

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Chamber Ref: FTS/HPC/PF/24/1687 & FTS/HPC/PF/24/1689

Re: Property at Lauderdale Mansions, Lauderdale Gardens, Glasgow, G12 9QT ("the Property")

Parties:

Mrs Pauline Bourhill, 44 Lauderdale Gardens, Apt 3/2, Hyndland, Glasgow, G12 9QT ("the Homeowner")

James Gibb, Red Tree Magenta, 270 Glasgow Road, Glasgow, G73 1UZ ("the Property Factor")

Tribunal Members:

**Fiona Watson (Legal Member)
Mary Lyden (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with parts 3 and 11 of the Overarching Standards of Practice and sections 3.1 and 4.9 of the Property Factor Code of Conduct 2021.

Background

1. By applications received between 16 April 2024 and 8 May 2024 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Code of Conduct for Property

Factors (“the Code”).

2. The Applications comprised the following documents: -
 - (i) application form in the First-tier Tribunal standard application form C1 (relating to matters prior to August 2021), indicating that the parts of the Code complained of are “*OSP 3, 9 and 11 and 2.4, 10, 3.1, 3.7, 4.9, 5.6.7*”;
 - (ii) application form in the First-tier Tribunal standard application form C2 (relating to matters after August 2021), indicating that the parts of the Code complained of are “*OSP 3, 9 and 11 and 2.4, 10, 3.1, 3.7, 5.6.7, 4.8, 9 and 10*”;
 - (iii) copy correspondence between the Homeowner and Property Factor;
 - (iv) copy energy bills and statements;
 - (v) a copy of the Property Factor’s written statements of services (WSoS)
3. On 24 May 2024, a legal member of the Chamber with delegated powers of the Chamber President accepted the Applications and a Case Management Discussion (CMD) was fixed for 20 September 2024 at 2pm by telephone conference call.

Case Management Discussion

4. The CMD took place on 20 September 2024 at 2pm by telephone conference call. The Homeowner was present on the call and was supported by a friend, Mrs Mathewson. The Property Factor had submitted their written answers prior to the CMD and had indicated that they would not be in attendance at the CMD and sought to rely on their written answers. The Property Factor’s position was that the breaches of the Code are denied.
5. The Tribunal advised the Homeowner that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required.

6. The Tribunal advised the Homeowner that there were parts of the Code referred to in her applications which did not exist and therefore were not competent. Following discussion, it appeared that the Homeowner was confusing parts of the Code with sections of the Property Factor's WSoS. The Tribunal explained to the Homeowner the purpose of each application, the changes that had occurred in the Code around August 2021, and took the Homeowner through each of her C1 and C2 applications to clarify the basis of each. It was thereafter confirmed that the parts of the Code complained of are as follows:
 - (i) In the application form in the First-tier Tribunal standard application form C1 (relating to matters prior to August 2021), the parts of the Code complained of are 2.4, 3.1 and 4.9;
 - (ii) In the application form in the First-tier Tribunal standard application form C2 (relating to matters after August 2021), the parts of the Code complained of are OSP 3, 9 and 11 and 2.4, 3.1, 3.7, 4.8, 4.9 and 4.10;
7. The Tribunal noted that in each application, the Homeowner had not specifically referred to part 7 of the Code but had inserted the words "*nothing that I can understand*" into that part of the application section. The Homeowner was given a short adjournment to consider her position. Following the adjournment, the Tribunal noted that the Homeowner had not intimated to the Property Factor in advance of the applications being raised, of any intention to rely on any of the parts of section 7 of the Code. The Tribunal explained to the Homeowner that she could not competently found on any part of the Code now which had not been intimated on the Property Factor prior to raising the application.
8. The Tribunal advised that given that the applications were denied entirely by the Property Factor, evidence would require to be heard in order for the Tribunal to determine whether any breaches of the Code had occurred. The Tribunal advised that a Hearing would be fixed for evidence to be heard, and which Hearing would take place in-person.

9. The Tribunal adjourned the CMD to an in-person Hearing to take place on Friday 20 December 2024.

The Hearing

10. A Hearing took place in person on 20 December 2024. The Homeowner was present and represented herself. She was accompanied and supported by her daughter, Lorne Bourhill. The Property Factor was not represented in person, having lodged a written response prior to the Hearing and indicating that they wished to rely on same.

11. The Tribunal raised an initial competency issue with the Homeowner in relation to her recently submitted amended applications, in which she sought to rely on additional sections of the Code which had not previously been referred to nor intimated to the Property Factor. The Homeowner submitted that she had considered that by intimating copies of the amended applications to the Property Factor at the same time as she lodged same with the Tribunal on 1 December 2024, that this would satisfy the intimation requirements. The Tribunal confirmed that it would reserve consideration of this point following the hearing of evidence.

12. The Tribunal, having now considered matters, is satisfied that it would not be competent to allow the additional parts of the code to be considered which had not been intimated previously on the Property Factor. Section 17 of the 2010 Act states as follows:

“17(1)A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a)to carry out the property factor's duties,

(b)to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

- (a) *the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and*
 - (b) *the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.*
- (4) *References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.*
- (5) *In this Act, "property factor's duties" means, in relation to a homeowner—*
- (a) *duties in relation to the management of the common parts of land owned by the homeowner, or*
 - (b) *duties in relation to the management or maintenance of land—*
- (i) *adjoining or neighbouring residential property owned by the homeowner, and* (ii) *available for use by the homeowner.*

13. By her failure to intimate the additional sections of the Code to the Property Factor prior to submitting her amended applications on 1 December 2024, as is required in terms of s17(3) of the 2010 Act, the Homeowner has not complied with the said section. Accordingly, the Tribunal cannot consider any additional sections of the Code on this basis. The Tribunal will therefore consider those sections as set out in clause 3 above.

The Homeowner

14. The Homeowner submitted that the development comprises three separate closes. The first close (number 47) comprises 13 properties, a lift and communal stair lighting. The other two closes (numbers 44 and 46) each have eight properties with a lift and communal stair lighting. There is one meter in each close, but only two bills were being produced, one pertaining to number 47 and the other being a joint bill relating to numbers 44 and 46 collectively. The Homeowner submitted that she had asked the Property Factor which close was paying for the communal garage lighting and garage electric door system. An electrician was sent

out to attempt to locate the source of the supply to that garage door and it was found that it was connected to close number 44. The Homeowner submitted that at this point it was discovered that the owners of numbers 44 and 46 had been paying for the electricity relating to the garage for all that time, without seeking a share from close number 47. At that point all of the Homeowners agreed that the easiest way to proceed would be to effectively pool the supply to all three meters together and each Homeowner take a 1/29 share of the total costs of the three separate meters. This was agreed some time ago when Hacking & Patterson were the factors to the development.

15. The Homeowner submitted that she had highlighted the issues to the Property Factor regarding the electricity bills and had expected them to duly investigate matters and that they would be grateful for this being alerted to them. However, it was submitted that the Property Factor instead "came out fighting". The Homeowner submitted that she went through the first and second stage stages of the Property Factor's complaints procedure to no avail.
16. The Homeowner submitted that in 2022, the electricity bills for the development appeared very low. She contacted the Property Factor asking them for an explanation on this. She asked for meter readings going back two or three years and the final readings taken when the electricity suppliers were changed. She also asked for copy invoices obtained from the suppliers. It was submitted that it took 14 months before she received a reply from the Property Factor. They had acknowledged receipt of her email but did not give any substantive reply within that period.
17. The Homeowner submitted that she received information from the Property Factor going back to May 2018 following her first stage complaint. She was surprised at this. The Homeowner submitted that their previous factor, LPM, had attended at the development on a monthly basis and taken meter readings. The Property Factor took over from LPM in 2018 and the Homeowners were assured that the Property Factor would carry out the same service as LPM had. The Homeowner

therefore reasonably assumed that the Property Factor would continue to attend at the development and take monthly meter readings. The Homeowner referred to a letter from the owner of LPM when advising the Homeowners of their company being taken over by the Property Factor, in which stated that there would be "a continuity of service" from the Property Factor and which mentioned monthly visits to the development.

18. The Homeowner submitted that the list of meter readings provided to her was very sporadic and there were some months between readings. The Property Factor had only taken readings for two of the meters, when the development has 3 meters. Only nine readings have been taken in a period of five or six years, when the Homeowners had been under the understanding that meter readings been taken on a monthly basis. Since the Property Factor took over in 2018, the electricity supplier has changed on three occasions at the instance of the Property Factor. The Homeowner submitted that the Property Factor had not given a reading to the new supplier when the supply has changed over and therefore estimated bills were being received. It was submitted that nobody knows how much electricity has been used or what has been paid to which utility provider. The Homeowner submitted that when the Property Factor took over from LPM, the Homeowners were not notified that there would be any change to the practice of checking all 3 meters on a monthly basis.
19. The Homeowner submitted that the Property Factor requested that the owners themselves take meter readings on a regular basis and provide them onward to the Property Factor. The Homeowner submitted that she had copied her letter of complaint to the Property Factor to the development's Owners Committee, as she considered that the information was relevant to all owners but the committee didn't do anything with it.
20. The Homeowner referred to a letter from David Reid of LPM of October 2019 which referred to the company merging with the Property Factor and which stated that they would continue to deliver on the current high standards of customer service. The Homeowner submitted that this had

not happened. It was submitted that the Homeowner had no problem with the service provided by LPM. They had chosen them because they were a smaller company and provided a more personal service. The Homeowners were advised by the Property Factor that they would still have a dedicated estates team to visit the development on a monthly basis and it was assumed that this would include taking meter readings as had been the practice up to the point of takeover. The Homeowner submitted that the first time she became aware that the Property Factor was not taking monthly meter readings was when she received a response from the Property Factor to her stage one complaint in November 2023. Their response confirmed that the Property Factor does not submit meter readings on a monthly basis. The Homeowner submitted that it does not appear that the Property Factor has been submitting meter readings on even a quarterly or six-monthly basis.

21. The Homeowner submitted that they had never had a problem with the electricity supply invoicing when LPM were managing the development. They never received estimated bills during that time and there were never any concerns or issues regarding the billing system.
22. The Homeowner submitted that the Property Factor advised her that from 2022 they would submit monthly readings to the supplier when provided to them by the Homeowners themselves. The Homeowner submitted that she simply wants to know how much she has paid in relation to electricity supply and how much is still due to be paid, but the Property Factor has been unable to confirm this information to her. The Property Factor has stated that there is £14,787.59 due in electricity supply arrears, however the Homeowners have not been provided with any evidence in this regard nor have they been provided with any evidence to satisfy them as to what has been paid historically and based on which readings.
23. The Homeowner referred to a spreadsheet which had been compiled by another of the Homeowners in the development, following receipt of a number of invoices from the Property Factor, in an attempt to try and make sense of the information they were provided. However, there

appear to be multiple bills covering the same period, some of the bills have credits and some of the bills have debits. No explanation has been provided by the Property Factor as to the content of these bills, nor why there appear to be multiple charges rendered for the same periods.

24. The Homeowner submitted that within the time since the Property Factor took over management of the development and the electricity billing process has fallen into confusion; multiple homeowners have either moved away from the development or died and therefore there may be money due by those individuals towards any arrear if one has accrued. The Homeowner submitted that she was worried that the debts of those individuals would be passed to the remaining owners by the Property Factor. It was submitted that this would be unfair as it was entirely down to the fault of the Property Factor not having provided appropriate and regular meter readings to the suppliers and getting matters in order as they are instructed and paid to do so by the Homeowners. The Homeowner referred to the Property Factor's WSoS which says that the whole financial obligations should be presented to somebody who vacates a property within three months, however there are people who have left a number of years ago and who won't know anything about the situation. The Homeowner submitted that the remaining owners should not have to pay these debts which have been left unresolved due to the failures by the Property Factor. The Homeowner referred to a letter from the Property Factor which stated that the sum of £271.27 would not be sought from the current homeowners, however it's not clear where that figure has come from.
25. The Homeowner submitted that she had identified the issue with the electricity billing because she had looked at one bill which had said that the costs for the quarter were £171 between 29 owners, but in the next quarter the bill was down to £117. The next bill she looked at was for £1,561 for a quarter and then again, the next bill was for £100. It was submitted that it was clear in looking at these bills that there was something wrong with the way that the meter readings were being provided, as the bills should not be so different in each quarter as the electricity supply is at the same constant level all year round. The

Homeowner submitted that she had raised this with the Property Factor and asked for an explanation but had not been provided with one to date.

26. The Homeowner submitted that she accepts that the current bills are probably accurate as the Homeowners are now taking monthly readings and submitting these to the Property Factor, however the Homeowner submitted that she is currently refusing to pay them until she has been provided with the information she has requested in relation to the bills to date: her usage; what she has paid to date; if there is an arrear attributable to each Homeowner, what this is and for which period this relates. The Homeowner submitted that she is not currently paying any of the bills because she does not know whether or not she has a credit, as this may be the case. The Property Factor has still not confirmed to her how much she has paid already. The Homeowner submitted that she has looked at the Property Factor's online portal but the monthly invoices have been removed so she cannot check herself what she has paid to date.
27. The Homeowner submitted that it was not accurate for the Property Factor to state that she had declined a meeting with them in May 2024. The Homeowner submitted that she did not think that the people investigating her complaint knew what they were talking about. She had advised the Property Factor that if they were unable to explain to her beyond the information they had already sent, then she did not think there was any point in meeting with them. However, if they were able to provide her with further information to the questions she had asked, then she could meet them in the following ten days and that they should contact her to arrange an appointment. They did not contact her and thereafter she raised her tribunal application.
28. The Homeowner submitted that the Property Factor has sent more information to the Tribunal as part of their application response, than they have ever sent to the Homeowner as part of their complaints process prior to now. It was submitted that the Property Factor has never provided the Homeowners with the level of detail that they have

submitted to the Tribunal, and that there is no explanation or justification for this.

29. The Homeowner submitted that she was not aware of LPM ever having used a utilities broker (“Indigo Swan”). It was submitted that in their response to the application, the Property Factor simply blames the issues on their broker and takes no responsibility themselves. The Homeowner submitted that the Property Factor had never advised the Homeowners that they would be using a broker. The Homeowner submitted that she did not think it was a reasonable position for the Property Factor to blame the issues on the broker and that she considers that the broker is doing “a terrible job”. The Homeowner submitted that she does not consider that the Property Factor has carried out any appropriate due diligence on the work of the broker. The Homeowner submitted that they have asked the Property Factor if the factor gets any financial benefit from using the broker, or does the broker get any financial benefit from using certain utility companies, and that they have had two different answers to those questions. The Homeowner submitted that the Property Factor had advised her that they had only recently found out that the broker receives commission from the standing charge on the development’s electricity accounts. The Homeowner had asked if the broker organised the standing charge and what other commission they receive, and she was told that the broker receives a payment of £145 from each meter. It was submitted that this contradicts what the Homeowner was told previously, which was that the broker received a percentage of the standing charge. The Homeowner submitted that she has asked the Property Factor whether the broker receives a fixed sum or a percentage, but the Property Factor has not replied. The Homeowner submitted that the broker is blaming the electricity supplier, and the Property Factor is blaming the broker, and nobody is taking responsibility. The Homeowner submitted that ultimately, the owners pay for the services of the Property Factor and the Property Factor themselves should take responsibility. The Homeowner submitted that they had not seen any of the letters sent to the broker prior to raising the tribunal application.

30. The Homeowner submitted that they were only told by the Property Factor regarding the change of electricity provider after the change had been instructed. The Property Factor had told the Homeowners that they don't always take the cheapest provider and that they choose a provider who is reliable with good customer service. The Homeowner submitted that they do not know whether the broker is working to the benefit of the Homeowners, and that there is a concern that they may be prioritising their own competing financial interests.
31. The Homeowner submitted that the electricity bills that have been provided by the Property Factor make no sense and the Property Factor has not been able to provide any sensible explanations for the charges on the bills, nor the fluctuation between quarterly bills, nor basic information such as how much homeowners have paid over time. The Homeowner submitted that "you should not have to be a rocket scientist to understand an electricity bill."

The Property Factor

32. The Property Factor relied upon their written response to the application, the terms of which will not be replicated in this decision. However, in general terms the Property Factor denied having breached any of the parts of the Code.

Findings in Fact.

33. The Tribunal had regard to the Application and written representations in full, and to the submissions made at the CMD and Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

34. The Tribunal found the following facts established:
- i) The Parties are as set out in the Application;
 - ii) The Property forms part of a development comprising three separate blocks known as numbers 47, 44 and 46 and in terms of which the Homeowner is liable for payment of a 1/29 share of the overall

- communal electricity costs of the three blocks;
- iii) The Property Factor was appointed as manager of the Property and the development of which it formed part in 2018;
- iv) Prior to the Property Factor being appointed, the previously appointed property factor (LPM) attended at the development on a monthly basis to obtain meter readings which were in turn submitted by them to the utility provider on a monthly basis;
- v) Since their appointment, the Property Factor has not obtained regular meter readings for each block in the development and has not provided regular and accurate meter readings to the utility provider for the development.
- vi) Following a change of supplier in September 2022, the meter readings applied by the outgoing supplier and incoming supplier appear to be incorrect, causing inaccurate billing.
- vii) The Property Factor utilises the services of a utilities broker ("Indigo Swan").

Decision of the Tribunal with reasons

35. From the Tribunal's Findings in Fact, the Tribunal found that the Property Factor has failed to comply with sections 3.1 and 4.9 of the 2021 Code and parts 3 and 11 of the OSP.

36. With regard to the specific parts of the Overarching Standards of Practice and the 2021 Code referred to in the Application and the information before it, the Tribunal made the following findings: -

(i) OSP3

"You must provide information in a clear and easily accessible way."

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice. There have been conflicting communications issued by the Property Factor to the Homeowner

regarding (1) the payment of utility bills, meter readings taken/submitted to the supplier, what payments may be outstanding and for which period and (2) what financial benefit the insurance broker derives from the contract with the utility provider. The Tribunal considered that the information provided to the Homeowner was unclear, lacking in detail and confusing and on that basis constituted a breach of this part of the Overarching Standards of Practice.

(ii) OSP 9

"You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements."

The Tribunal was not satisfied on the basis of the evidence before it, that there was sufficient evidence to show that the Property Factor had failed to comply with this part of the Overarching Standards of Practice.

(iii) OSP 11

"You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure."

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice, due to the length of time taken to provide a substantive response to the Homeowner's complaints.

(iv) 2021 Code at Section 2.4

"Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to."

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the

Code. This section refers specifically to those documents or information which the Property Factor must provide to a Homeowner as specifically required in terms of the Code – these documents/information are listed as follows:

- (1) Under section 1: the written statement of services
- (2) Under section 2: (i) the Property Factor's contact details, (ii) arrangements for dealing with out-of-hours emergencies, (iii) a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service.
- (3) Under section 3: at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.
- (4) Under section 4: (i) the property factor's debt recovery procedure, (ii) a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills.
- (5) Under section 5: (i) details of any insurance policy in place, (ii) an annual insurance statement (iii) Property Factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the insurance policy. They should also disclose any financial or other interest that they have with the insurance provider or any intermediary. A property factor must also disclose any other charge they make or apply for arranging such insurance, (iv) procedure in place for submitting insurance claims, (v) property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes, (vi) property factor must provide homeowners with clear details of the costs of public

liability insurance, how their share of the cost was calculated, and the terms of the policy and the name of the company providing insurance cover.

(6) Under section 7: a written complaints handling procedure.

The Tribunal was not satisfied that there was any evidence before it to establish that the Property Factor had failed to provide any of the listed information upon request by the Homeowner.

(v) 2021 Code at Section 3.1

"While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply."

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Code. The Tribunal was satisfied that the invoices provided to the Homeowner relating to the utilities account were confusing, lacking in sensible detail and difficult to follow. Some invoices were duplicated, and in some cases the same period was covered in multiple invoices with no explanation as to the multiple billing for those periods. The helpful spreadsheet compiled by one of the other homeowners, utilising the data from the utility invoices provided to them by the Property Factor, showed that there were obvious errors and inconsistencies in the billing which still require to be addressed.

The Tribunal had considerable sympathy with the Homeowner as to her confusion and concern over what was still due to be paid to the utility provider, as it is entirely unclear. The Tribunal noted that in the Property Factor's written response to the Tribunal, there is reference to "as a gesture to all homeowners" that the Property Factor had

made a decision to “*withhold a potential spread of exited homeowner debt...in the total of £271.27*” yet there was no clarification or breakdown as to where this figure had come from, how it had been calculated and to which period and to which utility bills this figure relates.

It is noted that in its response to the Tribunal, the Property Factor refers on multiple occasions to its broker, “Indigo Swan”, as being the party who is making attempts to resolve matters with the utility companies. It is suggested that it is only Indigo Swan who can do so. The Tribunal did not find this to be a satisfactory position to take. The Homeowners do not have any contractual relationship with the broker. Their contractual relationship is with the Property Factor. The Property Factor cannot hide behind a broker with whom it chooses to contract with, when things go wrong. The responsibility lies with the Property Factor to (i) ensure that accurate meter readings are given to utilities companies when the Property Factor (via its appointed broker) chooses to change supplier (without the agreement of the homeowners), (ii) that ongoing and regular meter readings are provided to that supplier throughout the contract of supply which they have entered into and (iii) that the billing is accurate and up to date. The Homeowners are entitled to a satisfactory response, and appropriate actions being taken, by the Property Factor with whom they contract.

(vi) 2021 Code at Section 3.7

“In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change in

ownership)."

The Tribunal was not satisfied on the basis of the evidence before it, that it had been established that the Property Factor had failed to comply with this part of the Code. Whilst it was noted by the Tribunal that the Homeowner was concerned that the Property Factor may attempt to recoup any utilities payments due by departed/deceased homeowners from the existing homeowners once the outstanding utilities account balance had been determined, and that the Homeowner consider that this would be unfair given the passage of time, this had not yet occurred. On that basis, the Homeowner concerns are not yet founded and therefore no breach of this section can be established.

(vii) 2021 Code at Section 4.8

"On request, a property factor must provide homeowners with a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills."

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Code. This section requires the Property Factor to provide information to Homeowners about how charges will be affected if one or more Homeowners fail to pay bills. There was no evidence before the Tribunal to establish that such information had not been provided, and it is noted that this information is freely available on the Property Factor's own website. Whilst the Tribunal noted that the Homeowner has concerns as to how debts due by departed/deceased homeowners may be distributed in the future, this does not constitute a breach of this section, which simply places an obligation on the Property Factor as to the provision of information as to the Property Factor's debt recovery procedure.

(viii) 2021 Code at Section 4.9

"A property factor must take reasonable steps to keep homeowners

informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.”

The Tribunal was satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Code. As set out above, due to the outstanding issues with the utilities companies, the Property Factor has been unable to provide the Homeowner with an accurate billing position. Given this issue commenced in 2022 and the lengthy passage of time, the Tribunal does not consider this to be at all a reasonable position to place the Homeowner in.

(ix) 2021 Code at Section 4.10

“A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).”

The Tribunal was not satisfied on the basis of the evidence before it, that it had been established that the Property Factor had failed to comply with this part of the Overarching Standards of Practice. There was no evidence before the Tribunal that the Property Factor, at the time of the Hearing, had made any attempts to recover debts from the Homeowner which were due by departed/deceased homeowners.

Property Factor Enforcement Order (PFEO)

37. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with sections 3.1 and 4.9 of the 2021 Code and parts 3 and 11 of the OSP, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states “*(1)The First-tier Tribunal must, in relation to a Homeowner’s application referred to it ... decide ... whether to make a Property Factor enforcement order*” and the Tribunal proposes to make a PFEO.
38. Section 20 of the Act states: “*(1) A Property Factor enforcement order is an order requiring the Property Factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the Homeowner as the First-tier Tribunal considers reasonable. (2) A Property Factor enforcement order must specify the period within which any action required must be executed or any payment required must be made. (3)A Property Factor enforcement order may specify particular steps which the Property Factor must take.*”

39. The Tribunal proposes to make a PFEO to order the Property Factor to:

- (i) make reasonable payment to the Homeowner to compensate them for inconvenience, frustration and time spent. There being no direct evidence of financial loss, the Tribunal considers that a sum of £250.00 is reasonable in all the circumstances and which must be paid within 14 days hereof;
- (ii) produce an itemised account to the Homeowner of all electricity charges she has paid since the Property Factor was appointed over the development to date, and which account must include (i) sums paid (ii) date each sum was paid (ii) reference to which utility invoice each sum relates and (iv) attached to said account a copy of each utility company invoice relating to each sum paid, and which must be produced within 28 days hereof.
- (iii) provide a written monthly update to the Homeowner on the steps taken by the Property Factor in the preceding month to resolve matters with the utility company, until conclusion of the

- outstanding utility account issues.
- (iv) provide the Homeowner with a copy of the contractual arrangement between the Property Factor and their broker, Indigo Swan, insofar as it relates to services provided relating to the building within which the Property forms part.

40. Section 19 (2) of the Act states: - *"In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it must before doing so (a) give notice of the proposal to the Property Factor, and (b) allow the parties an opportunity to make representations to it."*

41. The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

42. The decision is unanimous.

Appeal

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

Fiona Watson

Legal Member/Chairperson

17 February 2025