



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

Chamber Refs: FTS/HPC/PF/22/3674

28 Chancellor House, 4 Parsonage Square, Glasgow, G4 0TH ("the Property")

Parties:

Myah Guild, 28 Chancellor House, 4 Parsonage Square, Glasgow, G4 0TH ("the Homeowner")

Ross & Liddell, 60 St Enoch Square, Glasgow, G1 4AW ("the Property Factor")

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

The Tribunal determined that the Property Factor has failed to comply with Section 2.1 and 2.7 of the Code and has failed to carry out their property factor duties.

The decision of the Tribunal is unanimous.

Background

1. The Homeowner lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application comprises documents received by the Tribunal between 7 October 2022 and 20 January 2023. The application stated that the Property Factor has failed to comply with all Overarching Standards of Practice (OSPs), and all of Sections 1, 2, 3, 6 and 7 of the 2021 Code. The application also stated that the Property Factor has failed to carry out its property factor duties. Documents were lodged in support of the application including a copy of the Home Report for the property, copies of invoices and emails between the parties. The Homeowner also submitted letters addressed to the Property Factor outlining the sections of the Code which she stated has been breached and the duties which had not been carried out.
2. A Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 12 April 2023 at 10am by telephone

conference call. Both parties lodged written submissions and documents in advance of the CMD. The Property Factor also made a written request that the application should be dismissed, stating that the Homeowner had not exhausted their complaints procedure and therefore failed to comply with Section 17(3) of the 2011 Act.

3. The CMD took place by telephone conference call on 12 April 2023. The Homeowner participated, supported by her mother Mrs Guild. The Property Factor was represented by Ms Colville, solicitor. Ms Davidson and Ms Johnstone from the Property Factor also participated.
4. Ms Guild told the Tribunal that she purchased the property on 26 November 2021 but did not move in until March 2022. There is a designated parking space which is included in her title deeds. Her flat is located in a 7 storey block, on the fifth floor. In addition to the stairs, there are two lifts although one of them is often out of order. Ms Johnstone advised the Tribunal that there are 144 flats in the development.
5. The Tribunal noted that the Homeowner had lodged very little documentation with the application. Ms Guild said that she had lodged all relevant correspondence and that she did not always receive a response to her emails. She then made a complaint, first informally and then formally. She was left with no other option than to make the application.
6. Ms Colville referred the Tribunal to the Complaints Procedure outlined in the WSS and stated that the Homeowner had not followed this process. The Tribunal noted that the process appears to comprise three separate stages and that the correspondence lodged by the Homeowner did not appear to show that the process was engaged. However, the remainder of the correspondence between the parties would require to be reviewed before a decision could be made on this issue.
7. The Tribunal asked the parties about the template notification letters lodged by the Homeowner. One relates to the Code of conduct. The other to property factor duties. Ms Guild said that both had been sent to the Property Factor by email on the 2 November 2022. The Tribunal noted that the email of 2 November, and the response dated 3 November, had been lodged by both parties. The response requested full details of her complaint, in line with the Complaints procedure, and stated that she had to exhaust that process before making her application. Ms Johnstone told the Tribunal that only the Code letter had been attached to that email. The property factor duties letter was not received until 16 January 2023. The Tribunal asked Ms Johnstone whether either letter had been treated as a formal complaint. Ms Johnstone stated that Ms Guild was asked to provide further information, so that they could be processed as complaints, but did not do so. There was insufficient detail in the letters to allow matters to be investigated.
8. Ms Guild stated that the template letters (when taken with the other correspondence) provide sufficient detail of her complaints. The Tribunal noted that further details of the complaints were required, and that Ms Guild also

required to provide better specification of the Code complaints and clarify whether all OSPs and all parts of sections 1, 2,3, 6 and 7 were relied upon.

9. The Tribunal determined that the application should proceed to a hearing on the Property Factor's request to have the application dismissed and that a direction should be issued for further information and documents required by the Tribunal in connection with this request.
10. The parties were notified that a preliminary hearing would take place by telephone conference call on 4 July 2023. In response to the direction, the Property Factor lodged a bundle of correspondence which comprised letters and emails between 6 January 2022 and 20 January 2023. The Homeowner lodged a copy of her title deeds, two emails and a submission which provided specification of her Code complaints.
11. The preliminary hearing took place on 4 July 2023. Following the hearing, the Tribunal determined that the Homeowner had complied with Section 17(3) of the 2011 Act in relation to some of the complaints specified in the application and that this should proceed to a hearing on those complaints.
12. The parties were notified that the hearing would take place on 2 October 2023 by video conference. It was postponed at the request of the Homeowner. The hearing took place by video conference on 8 January 2024 at 10am. The Homeowner participated, supported by her sister Imogen Guild. Ms Johnstone also participated, and the Property Factor was represented by Mr Doig, solicitor. Prior to the hearing both parties lodged further documents and submissions.

The Hearing

13. The Tribunal discussed some preliminary matters with the parties. The Property Factor's late submissions were allowed, Ms Guild having confirmed that she had no objection to this.

The door entry system/security at the development/intruders

14. The Tribunal noted that the documents lodged indicated that an AGM took place in August 2023 and that the Property Factor's submission included a copy of a report from Police Scotland dated May 2023 regarding security and crime at the development. Mr Doig told the Tribunal that the Property Factor has issued a proposal to homeowners regarding reversing the external doors. Some of the other recommendations – replacing the door entry system and new fencing – are unlikely to meet with approval due to the cost. Ms Johnstone told the Tribunal that the report was not sent out to all homeowners, but a letter was issued on 23 June 2023 to advise that it was available on the portal. The letter provided a summary of the report and the police recommendations. The report was then discussed at the AGM which took place on 8 August. Currently there are two active proposals based on the report. On 7 September 2023, the Property Factor proposed that the services button be deactivated. To date 17

of the 46 proprietors have agreed to this. As they do not yet have a majority, they have not instructed the work. On 13 December 2023, they issued a second proposal. This was to alter the doors to the building so that they open outward and not inward. The police indicated that this would make it more difficult for intruders to force entry. To date 9 out of the 46 owners have agreed to this.

15. Ms Guild advised the Tribunal that she had been unable to participate in the AGM, due to the short notice. She has requested the minutes, but these have not been provided. She has voted in relation to the first proposal and is still considering the second. She said that the Property Factor had proposed disabling the facility on the door entry system which allows the resident to open the main door from their flat. Instead, the resident would have to go down to the main door. This is not a workable arrangement especially if someone is disabled or has young children.
16. Ms Guild told the Tribunal that her initial concern about the door entry system was that it was not working. She missed deliveries because, although the delivery driver pressed her button, her handset did not make a sound. She reported this when she moved in, but the defect has not been repaired and it is still an issue. She was told that she was the only one affected so it must be her handset and that she was responsible for the repair. However, other residents have told her that they have the same problem. For a while they had a sign with mobile numbers, but someone removed it, and it wasn't a satisfactory situation. She believes that there is a fault with the system and the Property Factor has failed to attend to it.
17. Mr Doig told the Tribunal that Ms Guild's report was actioned. It was investigated and it was established that the fault was only affecting her and her handset. Ms Johnstone stated that they believed that it was a private issue. There was only one other report of problems. The Property Manager made an assessment and, in the absence of reports from other residents, determined that it must be a fault with her handset. A contractor was not instructed to investigate.
18. Ms Guild told the Tribunal that she found an intruder under the stairs. Initially, she wasn't sure if they were alive. She noticed that the main door was warped, and it would open if pushed hard. It's been a recurring issue. People hang around and take drugs. They could harm someone and there are children in the building. She phoned the out of hours number, but they would not attend. The police dealt with it and told her to contact the Tribunal. Ms Guild told the Tribunal that there are residents in the block who are not aware of the Property Factor's proposals. Some might be tenants but there are also language issues. They were not given enough notice in relation to the AGM. There was also a situation where the lock was removed from the main door and not replaced for a couple of weeks. The door was insecure during this period. The locksmith then put the new keys through letterboxes although some residents were out at the time and could not then get into the building. The Property Factor is not available when contacted about issues. Whenever she phones no one answers.

19. Mr Doig told the Tribunal that the Property Factor has discharged its duty. They have communicated solutions to the problems and await a response/decision from the owners. There is a difference between general maintenance and replacement of a system. This would have to be funded. Furthermore, the Property Factor is not responsible for the removal of intruders. They have no locus or personnel to deal with that situation. They can only suggest measures to prevent it happening. Ms Johnstone told the Tribunal that she could not provide an explanation for the delay between the police report and the proposal which went out in December. However, the Property Factor is very active at the development. Mr Doig stated that the report establishes that the Property Factor has already taken steps. This has included measures to prevent intruders in other blocks being able to access the property and getting the lock on the main door changed. In response to questions from the Tribunal Ms Johnstone said that she did not know how many of the flats are occupied by tenants. 34 people participated in the Zoom AGM. She confirmed that the meeting was not quorate – this would have required 40 attendees – so no vote could be taken on any matters which were discussed. The attendees were not provided with any information on the costs associated with any of the police recommendations. However, they did discuss two options. Disabling the service button and disabling the handset so that the resident could not open the door from their flat.
20. Ms Guild told the Tribunal that she suggested another option - that the door is opened using a fob. Every resident would have one and the postman as well. She was unable to say what this might involve or if the door entry system would require to be replaced. Ms Johnstone said that she was happy to consider that, but it has not yet been proposed to homeowners.

Invoices/Accounts and enquiries in relation to same

21. Ms Guild said that the invoices and requests for payment are not clear. Initially she did not understand them and asked for a breakdown, in simple terms. She didn't understand about the advance charges and how the sums requested were calculated. In addition, the charges are not what she was told in the Home Report (£85 per month) and immediately before the purchase completed (£96). She has been asked for different sums at different times including £150 per month and £130 per month. She has been sent intimidating reminders and she has been paying under duress. She has been told that the increased costs are due to the cost of living and inflation but that would only mean a small increase. The charges do not reflect the level of service. The condition of the building is worsening, and the Factor has failed to deal with intruders. There is no cleaning and there are issues with the garden. Pest control has not been dealt with. The poor service and poor communication have had an impact of the trust she has in the Property Factor.
22. Ms Guild referred the Tribunal to an email dated 6 January 2022, sent to the property Factor following her purchase of the property. A response was received on 17 January 2022. The terminology was confusing, and she wanted things explained in simple, layman's terms. The response (and subsequent emails) did not explain how the advance funds requested were calculated. The

failure by the Property Factor to do this had caused a breakdown in trust. There were also discrepancies.

23. Mr Doig told the Tribunal that the invoices and emails have clearly set out how the sums due have been calculated and how her share is made up. The advance charges are based on estimated expenditure. These sums are then reconciled with the invoice which sets out actual expenditure. Ongoing repair and maintenance must be funded, and this is why advance payments are requested. Trust has nothing to do with this. It's an arithmetical exercise and the Property factor has fully explained it. Ms Guild disputed this and referred to an error which was made in the calculation of the monthly direct debit she was quoted and charged. In response to questions from the Tribunal Ms Johnstone said that there had been an error when the direct debit figure of £152 was calculated. This was later rectified. However, the figures quoted will vary depending on what has been paid so far that year in relation to the date of the calculation.
24. The Tribunal referred Ms Guild to an email dated 23 May 2022 which explains about the advance charges. She stated that she did not understand it. She wanted a breakdown of how the advance charges were calculated and this was not provided. She stated that she has set up a standing order, not a direct debit. Ms Johnstone said that the advance charges are based on the contracts which are in place – cleaning, lift maintenance, gardening etc. They are based on the previous year's costs.

Pest control issues/build-up of rubbish/wasp's nest.

25. Ms Guild told the Tribunal that there has been a wasp's nest ever since she moved in. An email was sent to homeowners stating that it could be removed but there would be a cost and a cherry picker would be involved because of the location. Eventually one of the residents removed it, although that was dangerous. From the time she moved in it grew and grew. The email from the Factor was sent about two months ago but it was reported two years ago. If it had been dealt with sooner and when it was smaller, then the cherry picker might not have been necessary. The nest was between the 5th and 6th floors. There have also been problems with a build-up of rubbish in the rubbish chutes. This could attract vermin. Ms Guild referred to an email dated 19 July 2022. She said that there was no response to her complaints about the wasp's nest and the refuse issue raised in this email.
26. Ms Johnstone told the Tribunal that the Property Factor is continually dispatching contractors to the development to deal with issues. The build-up of refuse is due to incorrect disposal by residents. There have also been issues with Council operatives which have caused delays. She stated that there was a response to the email of 19 July 2022 in relation to other matters raised, but she cannot locate a response to those 2 points. Ms Johnstone said that the nest was actually a beehive. The Property Factor took advice when it was first reported in 2022. They were advised that the bees were unlikely to return the following year and therefore decided to take no action. Unfortunately, the bees did return. When it was reported again, they contacted specialist contractors to

get information and a price for removal. They issued a proposal in November 2023. Only 17 out of 46 confirmed that they agreed with it. The cost was above their level of delegated authority (£500). The cost quoted was £680. Mr Doig told the Tribunal that the Property Factor doesn't just act on reports from homeowners. They have managers who inspect the property to identify repair and maintenance issues. It's not just a reactionary service. He added that the cherry picker was required because of the location of the nest, and it had nothing to do with the time it had been there or its size. The Property Factor was aware of it and took advice. That advice was that nothing could be done during the active season and that the hive was unlikely to be re-populated. Ms Johnstone stated that the advice was taken from a beekeeper as the local authority do not deal with bees.

Access/availability

27. Ms Guild said that she has experienced problems contacting the Property Factor. There have been several changes in the point of contact, and she doesn't know who the current Property Manager is. She said that she can never get through to the office and sometimes days and weeks pass before there is a response to an email or sometimes no response. Where a situation is urgent, the response should be rapid. In relation to the beehive , they didn't tell her or anyone else about the advice they had received. At one point she didn't get a response because it was the Glasgow Fair weekend, but they had not sent an email to say that they would be closed.
28. Mr Doig told the Tribunal that the Property Factor has appropriate systems in place for out of hours emergencies. It would be impractical to expect them to email thousands of homeowners to advise that they are shut on a public holiday. He told the Tribunal that Ms Guild had reported as an emergency the fact that someone had parked in her parking space. This had happened over a weekend. This was not an emergency and furthermore, as the parking spaces are private, was not something which the Property Factor would deal with.
29. Ms Guild told the Tribunal that the Property Factor should provide better information about what they do and do not do. In relation to the parking issue, she spoke to the resident in question who said that she had been told by the Property Factor that the space in question belonged to their property and that the Property Factor had attended and cut the padlock over the space when it was reported. Ms Johnstone told the Tribunal that this had never been raised before by Ms Guild. She said that the Property Factor would not typically get involved in disputes over the parking spaces and would direct people to the title deeds. She confirmed that there is no record of a job involving a padlock being cut for any resident in the block.

GDPR

30. Ms Guild told the Tribunal that she was provided with the address of the person who had parked in her parking space by the Property Factor and that this was a breach of GDPR. Mr Doig told the Tribunal that it was the Homeowner who

provided both the address and email address of the resident in question to the Property Factor and not the other way round. He referred the Tribunal to emails in relation to this. In response to questions from the Tribunal, Ms Guild said that the information was conveyed by email but that she could not refer the Tribunal to the email in question. She said that when she sent the emails to the Property Factor with the address and email address, she had obtained written consent. She was unable to direct the Tribunal to evidence that the Property Factor gave her the address of the resident who was parking her space.

31. At the conclusion of the hearing, Ms Guild said that it was regrettable that the situation had got this far and that she had tried to establish better communication with the Property Factor. She said that she had lost trust and that they have been incompetent and unprofessional. This has led to serious issues including crime. The property is not safe. Had they resolved matters sooner the costs would have been less. The situation has taken its toll on her, and the level of service requires to be drastically improved. Mr Doig referred the Tribunal to his written submissions and said that there was nothing in the evidence to establish the complaints. In particular, no evidence of the GDPR complaint and robust evidence to dispute it.

Findings in Fact.

32. On several dates between 6 January 2022 and 21 July 2022 the Homeowner reported by email that the door entry system/intercom was not working. She stated that when a visitor to the building presses the button on the control panel at the door, the handset in her property does not issue an alert. She also stated that the fault related to the system and not just her handset.
33. On several dates between 10 March 2022 and 12 July 2022 the Property Factor responded by email to the complaints about the door entry system. The Property Factor stated that, as no other complaints had been received, the fault appeared to be with her handset and was therefore a private matter. On 22 March 2022 the Property Factor stated that they were happy to arrange for a contractor to attend but that "if found to be common, the charge will be billed to all owners however if found to be private then this will be charged directly to you. If you can confirm that you agree to this proposal, I will instruct". The Homeowner did not advise the Property Factor that she agreed to the contractor being instructed on this basis.
34. On 12 July 2022, the Property Factor stated that no jobs had been raised in relation to the intercom but that this could be arranged if the contractor could get access to the Homeowner's flat. This would be arranged if a contact number was provided.
35. The Homeowner provided a contact number on 18 July 2022 and asked for an undertaking that the Property Factor would pay for the repair.

36. The Property Factor did not arrange for a contractor to attend to investigate the complaint about the intercom. A repair has not been carried out to the intercom.
37. On 20 September 2023, the Homeowner reported that there had been an intruder in the building and that the Police had attended. She requested a review of security at the building and a response to a previous email.
38. The Property Factor did not respond to the email of 20 September 2022.
39. In May 2023, the Police carried out a survey of the development and issued a report in relation to security arrangements with a number of recommendations. The report was not issued to the homeowners, but a letter was issued in June 2023 which notified the homeowners of the report and provided a summary of the terms of the report. The report was also available to homeowners on the portal.
40. An AGM took place by Zoom on 12 August 2023. The Police report and proposals were discussed. The Property Factor proposed that the services button could be disabled and the facility for opening the main door from the flats could be disabled. The meeting was not quorate as only 36 homeowners attended. A vote was not taken.
41. On 25 and 29 October 2023 the Homeowner sent emails to the Property Factor asking them to address the problems with security and safety at the building and advising that an intruder was sleeping in the building and taking drugs
42. On 7 September 2023, the Property Factor issued a proposal to homeowners that the service button could be deactivated. 17 out of 46 homeowners confirmed their agreement. In December 2023, the Property factor issued a second proposal to homeowners, namely that the doors could be reversed so that they opened outwards. 9 out of 46 homeowners confirmed that they are agreeable. The Homeowner responded to the first proposal but not to the second proposal.
43. The Homeowner asked the Property Factor to consider a system whereby a fob or code could be used to access the building. The Homeowner does not know how much this would cost or whether it would involve a new door entry system being installed.
44. In December 2021, the Property Factor issued two invoices to the Homeowner. The first was for her share of the common insurance premium due between the date of entry and 14 May 2022, the sum of £146.37. The second was for advance charges and was for the sum of £467.71, to cover the period from the date of entry until May 2022. The total sum claimed was £610.
45. On 6 January 2022, the Homeowner asked for an explanation of the invoices and for a breakdown. She stated that it was higher than she had been quoted when she viewed the property. The enquiry was acknowledged on the same date.

46. On 17 January 2022, the Property Factor sent a response to the enquiry. The Property Manager advised that the sum of £610 was made up of her share of the insurance premium from the date of entry until the insurance renewal date in May 2022. The remainder was for advance charges for the same period. The letter explained that a detailed invoice was issued in May each year for the previous 12 months. Advance charges were invoiced twice a year based on estimated costs unless the homeowner is paying by direct debit.
47. Between 7 February and 21 July 2022, the Homeowner sent a large number of emails to the Property Factor requesting clarification of the invoices, the direct debit figures quoted, whether everyone had to pay the same, if there were special arrangements due to personal circumstances, stating that she has not been given the requested breakdown, and requesting an explanation for the figures being higher than she was quoted before the purchase.
48. Between 8 February and 21 July 2022, the Property Factor replied to the emails from the Homeowner and provided a full response to the enquiries.
49. On 23 May 2022, the Property Factor sent the Homeowner a detailed invoice for the period 26 November 2021 to 15 May 2022. This invoice set out a description of each charge, the full amount of each charge, the Homeowner's share of each charge (as a percentage and figure) and the total sum due. The Property Factor also issued an invoice for advance charges for the period May 2022 to November 2022.
50. The Property Factor erroneously quoted the figure of £152 as a monthly direct debit figure. They apologised for the error and provided amended, accurate figures.
51. The Property Factor's invoices dated May 2022 and May 2023 are clear.
52. The Property Factor's responses to enquires about the invoices are clear and understandable.
53. On 18 July 2022, the Homeowner sent an email to the Property Factor entitled "Urgent – Please respond ASAP – Fees Complaint – Rubbish and intercom". She stated that there was an accumulation of rubbish outside the rubbish chute on the 5th floor and attached a photograph. She added that it was an ongoing issue and was causing smells and flies. She said that the chute wasn't blocked so there was no reason for the accumulation.
54. The Property Manager sent an email to the Homeowner on 19 July 2022 in response to an earlier email sent by the Homeowner on 15 July 2022. It did not address the complaint about refuse.
55. On 19 July 2022, the Homeowner sent an email to the Property Factor entitled "New Pest Control Problem and existing fees complaint, rubbish, intercom". In this email she complained about a wasp's nest outside her window and asked if anything has been done about the rubbish accumulation.

56. On 20 July 2022, the Property Manager sent an email to the Homeowner in response to another email dated 19 July 2023. It did not address either the wasp's nest or the rubbish accumulation.
57. On 21 July 2022, the Homeowner sent a lengthy complaint to the Property Factor in relation to several issues including the rubbish and the wasp's nest.
58. The Property Factor did not provide a response to the Homeowner in relation to the complaints about rubbish or the wasp's nest.
59. The wasp's nest was investigated in 2022. It was established that it was a beehive.
60. The Property Factor took advice in 2022 and was told that the beehive was unlikely to be re-populated the following year. The Property Factor did not relay this advice to the Homeowner or provide a quote for the removal of the hive.
61. The beehive was re-populated in 2023.
62. The Property Factor obtained a quote for the removal of the hive in 2023. Due to its location, the quote included the use of a cherry picker.
63. Residents at the development removed the hive and did not give approval for the work proposed by the Property Factor.
64. On Wednesday 13 July 2022 at 5.28pm, the Homeowner emailed the Property Factor and stated that someone had parked in her space and cut her padlock. She asked them to resolve the matter and re-imburse her on street parking costs. She said that she had contacted the out of hours service who said that they could not assist.
65. On 14 July 2022 at 9.35am, the Property Manager replied. He stated that the Factor was not responsible for the damage and therefore not liable for her parking costs. The email further advised that parking spaces were private and that all he could do would be to issue a letter to all residents to ask them to be "vigilant against this type of incident." The Homeowner was also advised that she could contact the police.
66. The Homeowner sent a response on 14 July 2022 at 11.12am. She asked the property manager to arrange for the car owner in question to re-imburse her parking costs, for a copy of the letter to the residents and to be told which spaces in the car park were unused. She also stated that there should be an out of hours hour service for parking issues. She also asked them to install a bollard in her parking space.
67. On Friday 15 July 2022 at 9.36am the property manager sent a response. It stated that a letter had not yet been issued and that the Property Factor had no way of identifying the resident. He stated that parking was a private matter, although they would assist if they could, and that out of hours provision was

restricted to emergency repairs.

68. The Homeowner sent 3 further emails to the Property Factor on 15 July 2022. The property manager responded on 19 July 2022. The office had been closed for the Glasgow Fair holiday from lunchtime on 15 July until the morning of the 19 July 2022.
69. On 15 July 2022, the Homeowner sent an email to the Property Factor which stated that the person who had parked in her space was at number 29. On 19 July 2022 she stated that "Through our own measures we know its flat 29." Also on 19 July 2022, she sent a further email to the Property Factor with the resident at number 29's email address.
70. The Property Factor did not provide the Homeowner with the address or email address of the owner of the car which had parked in her space.
71. The Property Factor did not advise the resident at number 29 that the Homeowner's parking space belonged to flat 29 and did not remove the padlock from the space.

Reasons for decision

72. In terms of their preliminary decision, the Tribunal determined that the application should proceed to a full hearing, but this would be restricted to those complaints which had been properly notified. The Tribunal determined that the Property Factor had been notified of complaints under sections 2.1, 2.2, 2.7, 3.1, 3.2, 3.4, 6.1, 6.4 and 6.5 of the Code and a failure to carry out duties. However, the hearing would be also be restricted to complaints in relation to the intercom/security at the building, clarity of invoices, enquiries in relation to invoices, accumulation of refuse, pest control issues, access and availability and alleged breaches of GDPR. The Tribunal noted that when providing better specification of her complaints under each section of the Code, the Homeowner included a number of new factual complaints which did not form part of the correspondence with the Property Factor before the application was made and would not be considered by the Tribunal.
73. In response to the direction issued by the Tribunal, the Property Factor lodged two versions of the WSS and a schedule of management dated 25 November 2021, addressed to Ms Guild. Neither party made specific reference to these documents during the hearing, but Ms Guild advised the Tribunal at the preliminary hearing that the bundle of documents which includes the schedule was a complete set of the correspondence between the parties. The schedule refers to the WSS. The Tribunal notes that the schedule indicates that the following services are provided – "to arrange the maintenance of the common grounds, the fabric of your building and manage the contractual obligations that arise" and "insurance services". The services provided are more fully outlined in the WSS – "routine maintenance repair work to common parts" and to

"arrange insurance cover as set out in the...title deeds." The WSS also states that "additional services may incur further expenditure the details of which will be agreed with owners in advance". It refers to twice yearly inspections of the buildings, internal stairwells, bin stores and landscaped areas. There is a section on emergency works and the steps to be taken by homeowners in relation to same. It also explains that as emergency works will incur a call out charge, homeowners should carefully consider whether the repair in question is an emergency. The WSS goes on to cover routine repairs, major repairs, and response times.

74. Based on the content of the emails sent to the Property Factor, the Tribunal concludes that Ms Guild did not read the WSS or the development schedule and does not fully understand the role of a property factor. This is particularly evident in the emails she sent to the Property Factor about her parking issues. The car park is not common property. Each space is allocated to a property and is owned exclusively by the owner of that property. When buying property, it is the purchaser's responsibility to establish what is included in the purchase price. If the position is not clear, advice should be taken from the solicitor dealing with the purchase. Had she done this, and later considered the terms of the WSS and schedule, Ms Guild would have realised that the Property Factor has no obligations toward homeowners in relation to their parking spaces. Even when they advised her that this was the case, she continued to correspond with them regarding the issue and demand that they take action. In their emails, the Property Factor clearly states that they cannot and will not become involved in parking issues. However, in an effort to assist her, they provided some general advice and agreed to issue a letter to all residents on her behalf. Ms Guild's complaints about their failure to deal with intruders also demonstrates that she does not appreciate the Property Factor's role. She said during her evidence that they should have dealt with the problem, and she should not have had to call the police. However, the removal of intruders from private property is not part of the maintenance and repair of common parts or insurance services. If a person has gained access to property unlawfully and without the consent of the owners, it is clearly a matter for the police.

Door entry system/security at the development/intruders

75. The correspondence clearly establishes that Ms Guild made numerous reports of a fault with the door entry system. It was first reported on 6 January 2022. The first written response appears to be on 10 March 2022, although an email on 17 January 2022 refers to a separate response about the door entry complaint. On the basis that no other complaints had been received, the Property Manager concluded that the fault lay with Ms Guild's handset and that they were not responsible for arranging a repair. At the hearing, Ms Guild said that other residents had experienced problems. Even if this was the case, she did not inform the Property Factor of this and did not provide any evidence that other residents had reported a problem. It is clear from the subsequent correspondence that Ms Guild did not agree with the Property Manager's assessment of the fault. The situation appears to have been further complicated

when a new property manager advised her that he would “raise a job” for the complaint in July 2022, although it appears that he did not do so as no repair has been carried out.

76. It seems likely that the handset in Ms Guild’s property is faulty if it does not ring or buzz when the button on the panel at the main door is pressed. However, in the email dated 22 March 2022, the Property Manager agreed to arrange for a contractor to attend on condition that that Ms Guild would be responsible for the cost of the repair and any call out charge which might apply if the fault lay with her handset. She did not respond to this offer or agree to the proposal but continued to complain. In the absence of her agreement, the Property Factor had a valid reason for refusing or failing to instruct a contractor. The Tribunal notes that when the new property manager advised Ms Guild that he would raise a job for the report in July 2022, she responded by asking him to confirm that Ross and Liddell would pay for the repair. Given the possibility that it was a fault with her own handset, this demand was unreasonable and further demonstrates a lack of understanding of the Property Factor’s role. If her handset is faulty, she is liable for the cost. If it is a common property issue, the cost is divided among the homeowners in the block. She was told this on 22 March 2022. In neither case would the Property Factor be liable for the cost. The Tribunal is satisfied that the Property Factor acted appropriately in relation to the complaint about the intercom.
77. Although the parties indicated that the correspondence lodged was a complete set, the Tribunal is not sure that this can be the case. In September 2022, Ms Guild reported that there had been an intruder and the Police had attended. There appears to have been no response and the later emails (in November and December 2022) only relate to fees and charges and the application to the Tribunal. In May 2023, the Police carried out a survey and issued a report. Neither party explained whether the Police initiated the visit or were asked to attend by the Property Factor or the residents. There is also no evidence of any further complaints to the Property Factor about security and intruders (except for the notification letters regarding the application) until October 2023, when there are emails which relate to the Police recommendations and the proposals issued by the Property Factor. It is therefore not clear whether the September report was the only complaint or whether other reports were received from Ms Guild and other homeowners. However, it appears that the Property Factor were aware of the issue and that steps have been taken in recent months to address the matter.
78. Ms Guild did not explain what steps she believes the Property Factor should have taken between her report about the intruder in September 2022 and the application to the Tribunal, which she submitted the following month. The Factor is contractually required to deal with maintenance and repair of common parts. If the main door to the building has been damaged, they should arrange for it to be fixed. However, services which go beyond essential maintenance and repair are only undertaken if the Property Factor is willing to undertake them. They appear to be described in the WSS as “additional services”. There is caselaw on the difference between maintenance/repair on one hand and improvements on the other. The former (in terms of the title deeds and WSS)

is what the Property Factor has contracted to arrange and is based partly on delegated authority and partly on majority vote. Usually, improvements require the unanimous agreement of homeowners and would also require the Property Factor's willingness to become involved. A new, stronger door or a more advanced door entry system could be expensive and would be improvements rather than repairs or renewals, unless the existing door or system could not be repaired. Even alterations to the door or door entry system might not be classed as repair or maintenance unless they are damaged or faulty. Given the limited response received to the proposals which have been issued (and the poor attendance at the AGM), it seems unlikely that homeowners will sanction major expenditure. Ultimately, it is the owners who are responsible for such matters. The Property Factor is only their agent. However, having agreed to become involved, it's not clear why the Property Factor did not provide the homeowners with a comprehensive list of options, with estimated costs, in June 2023 and instead have issued proposals in a piecemeal fashion. They have not proposed a code/fob system, which Ms Guild suggested. However, the Tribunal is not clear why this is seen as a solution. The provision of a key to Royal Mail and the deactivation of the services button would have the same effect and would be cheaper. Furthermore, it would not necessarily prevent unauthorised access where the door is forced open, where intruders follow residents into the building or where residents open the door without checking who is there. The Tribunal notes that Ms Guild has rejected the suggestion that residents should have to go to the main door to let visitors in.

79. For the reasons outlined, the Tribunal is not satisfied that the Homeowner has established that the Property Factor was obliged to take action regarding security at the property and intruders and failed to do so.

Invoices/Accounts and enquiries in relation to same.

80. Most of the correspondence lodged relates to the invoices and accounts. From January 2022, Ms Guild has sent numerous emails to the Property Factor in relation to these. Her enquiries relate to the following issues – the difference between what she was quoted before purchasing the property and the sums she is expected to pay, the lack of clarity in the invoices, the lack of clarity in the emails received in response to her enquires, the mechanism for payment, her circumstances and the fact that she cannot afford to pay and her insistence that the invoices should be suspended while the Tribunal is dealing with her application.
81. It is not clear why the Homeowner believes that the Property Factor should have suspended her invoices. Most of the entries on the invoices are unrelated to her complaints. The Property Factor has requested payment of her share of insurance, lift maintenance and several other services. These are sums due to external contractors and companies and must be paid. If a homeowner fails to pay their share, then the other owners may have to meet the cost of the missing share unless and until the sums are recovered by way of court action. There may be grounds for withholding the management fee element of an invoice, or

a particular charge which is in dispute, but to expect the Property Factor to carry her share of the whole invoice when most of it is not relevant to her complaint is unreasonable. The Homeowner has also mentioned in several emails that the Property Factor should take account of her financial circumstances. Again, it is not clear why she believes this to be the case. The Property Factor is a business. To allow a homeowner to pay less than is due or to delay payment will have an impact on the provision of services to the development and may mean that the Factor has to use their own funds or expect other owners to meet the shortfall.

82. There appear to be four aspects to the complaint about the invoices which is under consideration – the difference between the figures quoted before the property was purchased and the invoices received, the lack of clarity in the invoices, the failure by the Factor to respond to her enquiries about the invoices and the different and confusing figures quoted as monthly direct debit amounts.

- (a) **The figures quoted prior to the purchase of the property.** As the Property Factor points out in correspondence to the Homeowner, they are not responsible for information provided by the seller, the Estate Agent, or the Home Report. Although this was made clear to the Homeowner early in the correspondence, she continued to raise it with the Property Factor in subsequent emails.
- (b) **Lack of clarity in the invoices.** The Homeowner failed to articulate why she does not understand the invoices and statements. Copies of some of the invoices and statements were lodged by both parties. The annual invoices issued in May 2022 and 2023 are detailed and self-explanatory. They set out a description of each charge, the amount of each charge, the Homeowner's share of each charge (expressed both as a percentage and a figure) and the total sum due for the year. The invoice is for the preceding year and is the actual sum due, not an estimate. The Tribunal is satisfied that the invoices are clear and that the invoices for advance charges also clearly set out what the homeowner is being asked to pay and the period to which it relates.
- (c) **The failure by the Property Factor to provide a response to her enquiries regarding the invoices.** A full explanation of the initial invoices was provided on 17 January and in numerous subsequent emails. It was explained that the initial invoices were to cover the period from her purchase of the property in November 2021 until May 2022, when a detailed invoice for the preceding year would be issued. As she was only liable for half of the year, the sum of £610 was requested - £146 for insurance and the remainder for the other charges such as lift maintenance, cleaning, electricity etc. When the invoice was issued in May 2022, any sums paid to account were offset against the total due. A separate invoice for advance charges for May 2022 to November 2022 was also issued. As was also explained, advance charges are requested to ensure that there are funds available to pay contractors over the course of the year. They are estimates, based on the previous year's charges. The Homeowner's invoice in May 2022 was for £680. This was for a period of 6 months and included the insurance. The estimated costs (advance charges for May to

November 2022) were £505. This is clearly less than the sums due for the preceding 6-month period but is only an estimate. At no point in her correspondence did the Homeowner challenge or query any of the specific charges on the invoices. All her emails relate to the total sum she is being asked to pay. The Tribunal is satisfied that the Property Factor provided a response to the enquiries that were made and continued to do so even though subsequent emails simply repeated the same enquiries.

- (d) **Calculation of monthly direct debit.** In several of the emails issued by the Property Factor in response to enquiries about the invoices, it was suggested that the Homeowner consider setting up a monthly direct debit so that the cost could be spread throughout the year. The Homeowner largely ignored this suggestion until 2023 when she was wrongly quoted the sum of £152 per month for 12 months. The Property Factor apologised for the accounting error and advised the Homeowner in September 2023, that she could elect to pay £130.37 for 9 months (£1173.33) or £146 for 8 months (£1173.36). As the invoice issued in May 2023 was for a total of £1167.84, these calculations appear to accurately predict the sums which might be required for the year to May 2024. The Homeowner had previously been quoted £96 per month for 12 months. Again, this would have resulted in a total sum of £1157 which is in line with the annual estimated costs. As the Property Factor explained in correspondence and the hearing, the monthly sum due depends on when the direct debit is set up and how much has already been paid by the homeowner for that year. For this reason, the sums quoted will vary depending on when the quote is requested.

Build-up of rubbish/Wasps nest/Pest control

83. **Build-up of refuse.** The correspondence in relation to this issue took place over three days in July 2022. It is not clear what happened after 21 July 2022, but the Homeowner did not report the issue again. Ms Johnstone advised the Tribunal that she regularly arranges for contractors to attend and deal with refuse issues but that the problem is generally caused by the residents failing to deal with their rubbish appropriately. The Tribunal notes that a letter was issued to residents in February 2022 regarding this issue. The Homeowner did not provide any additional information about this complaint during the hearing, so presumably it was dealt with at some point after her complaint, even if the complaint was not acknowledged. There was no reference to it in the later correspondence (in November and December 2022) which relates only to non-payment of invoices and the submission of the application to the Tribunal. The Tribunal is not persuaded that the Property Factor failed to deal with the build-up of rubbish when it was reported in July 2022.

84. **Wasp's nest.** The Homeowner advised the Tribunal that although the nest was reported in July 2022, it was only removed recently and that by the residents themselves. Ms Johnstone told the Tribunal that she took advice on the issue in 2022 because it turned out that there were bees and not wasps. She was told that the bees were unlikely to return the following year. She decided that no action would be required. However, the bees did return, and she obtained a quote for the removal of the nest at the end of the active season. The residents

did not approve the quote. Ms Guild told the Tribunal that she was not told about the advice taken in 2022. The first information she received was the quote involving the cherry picker in autumn 2023. The Tribunal is satisfied that the Property Factor failed to advise the Homeowner of the outcome of her enquiries and the decision taken in 2022. However, the Property Factor obtained a quote for the removal of the hive when it was again reported in 2023. The work was not carried out because it was not authorised by homeowners.

Access/availability

85. This complaint largely relates to the failure by the Property Factor to notify homeowners that they would be closed on the Friday afternoon and Monday of the Glasgow Fair weekend. Prior to the holiday weekend, the Homeowner experienced the parking issues referred to earlier in this decision. As previously indicated, parking issues are outwith the Property Factor's remit, and they notified her that they could do little to assist her before they closed for the weekend. In fact, they responded promptly to her emails and provided her with some practical advice. There had also been previous correspondence with her when it had been made clear that privately owned parking spaces were not part of their contract.
86. The Property Factor is not available 24 hours a day. They operate during usual office hours. They have a system in place whereby homeowners can call an out of hours number which provides details of contractors who can be contacted in an emergency, such as a water leak. They also provide a 24 hour telephone number for the insurance company. Otherwise, they can only be contacted during usual office hours. The Tribunal is satisfied that this is a perfectly satisfactory arrangement, and most property factors operate on this basis. It is also usual for businesses such as property factors to be closed on public holidays. The Homeowner's expectation that an email will be sent to all clients prior to an established public holiday is unreasonable. However, it would be good practice to ensure that usual opening hours are notified in the WSS or website and that unusual closures such as staff training are notified in some way – even by a message on the answering machine.
87. In terms of their WSS, the Property Factor has 7 working days to deal with enquiries which are not urgent. Although the Homeowner was understandably annoyed and inconvenienced by the parking issue, it was not an emergency. Even if the parking concerns had been something that the Factor was contractually obliged to deal with, their responses were timeous.
88. Although not directly relevant to the complaints being considered, the Tribunal is not persuaded by the Homeowner's claim that the Property Factor told the resident at number 29 that the parking space belonged to that property or that they came out and removed the padlock. The Homeowner did not make this allegation in any of her correspondence to the Property Factor or in the application lodged with the Tribunal. The Homeowner told the Tribunal at the hearing that the former resident at the property made the claim when confronted about parking a vehicle in the Homeowner's space. Given the number of emails from the Property Factor to the Homeowner which specifically state that they

have no responsibility for privately owned parking spaces, it is highly unlikely that the claim has any foundation and there was no evidence presented to the Tribunal that it occurred.

89. The Tribunal is not persuaded that the Homeowner has established that the Property Factor is unavailable or inaccessible.

GDPR

90. As the Property Factor's representative pointed out, the evidence establishes that it was the Homeowner who provided the Property Factor with the address and email address of the resident who parked in her space and not the other way round. In response to questions from the Tribunal, Ms Guild said that she was given this information by the Property Factor by email. She was unable to refer the Tribunal to the email in question. On the other hand, the Property Factor produced emails from her which identified the address, stated that she had obtained it through her own "measures" and also detailed the email address. The Property Factor told the Homeowner by email that they had no way of identifying the resident in question from the registration plate provided by the Homeowner. The Tribunal is satisfied that it was the Homeowner who provided the resident's information to the factor and not the other way round.

Section 2.1 – Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

91. The first two sentences of this clause are just general statements about the importance of good communication and homeowner's responsibilities. In relation to the obligations imposed by this section, the only evidence that the Property Factor failed to consult with the Homeowner in relation to proposed repair or maintenance work relates to the beehive. In 2022, the Property Factor decided not to obtain an estimate for removal of the hive without consulting the homeowners. This decision was based on advice obtained from a specialist, but the advice was not passed on. A breach of Section 2.1 is established in relation to this failure.

92. The Tribunal is satisfied that the Property Factor provided the Homeowner with all required information to enable her to understand how they operated, what to expect and to assess whether they had met their obligations. A WSS and development schedule were provided. These clearly set out what services are provided and provide information on how to report issues, response times and communication arrangements. Furthermore, in response to numerous

enquiries, the Property Factor provided a great deal of additional information on their role and what services were not provided, with reasons. These included dealing with intruders and parking disputes. A breach of this section of the Code has not been established in relation to the provision of information.

Section 2.2 – Factors are required to comply with current data protection legislation when handling their clients personal data and to ensure this information is held and used safely and appropriately.

93. For the reasons outlined in paragraph 90, the Tribunal is satisfied that the Property Factor did not fail to comply with GDPR in relation to the address and email address of the resident whose car was parked in the Homeowner's space. The evidence clearly established that she provided the Property Factor with this information. There were no other complaints or any evidence of failure to apply GDPR. A breach of this section has not been established.

Section 2.7 – A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints quickly and as fully as possible and to keep homeowners informed if they are not able to respond within the agreed timescale.

94. In terms of the WSS, the Property Factor undertakes to respond to letters and emails within 7 working days and if a full response cannot be provided, the homeowner will be notified and a timescale for response provided. The vast majority of enquires from the Homeowner received a full response well within that timescale, sometimes the same day or the following day. However, the Property Factor failed to provide any response to the following emails; - 19 July 2022 at 2.42pm, 21 July 2022 at 12.14pm and 20 September 2022 at 8.59pm. In particular, they failed to respond to the complaints about the build up of rubbish and the beehive. The Property Factor also failed to respond to the notification of the complaints that they had failed to comply with the Code and carry out their property factor duties. They did reply, but only to ask for further information to allow them to deal with the complaint. While the Tribunal accepts that there was limited information provided in the complaint letters, the previous correspondence provided additional information and the Property Factor ought to have responded to the complaints, even briefly. The Tribunal also notes that the Property Factor responded to the Homeowner's initial email of 6 January 2022 within 7 working days, but it was not a full response as the intercom issue was not included in the response. The Property Factor does not appear to address the intercom complaint until 10 March 2022. The Tribunal is satisfied that a breach of this section has been established.

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 statement/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

95. Most of the Homeowner's emails to the Property Factor relate to, or include an enquiry or complaint about, the statements, invoices and charges. For the reasons outlined in paragraphs 80 to 82, the Tribunal is satisfied that a breach of this section has not been established. The invoices and statements are clear and transparent, all enquires received a full and straightforward response and there was no complaint about (or evidence of) improper charges.

Section 3.2 – The overriding objectives of this section are to ensure property Factors; protect homeowners funds; provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor; make a clear distinction between homeowners funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds.

96. In terms of complaints being considered by the Tribunal, the only part of this section which potentially applies is the second part – clarity and transparency in accounting procedures. Again, for the reasons outlined in paragraphs 80 to 82, a breach of this section has not been established. The invoices are clear and detailed, and the Homeowner has been provided with a full explanation for the request for advance funds and how these sums are calculated.

Section 3.4 – A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and detailed description of the activities and works carried out which are charged for.

97. For the reasons outlined in paragraphs 80 to 82, the Tribunal is satisfied that the invoices issued to the Homeowner in May 2022 and 2023 comply with this section of the Code and no breach is established.

Section 6.1 – This section of the Code covers the use of both in house staff and external contractors by the property factor. While it is the homeowner's responsibility and good practice to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

98. Although the Homeowner's complaints include a failure to carry out work – the intercom, removal of the beehive and improving security at the building – it was not established that there had been a failure to carry out work which was within delegated authority or for which approval had been given. The Factor failed to instruct a contractor for the intercom, but they had a valid reason for this refusal. The Property Factor's assessment was that it was a fault with property owned by the Homeowner and located in her flat. They agreed to instruct a contractor but only if she agreed to pay for the repair if their assessment was correct. She did not do so. In relation to the beehive, the Property Factor decided that the removal was not required in 2022. In 2023, they obtained a quote but did not get approval. The Homeowner's suggestion that the beehive could have been removed more cheaply if instructed in 2022 makes no sense. It was the location of the hive (and the need for a cherry picker) which led to the cost involved.

99. The issue of the building security is a complex one. The Police recommendations could not be classed as routine maintenance or repairs. Some involve potentially expensive improvements which probably require the unanimous consent of homeowners if they are to be implemented. There have certainly been delays by the Property Factor acting upon complaints about intruders and security. However, as these are matters outwith their strict contractual obligations (maintenance, repair and insurance), the Tribunal is not persuaded that this section of the Code applies to these delays. The Homeowner was also very vague as to what steps she feels they ought to have taken, when the matter was first reported. She referred only to a "review" of security. That has now taken place and police report obtained. However, it is clear that the homeowners as a group have little interest in spending money on the measures which have been proposed. The Tribunal is satisfied that a breach of this section has not been established.

Section 6.4 – Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of the work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job specific progress reports are not required.

100. Again, as the intercom repair, building security improvements and removal of the beehive were not instructed, this section does not appear to apply, and no breach is established.

Section 6.5 – if emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out of hours procedures if that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.

101. The Homeowner's complaint under this section relates to the property Factor being unavailable over the Glasgow Fair weekend when she experienced parking problems. For the reasons outlined in paragraphs 85 to 89, the Tribunal is satisfied that the Property Factor has appropriate emergency arrangements in place, that the parking issue was not an emergency and that it was not within the Property Factor's remit. A breach of this section is not established.

Property Factor duties.

102. The Homeowner's property factor duties complaints are identical to those under the Code. The Tribunal is not persuaded that the complaints about invoices and statements, responding to enquiries, GDPR or accessibility are relevant to property factor duties which are generally about the services provided in terms of the WSS and application of the relevant provisions of the deed of conditions.

103. The Tribunal is not satisfied that the Property Factor's failure to act on the complaint about the intercom is a failure to carry out their duties. Although they assessed the fault as a private property issue, they offered to instruct a contractor. The Homeowner did not agree to the proposal that she would be liable for the cost if the fault lay with her handset. The Property Factor was therefore entitled to refuse to take further action.

104. The Tribunal is satisfied that the Property Factor's delayed response to the beehive is a failure to carry out their duties. They should have obtained a quote for the removal in 2022, when the matter was first reported, and passed on the advice that the bees were unlikely to return. This would have allowed homeowners to make an informed decision. However, in 2023 they did fulfil their duties when they obtained a quote for removal. They did not instruct the work because the homeowners did not agree to it.

105. For the reasons previously outlined, the Tribunal is not persuaded that the delayed response to the security issues is a failure to carry out their duties. This is matter which is ongoing. The options available to homeowners appear to be "additional services" and potential improvements rather than routine maintenance and repair of common areas. The WSS does not require the Property Factor to arrange improvements although it makes sense for them to be involved in such matters. The WSS makes provision for additional services beyond basic maintenance and arranging insurance, where this is agreed in advance. The Tribunal is not satisfied that their delayed response and failure to implement any security improvements is a failure to carry out their duties.

106. The Tribunal is therefore satisfied that there has only been a failure to carry out property factor duties in relation to the beehive when it was reported in 2022. .

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.