

Housing and Property Chamber

First-tier Tribunal for Scotland



**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")
Property Factors (Scotland) Act 2011 ("the Act")**

Statement of reasons for decision in terms of the First-tier Tribunal for Scotland, Housing and Property Chamber ("the Tribunal") (Rules of Procedure) Amendment Regulations 2017 ("the regulations")

Chamber Ref: FTS/HPC/PF/21/0844

Re.: 5 Hillpark Grove, Edinburgh, EH4 7AP ("the property")

The Parties: -

Mr Aylmer Millen, 5 Hillpark Grove, Edinburgh, EH4 7AP ("the homeowner")

Charles White Ltd., 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the property factor")

Tribunal Members: - Simone Sweeney (Legal Member) Helen Barclay (Ordinary Member)

Decision of the Tribunal

The Tribunal unanimously determined that there is no evidence that the property factor has failed to comply with the introduction to section 1 or with sections 2.1 or 7.1 of the Code of Conduct for Property Factors ("the Code") as required by section 14 (5) of the Act.

The Tribunal unanimously determined that there is no evidence that the property factor has failed to comply with the Property Factor's duties as required by section 17 (1) (a) of the Act.

Background

1. By application dated 30th March 2021, the homeowner sought determination of whether the property factor had complied with the introduction to section 1, sections 2.1 and 7.1 of the Code as required by section 14 (5) of the Act and whether the property factor had complied with the Property Factor's duties as required by section 17 (1) (a) of the Act.
2. Documentation in support of the application was produced by the homeowner (including copy title deeds, written statement of services, copy communications between the parties, minutes of owners' meetings amongst other things). Also the homeowner provided a summary of his complaint.
3. A Notice of Acceptance of the application was issued, dated, 19th April 2021 by a legal member of the Tribunal under Rule 9 of the regulations. The application was referred to a Tribunal for determination. A copy of that Notice was issued to both parties by letter dated 5th May 2021.
4. A note of response to the application together with written representations were received from the property factor under cover of email dated 26th May 2021.
5. A telephone hearing before the Tribunal was assigned to take place on 28th June 2021. That hearing was discharged and the application continued to a hearing on 9th August 2021 at 10am. Reference is made to the terms of the Tribunal's direction dated, 18th June 2021.
6. At the telephone hearing on 9th August 2021 at 10am the homeowner was present. The property factor was represented by Ms Marianne Griffiths, Associate Director and Mr David Hutton, Managing Director. No issues were raised by parties in advance of the hearing.

Hearing of 9th August 2021

Evidence of the homeowner

7. By way of background the homeowner submitted that he challenges the legal basis on which the property factor acted on behalf of owners at a meeting of proprietors on 19th January 2021.

8. Reference was made to an annual general meeting of owners on 19th January 2021. The meeting, which proceeded virtually, was intimated to owners by the property factor by letter dated 6th January 2021 (a copy of which was before the Tribunal). The letter intimated an agenda and login details for owners to attend via Zoom. Within the agenda was a review of drainage works, playpark works and ground maintenance tender. Further detail of what would be discussed under each of these topics was provided on the letter. Insofar as is relevant, the letter read,

"Drainage. It remains our intention to provide a review at the meeting of the drainage works and seek agreement from owners on whether they wish CWL to progress with the further areas of drainage within the development at this time or whether you wish for us to discuss again at the 2021 AGM...Playpark Repairs ...The cat rocker base has been checked and it is confirmed that this is secure and useable. However it has been recommended that the unit be placed (sic) in the short-medium term and this will be discussed at the meeting...Ground Maintenance Tender. The Ground Maintenance tender has been completed. Please find a copy of the Tender Report. The costs received will be summarised at the meeting and I will be seeking instruction from owners on their chosen contractor..."

9. The letter was signed by Ms Griffiths. Attached to the letter was a mandate which was in the following terms:-

"I/We hereby authorise(full name) to act as my/our mandatory at the residents meeting of Hillpark Brae proprietors, on Tuesday 19th January 2021."

10. The covering letter of 6th January 2021 made reference to the mandate. The letter, insofar as is relevant provided,

"It is imperative that the meeting is quorate to ensure decisions can be made on items discussed. The quorum for such meeting is 20 proprietors or more, in person or by mandate.

Mandate.

Please find attached a mandate which you can fill in and nominate another party to act on your behalf at the meeting..."

11. It was submitted by the homeowner that the property factor had received completed mandates from a number of owners and had voted on their behalf in relation to matters on the drainage and garden maintenance contracts at the meeting on 19th January 2021.

Introduction to section 1 of the Code

12. The homeowner specified that the part of the introduction to section 1 of the Code with which he was alleging the property factor had not complied was the following:

"You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code."

13. Acting on behalf of owners as a mandate at the meeting was, in the homeowner's view, a conflict of interest and a breach of the terms of the property factor's statement of services. The Tribunal was referred to page 3, section 1 of the statement of services under the heading, "Authority to Act," specifically the sections which provided,

"CWL must operate at all times in accordance with the terms of the DC."

and,

"It is important to note that CWL act as agents for the Owners' Association. All contractual or other arrangements are entered into on this basis, CWL are at no time acting as principals. Provided that CWL act within the provision of the DC the Owners' Association will at all times indemnify CWL in respect of their actions."

14. The property factor's role is to act as agent for owners at the development. By taking on the role of mandate for owners at the meeting. The property factor cannot act as principal if it is acting as agent. The homeowner submitted that, by acting as mandatory on behalf of owners, the distinction between agent and principal had been blurred and contradicted the undertaking in the statement of services, above.
15. The homeowner referred to the introduction to section 1 of the Code. He invited the Tribunal to accept the comparison between what the property factor undertakes to do in the written statement and the action it took at the meeting.

Failure to comply with deed of conditions

16. Moreover the property factor was not acting in accordance with the deed of conditions thereby prejudicing the legal indemnity claimed by the property factor in its reliance on strict compliance with the terms of the deed of conditions.
17. The Tribunal was referred to clause sixth of the burdens section, D12, of the deed of conditions. Insofar as is relevant, this provided,

"(2) At any meeting so convened any Proprietor who is entitled to attend may be represented by any other person as mandatory appointed by written mandate to attend, vote and act on behalf of the Proprietor giving the mandate;

(3) A Proprietor entitled to attend or his mandatory present at such meeting shall be entitled to one vote for each House owned by such Proprietor;

(4) It shall be competent at any such meeting, by a majority of votes of Proprietors or their mandatories present, 20 Proprietors or their mandatories being a quorum;...(iv) to appoint the Factor, who shall take charge of the matters mentioned above in this clause as may competently be dealt with at a Meeting or Proprietors convened and held in accordance with this clause and to delegate to the Factor such rights and powers as may be exercisable by the Proprietors present or represented at such meeting (except those specified in the following sub-clause (v) and except that in the case of major work being work the cost of which is estimated to exceed two thousand pounds (£2,000) or such other amount as may be determined by the Proprietors, the

Factor shall before instructing such work report to and obtain the instructions of the Proprietors by convening a Meeting of Proprietors in accordance with the terms of this Deed for that purpose)"

18. The homeowner highlighted that the deed of conditions is silent on the property factor having any role in voting as mandatory or proxy or, at all. The homeowner accepted that the deed of conditions provides that an owner can be represented by, "*any other person.*" He accepted that this was a wide term. The homeowner submitted that the deed of conditions provided no definition on the word, "*person.*" He disputed any suggestion that this could include an officer of the property factor because the property factor attends these meetings as an agent of the owners and to take on the role of mandatory at the meeting would be a conflict of interest. The property factor is not attending as a "*person*" but, rather, to propose maintenance and repairs and not to vote on whether these repairs proceed. The Tribunal chair enquired whether the homeowner accepted that so long as the property factor accurately represented an owners' interests and voted accordingly, there was no conflict. The response of the homeowner was that the property factor provides headlines only and notice of estimates but discussions at meetings may reveal more detail which influences the way in which an owner may vote on an issue. Discussions at a meeting are often contrary to what the factor is proposing. Moreover the homeowner suggested that owners don't take time to investigate the proposed issues or may not have a sufficient understanding of the issues. He suggested that voting on the various issues requires an independence of view which is lost if an owner instructs the property factor to act as his mandatory.
19. The homeowner admitted that there was no provision with the deed of conditions which prevented an owner from authorising the property factor to act as his mandatory. He submitted that should an owner do so, then the appropriate action is for the property factor to refuse the request. The intention of clause sixth, in his view, was that a friend, neighbour, family member represent the interests of the owner. The Tribunal chair enquired about situations where an owner is unable to attend a meeting and has no one else that they can call upon to represent their interests. Given that there is nothing within the deed of conditions prohibiting otherwise,

surely it was permissible for the owner to instruct the property factor as mandatory? The homeowner admitted this was a possibility but he had never encountered this situation occurring. He admitted that there were vulnerable owners who may instruct the property factor in this way. However he was of the view that the appropriate action was for the property factor to highlight that this created a conflict of interest.

20. Other than dealing with repairs and maintenance at the development in which the property is located, the homeowner argued that there is nothing within the deed of conditions which permits the property factor to act on behalf of owners.

Response of the property factor

21. Ms Griffiths denied any failure to comply with the introduction to section 1 of the Code. Reference was made to the terms of the letter of 6th January 2021 and attached mandate form. The letter and form was issued to every owner invited to the meeting of 19th January 2021. The letter included the agenda for the meeting and prepared information on the various issues. Ms Griffiths received five forms authorising her to act as mandatory on the issues of drainage works and ground maintenance works. Ahead of the meeting Ms Griffiths spoke with each of the owners who had appointed her to satisfy herself of their respective positions.
22. At commencement of the meeting Ms Griffiths made it known that she had mandates from five owners and was appointed to act for them. No objections were received. A copy of the minutes of the meeting, lodged by the homeowner and before the Tribunal, confirmed same. Ms Griffiths explained that she had voted on behalf of the owners only on the issues on which she had specific instruction. Other issues arose in the course of the meeting on which the property factor had not received specific instruction. Therefore the property factor did not vote on behalf of the owners on these matters. Ms Griffiths confirmed that no one objected to votes being sought on issues which had not been made known to those absent owners. Neither had any of the owners from whom she had received mandates expressed any dissatisfaction with her actions at the meeting.

23. Following receipt of the homeowner's complaint, the property factor had sought legal advice which confirmed that there was no issue with the property factor acting as mandatory.
24. Moreover legal advice was sought on the definition of, "*any other person*" as it appears at the sixth clause of the deed of conditions. The advice was that there is nothing within the deed of conditions which precludes the property factor from acting as mandatory at the meeting.

Section 2.1 of the Code

Evidence of the homeowner

25. It was submitted by the homeowner that the property factor had failed to comply with section 2.1 of the Code. This provides that the property factor,

"must not provide information which is misleading or false."
26. Reference was made to the terms of a letter from the property factor dated, 6th November 2020 which was within the papers lodged by the homeowner. The letter was issued to owners to invite them to a meeting on 15th December 2020. Specifically, the homeowner referred to the part of that letter which provided,

"It is imperative that the meeting is quorate to ensure decisions can be made on items discussed. The quorum for such meeting is 20 proprietors or more, in person, or proxy. Therefore, a proxy form will be issued in advance of the meeting if you are unable to attend."
27. The homeowner alleged that this statement was false and showed a failure to comply with section 2.1 of the Code. There is no provision for a proxy vote in terms of the deed of conditions. Rather, mandatories are to be nominated by owners who are unable to attend a meeting.
28. This was brought to the property factor's attention by the homeowner. A reply was received from Ms Griffiths dated 12th November 2020. Insofar as is relevant, the email read,

"My apologies, I will ensure the forms issued to owners are mandates and not proxies..."

29. Notwithstanding this response, the homeowner alleged that the property factor did in fact proceed with a proxy vote at the meeting on 19th January 2021. He referred the Tribunal to an email from Ms Griffiths of 16th February 2021 in which she explained the actions of the property factor at the meeting on 19th January 2021. The email, insofar as is relevant provided,

"I did not accept an open vote from any owner who nominated me as their mandatory. I received explicit instructions from each owner on how their vote should be noted at the meeting and for those votes which were as a result of separate discussion...the mandatory votes were not logged as they did not apply."

30. A proxy vote is a specific instruction on a specific topic to vote in a specific way. A mandatory vote, by contrast, allows discretion for the person who holds the mandatory to act on how he sees fit. It provides a wider discretion. The homeowner submitted that the content of Ms Griffiths' email, above, was evidence that the property factor had proceeded with a proxy vote. This demonstrated a failure to comply with section 2.1 and the deed of conditions.

Response of the property factor

31. Mr Hutton responded that the property factor admitted there had been reference to proxy votes in the email of 6th November 2020 and that this ought to have read mandatory. Ms Griffiths issued mandate forms to owners ahead of the meeting on 19th January 2021. These were completed by owners who instructed her to vote on their behalf on certain matters in a certain way. Ms Griffiths acted in this way and satisfied the requirements of clause sixth of the deed of conditions. The property factor accepted that the homeowner wanted to call this a proxy vote. It was emphasised that there were no objections taken at the meeting or complaints raised about the actions of the property factor by anyone other than the homeowner.

Section 7.1 of the Code

Evidence of the homeowner

32. The homeowner alleged that the property factor failed to comply with section 7.1 of the Code. This concerns complaints resolution and places the following obligation on the property factor:-

"You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."

33. The homeowner admitted that the property factor has a complaints procedure. The homeowner admitted that he had made a complaint to the property factor. He admitted that he had received replies from the property factor. He admitted that the property factor met timescales by with their replies. His complaint did not involve contractors.

34. Rather, the homeowner alleged that the property factor had issued emails containing, *"provocative language used to hedge its position"* and had not provided him with a substantive response to his complaint. By failing to do so, the homeowner alleged that the property factor had not followed its own complaints procedure as required by section 7.1 of the Code.

35. Reference was made to the complaints procedure set out in the property factor's statement of services at section 4, page 14. The procedure insofar as is relevant provided,

"CWL are determined to create a service which not only meets, but also exceeds customer expectations...The client relationship manager will: a)acknowledge your correspondence within forty eight hours and b)seek to correct any problems to your satisfaction within 28 business days If this is unsuccessful c)The Line manager will act as a neutral party and will endeavour to resolve your complaint within 14 days...The aim will be to resolve the matter to your satisfaction and the Line manager

will reach a stage in the process where they will confirm to you our final position. In the event that you remain dissatisfied having completed our internal complaints procedure, you can make application to the First-tier tribunal for Scotland..."

36. It was alleged that the property factor had not complied with this procedure because the property factor did not reach a conclusion on the part of his complaint that the property factor had created a conflict of interest.
37. The homeowner referred the Tribunal to an email chain between the parties from 26th February to 15th March 2021 which, it was said, "*encapsulates the inconclusions of the line manager.*"
38. No specification could be provided of any particular line or email which illustrated the homeowner's allegations. Rather the Tribunal required to read the communications as a whole to appreciate the failure on the part of the property factor to reach a substantive conclusion on the complaint.
39. The homeowner's email of 26th February was directed to Ms Griffiths. The homeowner expressed dissatisfaction with the response he had received from Ms Griffiths. He requested that his complaint be referred to a line manager for a final response.
40. By email dated 1st March 2021, Mr Hutton acknowledged receipt of the homeowner's email and provided an undertaking to revert later that week, "*by way of a second tier response.*"
41. A follow up email dated 4th March 2021 from Mr Hutton requested that the homeowner,

"briefly set out what you consider is required to resolve your complaint to your satisfaction."
42. The homeowner replied by email dated 8th March setting out his complaint that the property factor is a "*connected person*" where maintenance and management of the development is concerned and by accepting any nomination as mandatory from an owner is a conflict of interest and, as agent, it is for the property factor to encourage

the owners to be represented by another person. The email provided no answer to Mr Hutton's query of how the complaint could be resolved .

43. On the same date, 8th March 2021, Mr Hutton responded to the homeowners email. Insofar as is relevant, the email provided,

"...for any future meeting...CWL can reflect on your viewpoint and comments and either decline to act as a mandatory and/or on a no names basis communicate your view to owners who would seek to nominate CWL as a mandatory. My apologies for asking again, however can you be explicit as to what you consider is required to resolve your complaint."

44. The homeowner emailed Mr Hutton at 12:26 on 8th March repeating that he identified a conflict of interest and that the property factor must decline any request to act as a mandatory for owners. The email provided no answer to Mr Hutton's request of how the complaint could be resolved.

45. At 14:00 on the same date, Mr Hutton confirmed his understanding of the homeowner's view that a conflict of interest existed. Mr Hutton repeated his intention to consider this view at future meetings. The email ended,

"I trust this is acceptable for you and unless I hear otherwise I will consider the matter closed."

46. The homeowner responded at 14:17 in the following terms,

"In light of the equivocation in your phrase "taken into consideration" this does not represent the undertaking requested. As this does not constitute a substantive response embracing recognition of the conflict of interest you leave me with little choice but to proceed with the complaint."

47. Mr Hutton replied at 14:30. Insofar as is relevant, the email provided,

"I am sorry that you consider my correspondence and response was not sufficiently substantive for you. On three separate occasions I have asked you to be explicit as to

what you considered was required to resolve your complaint and to date I have not had an explicit response on resolution."

48. When asked by the Tribunal where he had responded to the property factor's request, the homeowner referred the Tribunal to the terms of his email to Mr Hutton of 15th March where it provided,

"In light of this conflict of interest you should reasonably undertake to refuse any request from Homeowners to act as mandatory or otherwise to cast any votes on Homeowners behalf..."

49. To resolve his complaint the homeowner wanted a declaration from the property factor of a conflict of interest and to confirm this to owners in writing. He submitted that he had intimated this to the property factor by emails of 8th and 15th March 2021.
50. The homeowner admitted that there was a dispute between the parties about whether or not there had been a conflict of interest. However he argued that it was for the property factor to explain why there was not a conflict of interest from their actions which, he alleged, the property factor had failed to do.
51. The homeowner admitted that the statement of services provides a complaints procedure, that his complaint was escalated to Ms Griffiths' line manager and that the property factor had responded within the timescales provided in the statement of services.

Response of the property factor

52. Mr Hutton maintained that the property factor had maintained communication with the homeowner throughout his complaint. Ms Griffiths had communicated with the homeowner initially and then passed the matter to Mr Hutton. It was explained that the allegation of a conflict of interest was recognised throughout. However, in his emails, Mr Hutton was attempting to put right something which had occurred in the past, hence the reason for him requesting how the complaint could be resolved. The replies from the homeowner caused confusion as it didn't appear that the

homeowner was replying to the property factor's request. It became very clear that there was a difference of opinion which would not be resolved between the parties.

Failure to comply with property factor's duties

Evidence of the homeowner

53. The homeowner invited the Tribunal to find that, taking everything together, the property factor had failed to comply with its own statement of services and therefore failed to comply with the property factor's duties.

Response of the property factor

54. Mr Hutton denied any failure to comply with the property factor's duties. Much of what has been discussed focuses on the interpretation of, "*any other person*" at clause sixth of the deed of conditions. Mr Hutton was satisfied that the property factor came within the definition of any other person and was entitled to act as mandatory for owners.

Findings in Fact

The Tribunal finds the following facts to be established:-

55. That the homeowner is the owner of the property and the property factor provides management services to the development in which the property is situated.
56. That an annual general meeting of owners took place on 19th January 2021.
57. That the property factor invited owners to attend the meeting by letter dated 6th January 2021.
58. That, attached to the letter, was a mandate form which enabled owners to authorise another to act as a mandatory at the meeting.
59. That, within the statement of services, the property factor gives an undertaking to operate at all times in accordance with the terms of the deed of conditions.
60. That clause sixth of the deed of conditions provides the rules for a meeting of proprietors.

61. That the deed of conditions permits an owner to be represented at a meeting of proprietors by, "*any other person*" as mandatory appointed by written mandate to attend, vote and act on behalf of the owner giving the mandate.
62. That there is nothing within the deed of conditions which precludes the property factor from being appointed as mandatory by an owner.
63. That the property factor received completed forms from owners requesting that the property factor act as their mandatory at the meeting on 19th January 2021.
64. That the property factor accepted these requests and acted as mandatory on behalf of these owners at the meeting on 19th January 2021.
65. That, by accepting requests from owners to act as mandatories, the property factor was acting in accordance with the deed of conditions.
66. That a letter from the property factor to owners dated 6th November 2020 advised that a proxy form would be issued to owners.
67. That the the deed of conditions provides that an owner or his mandatory present at a meeting shall be entitled to one vote for each house.
68. That the property factor apologised for referring to proxy votes.
69. That, at the meeting on 19th January 2021, the property factor voted on behalf of the owners on the issues of drainage and ground maintenance, only.
70. That the property factor represented the interests of owners by whom they were authorised to represent.
71. The statement of services provides a complaints resolution procedure which sets out a series of steps and timescales.
72. That the homeowner intimated a complaint to the property factor by email dated 26th February 2021.
73. That the homeowner complained that, by accepting requests to act as mandatory from owners, a conflict of interest was created by the property factor.
74. That the allegation of a conflict of interest was an issue in dispute between parties.
75. That the property factor sought clarification of how the homeowner's complaint could be resolved.

76. That the homeowner's position was that resolution of the complaint could be reached by the property factor declaring that there was a conflict of interest and by confirming same, in writing, to owners.
77. That the property factor followed the complaints procedure set out in its statement of services.

Reasons for decision

78. The deed of conditions provides that an owner may appoint, "*any such person*" as mandatory. This is a wide a definition as one might expect within a deed of conditions. There is no restriction on who the owner may appoint. There is nothing within the deed of conditions which precludes an owner appointing the property factor. The homeowner accepts this. He argues that what is intended by the deed of conditions is that an owner appoints another person who is physically present at any meeting, that the property factor does not meet that term. The property factor's officer, Ms Griffiths is a person who was present at the meeting on 19th January 2021. The Tribunal is satisfied that the property factor falls within the definition of any such person, was entitled to act as mandatory on behalf of owners on 19th January 2021 and that the property factor has acted in accordance with the deed of conditions. Therefore the Tribunal finds no failure on the property factor to comply with the introduction to section 1 of the Code or the property factor's duties in this regard.
79. The property factor admits it was wrong to refer to proxy forms in the letter of 6th November 2020. The Tribunal accepts this was a mistake. The homeowner draws a distinction between proxy and mandatory votes and submits that the deed of conditions specifies mandates not proxy votes. The Tribunal accepts all that is said by the homeowner in this regard. However, the only real difference is that with a mandatory vote, the mandatory must be present. Ms Griffiths was present at the meeting. In advance of the meeting of 19th January 2020, it is a matter of agreement between the parties that owners were issued with mandates. It is not in dispute that certain owners instructed the property factor to represent their interests as mandatory. Ms Griffiths made contact with the owners who appointed the property

factor as mandatory. It is not in dispute that Ms Griffiths received specific instructions on the owners' respective positions on the subjects on which a vote was to be taken. The owners had received notice of the issues to be voted upon ie. drainage and ground maintenance. The evidence before the Tribunal is that the property factor voted on behalf of the owners on these issues, only. There is no evidence that the property factor did not represent the views of individual owners, accurately. There is no evidence before the Tribunal, therefore, of any conflict of interest by the property factor acting as agent and representing the interests of owners. Even if it were to be accepted that there is a conflict of interest (which is not accepted by the Tribunal) there is nothing in the deed of conditions which prevents the owners from appointing the property factor to act as mandatory. Reference to the phrase, proxy votes, was an error on the part of the property factor, admitted as such and an apology provided. The use of a phrase which was incorrect had no practical effect of the property factor intention, ie. to allow the owners the opportunity to appoint, "*any other person*" to represent their interests at the meeting. Against this background the Tribunal is satisfied that the property factor was not false or misleading in the letter of 6th November 2020. Accordingly, the Tribunal makes no finding of any failure on the property factor to comply with section 2.1 of the Code.

80. The homeowner argued that the property factor failed to comply with section 7.1 of the Code by not providing a substantive response to his complaint. That complaint was that there was a conflict of interest by the property factor. The homeowner admitted that this was an issue on which the parties disagreed. The resolution which the homeowner wanted was for the property factor agree that there had been a conflict of interest and to confirm same, in writing. This outcome was unlikely given parties' opposing views on the subject. The homeowner admitted that the property factor has a complaints procedure within the statement of services, that he made a complaint, that it was escalated to a manager and that there was no issue with the timescales in which the property factor responded. The Tribunal is satisfied that the property factor followed its own complaints procedure. In so doing, the property factor complied with section 7.1 of the Code.

81. The homeowner raised no new issues or evidence to support his allegation that the property factor failed to comply with the property factor's duties. The Tribunal is satisfied that there is no evidence of any failure by the property factor to comply with the property factor's duties at section 17 (1) (a) of the Act.

Decision

82. In all of the circumstances narrated, the Tribunal finds no evidence that the property factor has failed to comply with the introduction to section 1, with sections 2.1 or 7.1 of the Code and no evidence that the property factor has failed to comply with the Property Factor's duties as required by section 17 (1) (a) of the Act.

Appeal

83. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal within 30 days of the date the decision was sent to them.

84. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Chair, at Glasgow on 29th August 2021

