the Applicant.

80. Subsection 3.3.

80.1. This complaint by the Applicant is rejected by the tribunal. The subsection is not applicable to the factual complaint because there is no criticism of annual invoicing, or financial breakdowns for supplies made by the factor. The Applicant was being asked to pay for the works as per the WSS quotation. The Applicant was provided with supporting documentation

for the charges he was being asked to pay in the form of a single quotation from WSS Group (**Respondent's Production 11**), as summarised in the letter from the Respondent's dated 27 August 2015 (**Respondent's Production number 1**).

81. Factoring duties.

81.1. The tribunal found that despite the said failures to comply with the **Code, subsections 6.1, 6.3 and 6.6** the Respondent had complied with its factoring duties arising from the Deed of Conditions and the Written Statement of Services.

Proposed Property Factor Enforcement Order ("PFEO")

82. The tribunal proposes to make a Property Factor Enforcement Order ("PFEO") in terms of the **2011 Act, Section 20**, and therefore attaches a proposed PFEO to give notice to parties for the purposes of the **2011 Act, Section 19(2)(a)** and allows parties an opportunity to make representations to it in terms of **subsection 19(2)(b)**.

83. **Section 20 of the 2011 Act** gives the tribunal power to require the property factor to (a) execute such actions as the tribunal considers necessary and (b) where appropriate, make such payment to the homeowner as the tribunal considers necessary.

84. In the present matter the tribunal is of the view that a payment by the Respondent to the Applicant in the sum of £250 is reasonable in light of the Respondent's failure to comply with the **Code subsections 6.1, 6.3 and 6.6**, in the circumstances as narrated.

Right of Appeal

85. A homeowner or factor aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

S Tanner

Signed Susanne L M Tanner, Queen's Counsel,
Legal Member and Chairperson of the tribunal

Date 29 June 2017