



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/Property Factor/20/1457

The Parties:-

Miss Carla McLay, 10/6 Kilnside Road, Paisley ("the Homeowner")

Hacking and Paterson, Management Services, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL ("the Factor")

The Tribunal:-

**Melanie Barbour (Legal Member)
Angus Anderson (Ordinary Member)**

DECISION

The Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 in that it did not comply with sections 1, 2.5 and 3.3 of the Code of Conduct for Property Factors.

The decision is unanimous

Introduction

1. In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"
2. The Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that registration.

Background

3. By application dated 2 July 2020 the Homeowner complained to the Tribunal that the Factor was in breach of Sections 1, 2, 3, 4, 5 and 7 of the Code.

4. Following correspondence with the Tribunal the Homeowner intimated her intention to apply to the Tribunal to the Factor in correspondence dated 2 July 2020. In said correspondence the Homeowner referred to alleged breaches of Sections 1, 2.1, 2.3, 2.4, 2.5, 3.0, 3.3, 4.0, 5.2 and 5.8 of the Code.
5. By Notice of Acceptance dated 21 July 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned to take place on 29 September 2020. This hearing was postponed, and a further hearing assigned until 26 October 2020.

Hearing

6. A Hearing was held by teleconference on 26 October 2020. The Homeowner attended personally. The Factor was represented by Mr Alastair Leitch.
7. Following the introductions, the Tribunal considered the scope of the application as although the Homeowner had made reference to breaches of Sections 1, 2, 5, 6 and 7 of the Code, the correspondence to the Factor intimating her intention to apply to the Tribunal did not make reference to Section 7 of the Code. The Tribunal therefore determined that as notice of any alleged breach of section 7 had not been intimated to the Property Factor issues should be restricted to the breaches of the code which had been intimated to the Property Factor.

Summary of submissions

8. Section 1 of the Code

9. The Homeowner referred to her letter of 2 July 2020 to the Property Factor. She advised that she had not been provided with a written statement from the Property Factor. She advised that she was not provided with the Property Factor's written statement within 4 weeks. She noted that the Property Factor had accepted his breach. She advised that she was referring to the first and second bullet points in section 1 of the Code.
10. She advised that she had purchased her property in April 2019. Her lawyer had advised her that the Property Factor for the subjects was Hacking and Paterson. She did not receive any information from the Property Factor when she moved in. It was not until she had been speaking to a neighbour in June 2019, when she had been advised that there was a consultation on common charges, that she became concerned that she had not heard anything from the Property Factor. She advised that as she was not able to take part in this vote, she contacted the Property Factor first by email, however she received no response. She then called them on 12 July 2019. She spoke to Donald Currie. She advised him that she was now the owner of the property; but she had had no communication from them. Donald Currie advised her that their records showed that the owners were Avant Homes.

11. The homeowner explained that there had been a slight confusion when she had purchased the property, her sellers had been buying a new build and her purchase had been delayed slightly because the property was sold first to the new build developers, Avant Homes, and then to her.
12. Donald Currie advised her that there was nothing that he could do; and they would have to get confirmation from Avant Homes that they were no longer the owner. She advised that she raised a concern with Donald Currie about getting a substantial bill; he noted her concern but said that he had to look into the matter. That was the end of the call.
13. Thereafter she advised that she did not hear anything further. She advised that she was not sure what to do. The next thing that she heard was on 11 March 2020, when she received a welcome letter from the Property Factor giving her advice about the services and internet codes in order that she could access the Property Factor's website. She advised that this was the first time that she was given access to this information.
14. On receipt of this letter, on 12 March 2020 she contacted the Property Factor and requested that she pay her Property Factor charges in quarterly payments. She did not receive any response from Property Factor until 5 May 2020. On 5 May 2020 she received a phone call from Donald Currie who advised that she was going to receive a substantial bill for the charges which had accrued from April 2019 until May 2020. She advised that she asked him about the responsibility for these payments. She considered that as far as the Property Factor had been concerned it was Avant Homes, who were the deemed owners during this period, then they should pay for these charges. She advised that she would pay from the date that she received their letter on 11 March 2020.
15. She received a bill after that date for the period 28 February 2019 until 28 May 2020.
16. As per her complaint she believed that had been misled and had not been properly communicated to her.
17. She advised that she emailed Donald Currie on 5 May 2020 as she disputed that she should have to pay for the charges which had accrued before she had been notified from the Property Factor that she was the owner. She received a response on 13 May 2020 advising that that the failure to correspond had been an administrative error.
18. The homeowner advised that she considered that she had been very inhumanely treated by the Property Factor. To receive such a big bill and letter during the time of COVID-19, she found to be thoroughly unacceptable. She emailed the Property Factor back to complain, advising that she had contacted them twice in 2019 they had done nothing.

- 19.On 21 May 2020 she submitted an application to the Property Factor's complaint procedure. She advised that in terms of the Property Factor's own policy she should have received a response within 3 days, however it took 6 days to get an acknowledgement. She should have received a resolution response in 14 days which would have been 10 June; however, she did not receive a response until 7 July, which was 7 weeks later. She considered that there was fundamental non-compliance by the Property Factor with their own procedure.
- 20.She noted that they acknowledged the breach of this section. She still considered that the breach was unacceptable. She went back to the Property Factor on 8 July 2020 with a proposal for settling the matter. To date she has had no response to that email. She considered that it was inhumane that she received the bill for the period from February 2019.
- 21.She considered that she had received no legally binding letter until 11 March 2020. Until March the Property Factor and their services had been one long mystery to her. She had never dealt with factors before. She was not sure what services they provided. The 11 March letter was the welcome letter. That letter confirmed the services that were provided and where to access all documents. She submitted that Avant Homes were legally responsible. The Property Factor would have written to Avant Homes about their responsibility.
- 22.She was asked by the tribunal whether she had been aware that she was receiving services. She advised that no, she was not aware she was being provided with services, she did appreciate that there were services, but she did not know what.
- 23.Mr Leitch appeared for the Property Factor. He advised that he agreed with most if not all of what the homeowner had said, she was correct and had put forward her case eloquently.
- 24.Avant Homes had been listed as being the owners, the Property Factor had not been advised that the owner was in fact, Miss McLay, ordinarily they would have been notified from a solicitor but the contact which usually arrives from the seller's solicitors did not come on this occasion. He advised that the Property Factor had issued invoices to Avant Homes in February 2019 and August 2019 and both of these invoices had been paid by Avant Homes.
- 25.When the homeowner contacted Property Factor in July 2020 to advise that she was the owner, that call prompted the Property Factor to contact Avant Homes and it was confirmed that they were not the owners. It should have allowed them to make the changes to the ownership details in July 2019. They had prepared a paper sheet with the new owner details and it should have been put on to the Property Factor's system, had that been done, the homeowner would have received the information from the Property Factor much earlier. The system they had for adding new owned details, for some reason, fell down, and the information was not actioned; the paper was filed without amendment due to the failed actions of one employee. There was

continued billing of Avant Homes. They paid accounts in May and August 2019. They did not pay November 2019 or February 2020.

26. After March 2020 the account was changed. When the change of ownership was updated in March Avant Homes was recrated with what they had paid, and the original charges were added to the homeowner's invoice.
27. The November 2019 non-payment did not raise a flag as they were developers, and the amount owing was not sufficient to pursue at that stage. Developers do not fall within the same debt recovery procedure. They did not receive any follow up to the balance at that time. In February 2020 nothing was paid again, and issue was flagged up then.
28. He advised that he did not however know how the matter had came to light in March 2020. Looking at the earlier memo which should have been actioned, he did not know what brought this matter to light in March 2020.
29. He did however advise that the invoices went to Avant Homes' office in Stirling. He advised that they also had offices elsewhere. He suggested that the invoice may have been sent to one office and paid, without the company being aware that they were not the owner for the property any longer. Had it have been a private seller he suggested that any unpaid invoice letter would have come back as "gone away". This situation in this case had been different as there was a commercial developer involved. This is something that in most cases would have come to light in some fashion.
30. He advised that in terms of changing procedures, the employee responsible for updating this information is no longer with the Property Factor. He advised that the person responsible for the accounts was Eva Grant, the property manager, and Donald Currie was the assistant property manager.
31. In normal sales they are notified by the selling or purchasing solicitor. They are sent forms to fill in, with all the details about the charges, services, insurance etc. They complete these and return them to the solicitors. There was no request on this occasion. He suggested that it may have been different as the first owner was Avant Homes.
32. In relation to the breach, Property Factor admitted that they had a system in place, but the new owner information had not been updated and the letter had not been issued until March 2020.

33. Section 2.1 of the Code

34. The homeowner referred to section 2.0 of the code. She noted that the first sentence referred to good communication leading to fewer misunderstandings. In her opinion the Property Factor had not adhered to this section, the communication with the Property Factor had been non-existent and was unacceptable.

35. She considered that the Property Factor's conduct had been misleading and false. They had failed to sort out the issue of the account which she had been issued with for 2019-2020. She submitted that the problem with the account was between Property Factor and Avant Homes, not her. It had not been rectified. She did not receive any notice from the Property Factor until 11 March 2020.
36. There had been no response or other correspondence from the Property Factor until the bill was received on 5 May 2020. The March letter from the Property Factor was a "welcome letter" and the next thing she heard from them was on 5 May when she received a substantial bill asking her to pay for services that she had not been aware of.
37. She felt the first letter was misleading, it had indicated that she was a new owner and set out how payments would be set up going forward from 11 March 2020. Therefore, it was a big surprise when she received the letter of 5 May with the bill. She said that she felt very surprised.
38. At the beginning of May Donald Currie had called to give her *the heads up* about the bill coming. He advised that it was for the services for the past year, he advised that it was for a substantial amount and they would offer a repayment plan. She advised him that it was not her responsibility.
39. The homeowner was asked about Donald Currie's response, she advised he told her to wait until she had seen the bill. She found him to be dismissive; he sent her an email after the call providing details of the credit control department in the event that she wanted to set up a repayment plan.
40. In response the Property Factor advised that the email had been sent providing the details of the credit control department. He advised that the Property Factor work on a quarterly cycle and that was why the invoice was not issued until May. There was no delay in issuing the invoice after the notice letter was sent in March. He advised that the computer programme was such that it would be very difficult to extract the correct information at a different period within the year and therefore it would have been difficult to issue an invoice before May.
41. He advised that the information which had been provided by the Property Factor was not misleading or false. They had no knowledge that they had misled the homeowner. The issue which had been accepted was that the information updating the homeowner details and providing her with information had been delayed.
42. He advised that the letter which was sent out on 11 March was a generic letter. It was a letter that was sent out to all new owners. It provides information about the services provided, where to access information and information about the portal. It also refers to the quarterly accounting that takes place to give people notice of the quarterly accounts that are sent out. He accepted that there was nothing in the letter to the homeowner to

acknowledge that there had been a delay in them obtaining the homeowners details. The letter had not been personalised in anyway.

43. Section 2.3 of the Code

44. The homeowner advised that she considered that this section of the code had been breached, as it required the Property Factor to provide contact details and these had not been provided until the letter of 11 March 2020.
45. Mr Leitch advised that these details had been provided in the service documentation; however, he admitted that these details were not issued timeously.

46. Section 2.4 of the Code

47. The homeowner considered that the consultation provision had been breached, as the Property Factor had failed to consult her during 2019. She was aware that her neighbours had been consulted on changes to the common charges. She had missed out on the opportunity to be involved in that vote.
48. The Property Factor advised that letters had been sent out regarding reducing the number of stair cleaning and ground maintenance carried out. The letter was a consultation. The letter was dated 3 July 2019, owners had until 17 July to provide their vote. Mr Leitch did not feel that there had been a breach of this section of the code, he advised that the Property Factor had a procedure in place as required by the code and they had followed the procedure. He advised that they did not have delegated authority and that issue did not arise in this case.

49. Section 2.5 of the Code

50. The homeowner advised that she considered that there had been a breach of this section as there was a requirement to comply with timescales. She referred to the email that she had sent in May 2020 and noted that there had been a complete failure to respond promptly. The email of 21 May should have been responded to in 3 working days and it took 6 days; and then it was not until the 7 July that she heard back from the Property Factor in respect of her complaint, this was 7 weeks and their timescale for responding was 14 days. She submitted that this was a breach of their own internal process.
51. The Property Factor advised that this information was factual correct, he accepted that there had been a delay in responding to the complaint. He advised that the Property Factor had already apologised to the homeowner. He advised that the only mitigation they would submit was that the Property Factor employees were working from home, as it was during lockdown, and there had been a breakdown in communication. It had been the property manager who had the responsibility to respond to the complaint. He accepted that there was no excuse, the matter should have been discussed with him,

had they not been able to respond in time they should have sought further time from the homeowner and kept her UpToDate.

52. Section 3.0 of the Code

53. The homeowner referred to the preamble, she considered that there had been a breach of trust as she had never received any information until she received the letter of 11 March. Then she received the invoice in May 2020 and this she considered showed a lack of information. The lack of information had led to a feeling that that there was no trust with the Property Factor, trust had not been built as timeous financial information was not provided by the Property Factor.
54. The Property Factor advised that this matter stems from the fact that the Property Factor did not recognise that the homeowner was the new owner of the property for several months. Therefore, they had not provided her with information promptly. In the ordinary course of these things, the selling solicitor requests information from the Property Factor, and when this is passed over, the updated details are provided about the new owner. It did not happen in this case, Avant Home's agents had not requested the usual information. He also advised that he would also have expected the homeowner's solicitors to have advised her about the Property Factor and they could have sought this information direct. He did not agree that there had been a breach of trust between the parties.

55. Section 3.3 of the Code

56. This section requires that homeowners be given a breakdown of their charges at least once a year, this did not happen in this case and therefore she considered that there had been a breach of this section.
57. The Property Factor advised that this again stems from the process of recording the homeowner as the new owner falling down. Relevant information had not been recorded. They issue quarterly accounts and when the account was sent out in May it set out all of the account and charges information. He accepted that there was a breach of the code in that no account had been issued within the one-year period.
58. The Property Factor was asked why it had not taken steps to ensure that the homeowner had been notified of the account within the 12 month period and this could have been done had it been issued in March 2020. He advised that it would have been difficult to do so, due to the way in which the computer programme had been set up. They had to recredit sums back to Avant Homes, then prepare accounts for the homeowner, and then issue the accounts. To do so accurately the most appropriate way to do this was by issuing the accounts at the next quarterly accounting period. He accepted that there had been no specific information about the invoices or account provided to the homeowner before May 2020. He advised that this was not thought about at the time. He accepted that the Property Factor had fallen foul of the code in this respect.

59. The tribunal asked if it had not been possible to create a manual account and override the system. The Property Factor advised that this was not something that had been considered or ever done. He advised that it would be difficult to do and match up to what the computer calculated quarterly. He advised that it was not impossible to do but would have been difficult to ensure it was accurate.

60. Section 4.0 of the Code

61. This section deals with the issue that non-payment of charges can affect the provision of service. The homeowner submitted that for her, it was important that the homeowner was aware of the implications of payment, however it was a year until the invoice was sent to her. She considered that this was a ridiculous time to wait for the invoice.

62. The Property Factor confirmed that it was totally regrettable that they had not amended the Property Factor records for the homeowner, however he submitted that it had happened due to human error. The Property Factor had offered to allow the homeowner to repay by instalments and they had also offered to try and address the complaint and to provide some compensation to settle the matter, however the homeowner was not prepared to accept the offer.

63. Section 5.2 of the Code

64. The homeowner advised that her reasons for raising this issue in relation to insurance, was that she had had no knowledge of the insurance in place until she received the letter of 11 March 2020. She considered if anything had happened to the property, she would not have known what to do.

65. The Property Factor advised it was all down to the owner not being registered on the system. As part of the sales transaction they receive a questionnaire from the selling solicitor, which is completed by the Property Factor and returned, it includes details of insurance in place. This form was not received on this occasion. He advised that the building's policy was renewed on 31 May 2019 and a letter had been issued to Avant Homes advising that the insurance had been renewed and providing a summary of the cover. He advised that he considered that this satisfied the requirements of this section of the code of conduct. The property had been fully insured and it is a block policy; and any claim would have been met and covered by the insurance. The policy is in the name of the "co-proprietors and bond holders per Hacking & Paterson Management Services".

66. The Property Factor was asked if they also have any buildings which they did not provide building insurance for. He confirmed that they did.

67. Section 5.8 of the Code

68. This section deals with the frequency which insurance is revalued. For the homeowner the delay in receiving the information does not suggest a timely manner. She was not sure what the frequency is.
69. The Property Factor advised that the information is set out in their terms of service document and confirms that they do not revalue the insurance. See section 3.2 of the terms of service.
70. The Property Factor was asked how the insurance costs were reassessed. The Property Factor advised that if there is a property sold, they keep a note of the value and this may be used to update the policy value. They may revisit this if there is advice from the Scottish Government to do so. The Property Factor was asked how long the building had been factored for. He was not sure, however he believed that it may have been 2002.
71. The Homeowner was asked why she considered that the Property Factor had failed to resolve the complaint, she advised that the Property Factor had not completed the complaint procedure due to their delay. 8 July 2020 was the last communication she had sent to them in hope to go to stage 3 and consider their proposal and she did not get a response to that letter.
72. The apology and explanation did not resolve the issue. Up until March 2020 she had received no information until today's hearing. She had not had the knowledge of the reasons why the delay had occurred and why the payments had been issued in the way that they had.
73. She suggested that the charges from February 2019 until March 2020 amounting to £607.50 should not have to be paid by her. She advised that she was prepared to repay the other monetary payment.
74. She advised that she had been billed on 2 July 2020 and she had paid this. Her dispute was with the payment of £953.70.
75. The Property Factor advised that in response to the 7 July proposal, they could not agree to that proposal and they had not been able to resolve the complaint amicably. The Property Factor had written off management fees, and float fund and offered compensation of £100. They did not consider however that they could write off the whole invoice as the homeowner had received the benefit of the services since the date of entry. There was no argument that these services had not been provided to the homeowner. Therefore, he considered that they were entitled to payment during that period.
76. He advised that they were still prepared to settle the matter; they would not seek the £47.10 management fee and they would offer £300 in compensation. They were not able to offer non-payment of the float as this was a requirement of the title deeds.

77. The homeowner advised that she was not sure what services she had received from the Property Factor until she had received the invoice in May 2020; however she advised that she did not dispute that she had received the services provided. She confirmed that she accepted that she had had the benefit of the services since she had moved into the property, however she advised that she had received no notice of these services; and further she had not been billed for them.
78. The Property Factor advised that they were still prepared to offer a repayment schedule to the homeowner for the outstanding invoice.
79. The homeowner advised that if she had to repay the invoice, she would need a 12-month period in which to make repayment.
80. The homeowner advised that she had never expected to move in and have these issues. She considered this had occurred just as the pandemic was beginning. This was meant to be an exciting time for her with her first own home, but these issues occurred, and she felt she had been penalised. It had left a bad taste in her mouth. It had caused her anxiety and had been stressful. She had had to chase the Property Factor. The matter had been hanging over her head. She advised that she had been sickened by what had happened. She did not consider that they have showed customer care. It was their fault. There is a human element. She would suffer financial detriment having to pay one year's backlog.
81. The Property Factor advised that they had accepted responsibility for their error however it was down to human error. They were willing to offer compensation on the basis set out. They could not however agree the offer proposed by the homeowner.

The Tribunal make the following findings in fact:

82. The Homeowner is the owner of 10/6 Kilnside Road, Paisley ("the Property")
83. The Factor performed the role of the property factor for the Property.
84. The Factor kept a list of homeowners in the development.
85. The Homeowner purchased the property in April 2019.
86. The Factor held details of the owner for the property, from April 2019 until 2020 as being Avant Homes.
87. The Homeowner contacted the Factor in around July 2019 to notify them that she was the owner of the property.
88. The Factor failed to amend the ownership details from July 2019 until March 2020.

89. The Factor amended the ownership details until March 2020.
90. The Factor issued a welcome letter with details about services and charges to the Homeowner in March 2020.
91. The Factor issued an invoice to the Homeowner in relation to charges incurred from April 2019 until May 2020 in May 2020.
92. The Factor provided services to the Homeowner as per the invoice issued to the Homeowner in May 2020.
93. The Homeowner sent a letter of complaint to the Factor in a letter dated 21 May 2020.
94. The Factor acknowledge the complaint letter on 29 May 2020.
95. The Factor responded to the complaint letter on 7 July 2020.
96. The Factor has a statement of Service and Delivery Standards issued 11 March 2020.
97. The Factor has a complaint's procedure.

Reasons for Decision

98. Section 1 of the Code

99. We consider that there had been a breach of this section, the homeowner did not specify the particular part of the section 1 that she were referring to, however looking at section 1 as drafted, it appears to us that there has been a breach of the preamble and spirit of section 1. The breach is the failure to provide the written information to the homeowner. While we appreciate that there had been issues at the beginning of the homeowners' ownership of the subjects being slightly more complicated than usual, given the involvement of the developer, she had nonetheless made contact with the Property Factor in July 2019 provided information to them about her ownership, but something had happened at that time and the records were not updated and she was not provided with any information. We consider that at the very least she should have received information from the Property Factor in accordance with Section 1 after the homeowner had contacted them in July 2019.

100. Section 2.1 of the Code

101. We consider that given the substantial delay in making contact with the Homeowner, when the Property Factor made contact in March 2020, they should have paused and amended their welcome letter. What was sent to her was a generic letter which was no longer wholly relevant to her as she had

now lived in the property for over a year. However, while we consider that the practice adopted by the Property Factor could have been better, we did not however find that they acted in a manner which could be construed as misleading and false. We did not find that there had been a breach of this section.

102. Section 2.3 of the Code

103. While we consider that there had been delay in providing contact details, we consider that this matter was not deliberate but was incidental to the initial error in processing the homeowner details. As soon as the processing had taken place the contact information had been provided to the homeowner. We note that the Property Factor has apologised for the delay. We do not consider that there has been a breach of this section of the code due to the incidental nature of the delay to the original error in not processing the homeowner's details.

104. Section 2.4 of the Code

105. We consider that the Property Factor had a process for consulting with homeowners, and it appears that it was carrying out consultation in accordance with that procedure. We note that the consultation in this case was about reducing the services being provided and therefore reducing the fees incurred. We consider that the consultation in this case is not, in fact, covered by section 2.4. In addition, and even if it had been covered by this section, as we find that there is a procedure in place, we consider that any failure to consult the homeowner was not deliberate but was incidental to the original delay in updating the homeowner's details.

106. Section 2.5 of the Code

107. We find that there has been a breach in the timescales in responding to the complaints. The homeowner had not been kept informed. We note that this is accepted by the Property Factor.

108. Section 3.0 of the Code

109. We note that the homeowner did not dispute that she had received services from the Property Factors, and she did not dispute the services she was being asked to pay for. What caused her to consider that there had been a breach of this section was the lack of knowledge about the services and the costs which had accrued. She was unhappy about the delay in the information being provided to her. While we sympathise that there had a failure to provide this information to her in a timeous manner, we do not find that there had been a breach of this preamble. We consider that as soon as the homeowner details were updated financial information was provided to her, that financial information was not challenged, it was the delay in receiving it which had caused the homeowner concern.

110. Section 3.3 of the Code

111. We find that this section of the code has been breached. The Property Factor's explanation of the accounting software appears to be the reason why the account was not issued within the 12-month period. While we note this explanation, we find that there was a breach of this section. We consider it is a fairly significant breach of the code. We find it unacceptable for the Property Factor to allow homeowners to be left for a period in excess of 12 months without being provided with an invoice setting out the charges which they were being asked to pay for. We did not consider that the reason provided by the Property Factor was acceptable. This failure was not incidental to the original breach which had occurred, albeit we do consider that it was a consequence of the original breach.

112. Section 4.0 of the Code

113. We do not find that there has been any breach of section 4. Any failure perceived to have occurred in this section was in fact a failure to adhere to the terms of section 1, it was not deliberate, it was a delay in recording homeowner details, and once rectified it appears to us that relevant information was passed to the homeowner.

114. Section 5.2 of the Code

115. We do not find that there has been a breach in this section. Again, we find that this issue is incidental the original breach arising from section 1.

116. Section 5.8 of the Code

117. We did not find that there had been a breach of this section.

118. However, we would observe in relation to section 5.8, we were surprised at the lack of obvious information provided to homeowners about the issue of rebuilding costs for the property and the lack of any revaluation being carried out unless a request is made by the homeowners. While this issue is outwith the terms of the complaint before us, we would make the following advisory comment, that it would be good practice for the Property Factor to ensure that correspondence is issued to all homeowners to alert them to the date when the original revaluation was carried out of the development; and that the Property Factor does not instruct revaluations unless instructed to do so by the homeowners.

119. Remedy

120. We consider that the homeowner is required to pay for the services that she had the benefit of since she took occupation of her property. We consider that while she had not received formal notification from the Property Factor about the services she would receive, she had nonetheless received the benefit of these services. She was also covered by the insurance arrangements for the property which the Property Factor had in place. We note that the Property Factor has agreed not to seek the Management Fee

which was set out in their invoice. It also appears to us that the Property Factor did not add a management fee to the original invoice for the period from 15 April 2019 until 29 February 2020. While we note that they had not made contact with the homeowner prior to March 2020, we do consider that they would have nonetheless been instructing works and managing aspects of the property in carrying out their duties. The homeowner has therefore benefited from not having to pay this fee. We also note that the Property Factor has apologised and has attempted to agree compensation for their error with the homeowner. We find that the compensation proposed, taken together with the deletion of the management fee, and the fact that they did not seek any management fee from the homeowner for the period April 2019 until March 2020 is a fair and reasonable proposal for settlement. We consider that any award of compensation should be the sum which has already been proposed by the Property Factor.

Proposed Property Factor Enforcement Order

121. The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A homeowner or property factor 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 from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Melanie Barbour Legal Member and Chair

2020 Date