

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/17/0281

Re: 15C Lothian Road, Greenock, PA16 0PG ("the Property")

The Parties:-

Ms Lynnette Britton, 15C Lothian Road, Greenock, PA16 0PG ("the Homeowner")

River Clyde Homes, Roxburgh House, 102-112 Roxburgh Street, Greenock PA15 4JT ("the Factor")

Tribunal Members

Ms Helen Forbes (Legal Member)

Ms Elaine Munroe (Ordinary Member)

Decision

The Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Property Factors (Scotland) Act 2011 ("the Act") in respect of compliance with Sections 2.5 and 3.3 of the Property Factor Code of Conduct ("the Code").

The decision is unanimous.

Background

1. By application received in the period from 21st July 2017 to 20th March 2018 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination that the Factor had failed to comply with Sections 2.2, 2.5, 3.3, 4.3, 4.9, 7.4 and 7.5 of the Code. Details of the alleged failures were outlined in the Homeowner's application and associated documents comprising letters and emails to and from the Factor, the Factor's Written Statement of Services, the Factor's 'Guide to Cleaner Greener Neighbourhoods' and various photographs allegedly

indicating failures in the services provided by the Factor. In correspondence with the tribunal administration regarding a lack of notice given to the Factor in relation to all the sections cited, the Homeowner clarified that she wished the Tribunal to consider the alleged breaches of Sections 2.2, 2.5, 3.3 and 4.9 of the Code. The failures outlined by the Homeowner included claims of intimidation and threatening behaviour by the Factor's staff, and a lack of support; failure to respond to enquiries and complaints timeously; and failure to provide a detailed financial breakdown of charges made and a description of activities and works carried out.

2. The Homeowner also applied for a determination that the Factor had failed to comply with its duties under section 17 of the Act in respect of a failure in the caretaking service, complaining that grass cutting was not being carried out, bins were not being cleaned or put back in the bin store. There was rubbish and the area was untidy, the gutters were not cleaned, and there was graffiti on the path, cracks in the common close, and the roof was damaged.
3. By Minute of Decision dated 19th March 2018, a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.
4. On 19th April 2018, Notice of Referral and Hearing was sent to the Parties. A hearing was set down for 1st June 2018.
5. On 9th May 2018, the Factor's legal representative lodged written representations. It was submitted on behalf of the Factor that the Tribunal should reject the complaints in relation to sections 2.5 and 3.3 of the Code, and the alleged breach of Property Factor's duties, for lack of fair notice and specification. It was further submitted that prior notice to the Factor had not been given in respect of section 2.2 of the Code. It was further submitted that the Application was without merit and should be dismissed by the Tribunal.
6. On 23rd May 2018, the Factor's legal representative lodged a List of Witnesses and two Inventories of Productions, with productions comprising Written Statement of Services, copy invoices, letters from the Factor to the Homeowner, a statement of the Homeowner's account and associated account information, and extract Decree for Payment date 17th February 2016.

Hearing

7. A hearing took place at 10.00 on 1st June 2018 at Gamble Halls, 44 Shore Road, Gourock, PA19 1RG. The Factor was represented at the hearing by Ms Claire Mullen, Solicitor, TC Young Solicitors. Two witnesses attended to give evidence for the Factor. The Homeowner was not present. The Tribunal Clerk made a telephone call to the Homeowner. The Homeowner said she was unable to get time off from her work, and she did not intend to be present at the hearing. She had understood that she did not have to attend.

Preliminary Matters

8. In respect of the Homeowner's failure to appear, and the defects previously notified in the Factor's representations, Ms Mullen made a motion in terms of Rule 27(2)(b) that the case should be dismissed as the Homeowner had failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal could not deal with the proceedings justly and fairly.
9. The Legal Member asked Ms Mullen how she would anticipate leading her witnesses, should the Tribunal not grant her motion to dismiss the case. Had the Homeowner been present, the Tribunal had not intended to allow the witnesses to be present while evidence was given by the Homeowner. Ms Mullen said that, as the Homeowner was not there, the case could proceed with less formality, and it would be helpful to have her witnesses in the hearing throughout.

The Tribunal adjourned to discuss Ms Mullen's motion.

The Tribunal agreed that the proceedings could be dealt with justly and fairly in the Homeowner's absence. The Tribunal considered that sufficient fair notice and specification of the complaints had been given to the Factor by the Homeowner, and that the Application could not be dismissed for want of merit. The Tribunal considered that Rule 29 allowed the hearing to proceed in the absence of the Homeowner. The Tribunal was satisfied that Rule 24(1) had been duly complied with.

The Tribunal decided that, in the circumstances, it would be helpful to have both witnesses sitting in throughout the hearing.

The hearing resumed and Ms Mullen was accompanied by Patricia McGlynn, Factoring Supervisor and Wendy McDougall, Financial Officer from River Clyde Homes.

The Legal Member raised a further preliminary point regarding the Factor's submission that no notice had been given by the Homeowner of the Factor's alleged failure to comply with section 2.2 of the Code. The Legal Member indicated that the Homeowner had provided evidence of notification to the Factor in regard to this section dated 5th February 2018. Ms Mullen said that she had now been made aware of the notification and accepted that the Tribunal could consider the alleged failure to comply with that section.

Evidence and Representations

10. The Tribunal then dealt with each of the Homeowner's complaints in turn.

Failure to comply with section 2.2 of the Code

11. Section 2.2 of the Code states: *You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).*

The Homeowner stated in the Application that she had been bullied and harassed by the Factor's staff and they had given her no support regarding her ongoing complaints. In a letter dated 17th August 2017, the Homeowner wrote to the Factor saying that she had been spoken to in 'a very intimidating' way after contacting the Factor to look for support after receiving notification of an increase in management fees and charges in 2017.

On behalf of the Factor, Ms Mullen said that the Factor had not been abusive or intimidating in its dealings with the Homeowner. Reasonable notification had been given that court action may be taken in relation to the debt. There was no evidence before the Tribunal of abusive or intimidating behaviour by the Factor. Ms Mullen referred to productions 2, 3, 5 and 6 as examples of reasonable letters from the Factor to the Homeowner. In response to questions from the Legal Member as to whether there were other letters that had not been lodged, Ms Mullen said these were just some of the letters sent. The Applicant had produced nothing in terms of evidence of intimidating or threatening behaviour by the Factor.

Ms McDougall said that legal action in respect of outstanding debt had been taken by the Factor against the Homeowner in 2015. A decree was awarded with time to pay granted over a period of five years. Ms McDougall has spoken to the Homeowner a few times on the telephone in connection with debt recovery. Phone calls made by the debt recovery team were not intimidating. Such calls were made to inform the Homeowner that the debt was about to go to a debt recovery agency, and to ask if she would like to make payment. The team have found the Homeowner challenging to deal with. The Homeowner has always maintained she could not pay any more than she is paying. Ms McDougall has had conversations with the Homeowner about her monthly payments and she has mentioned that the joint owner of the Property, believed to be the Homeowner's ex-partner, is jointly and severally liable for the debt. The Homeowner became angry and abusive and said she was going to make further complaints.

In May 2016, Ms McDougall had a call from the Homeowner to discuss how her payments were allocated. The Homeowner became angry and said she could not afford to pay more. She was swearing and said she was not happy with the service provided. There was a further telephone call with the Homeowner in November 2016, when monthly instalments were discussed. On that occasion, the Homeowner terminated the call and then lodged a stage 1 complaint. Ms McDougall said that her team do not threaten homeowners. They give opportunities to pay and try to come to an arrangement. They only make one call to a debtor, and then it goes to the collection agency.

In response to questions from the Ordinary Member as to the level of support given to homeowners that find themselves in debt, Ms McDougall said the Factor had twice offered the Homeowner a referral regarding money advice to an advisor with their Financial Fitness section, to provide financial assistance, support and help with budgeting. The Homeowner responded to the effect that she did not wish to be told how to budget. The Factor's staff had also suggested

to the Homeowner that she contact an external agency for assistance. The Homeowner had not done so. There was no option but to progress debt recovery. It was felt that the Homeowner would not go along with any of the Factor's suggestions.

In response to questions from the Ordinary Member as to whether she had met the Homeowner, Ms McDougall said she had met the Homeowner in court. She also arranged to meet her in September 2017, but the Homeowner phoned and cancelled the meeting, asking for information about charges, payment and her outstanding balance. Other members of staff had met with her, particularly Paul Monaghan, who met her on several occasions.

The Ordinary Member asked how much the Homeowner owed. Ms McDougall said she owed just over £600 on her factoring account, and a further sum in relation to the decree, bringing the total up to around £2214. Factoring fees were now charged annually. The annual management fee is £126.34 and the annual caretaking service charge is £508.50.

Ms McGlynn said she had not had any contact to date with the Homeowner.

Responding to questions from the Ordinary Member about whether the Factor writes off debts, Ms McDougall said they try to recover as much outstanding debt as possible. They introduced a new legal recovery system in 2014 including making phone calls to debtors and passing the debt to a debt collection agency. They would only write off irrecoverable debt. The change to annual billing allows people to pay by monthly direct debit. The Factor could not justify writing off large numbers of debts, and they would prefer not to pass the debt to other owners.

Summing up on behalf of the Factor, Ms Mullen invited the Tribunal to determine that there was no breach of this section. The evidence showed that the Factor had tried to assist the Homeowner. Such assistance requires reciprocation.

Failure to comply with Section 2.5 of the Code

12. Section 2.5 of the Code states: '*You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep Homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.*'

Ms Mullen said that this complaint was lacking in specification. There was no fair notice of the occasions on which this section had been breached. Ms Mullen referred to production 5 – a letter dated 22nd June 2015 – that referred to a meeting with the Homeowner on 12th June 2015. There was a response within eleven working days, with a meeting in between times. Production 2 was a letter dated 16th November 2016. It referred to receipt of a complaint on 10th November 2016, with a response within 4 working days. Production 3 was a letter dated 2nd March 2017. It referred to contact made by the HO on 27th

January 2017 – this was a three working day response. The Factor was responding within the timescales set out in the Written Statement of Services, and this was in compliance with the Code.

The Legal Member drew the attention of Ms Mullen to the Homeowner's email to the Factor dated 20th May 2015 which referred to a three week delay in getting a response from Paul Monaghan. Ms Mullen conceded that she was not in a position to respond on this point. The Legal Member drew Ms Mullen's attention to the Homeowner's document entitled 'Timeline', which referred to several instances of delay on the part of the Factor's staff in responding to her concerns. Ms Mullen asked for a short adjournment to take instructions. An adjournment was granted.

When the Tribunal reconvened, Ms Mullen said the Factor was prepared to concede historical failures in corresponding timeously in 2013, 2014 and 2015. The Factor's processes had now changed and communications were made timeously as indicated in the correspondence lodged by the Factor. There was no fundamental difficulty in responding to complaints or inquiries and no necessity for a Property Factor Enforcement Order in this regard.

The Ordinary Member asked how the systems had changed. Ms McGlynn said they were using a CRM system and were making changes. Calls are taken by a call centre. She said they try to put notes on the system when people call, but it is open to error. All owners will be on the system within the next few months. It will then be possible to have a better timeline. There are currently difficulties using two separate systems. All calls are recorded manually on the system. Ms McGlynn said she agreed it was not the best way to communicate. Their system could be much improved and they were working towards that. They hoped to have a portal for homeowners similar to that for tenants, and a new billing system within the next few months. Customers tended to email different sections and pulling everything together is something they are working towards.

Ms McDougall said they use a task function to send tasks to those who need to complete them and they would be able to track those tasks. There is now a dedicated complaints team and complaints are listed daily. There has been much improvement over the past couple of years.

Failure to comply with Section 3.3 of the Code

13. Section 3.3 of the Code states: *You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.*

Ms Mullen said that bills have been sent out annually since March 2017. There are separate bills for management and caretaking fees. She referred to production 5, the letter dated 22nd June 2015 which gives the Homeowner a breakdown of the services she is receiving. The bills give the requisite information.

Ms McDougall showed the Tribunal an example of the new bills issued since 2017. In response to questions from the Legal Member regarding the level of detail on the bills, Ms McDougall said the duties would remain the same as previously. The repairs would have been detailed to the Homeowner in the past. Any repairs would be detailed on the invoice. If there was any change to the fees, a letter would be sent out.

The Legal Member asked how a homeowner was to know what services were included in the caretaking. Ms McGlynn said there was no details of this on the account, and it was not done as a matter of course, but they are thinking of doing this annually. They are having an 'MOT' of their Factoring Service carried out in July by outside consultants, who will assess what they are doing well and what could be improved.

Ms McDougall said these details would be available on request, and the factoring manager would send them out. There is an ongoing review of caretaking services. She is not aware if homeowners are notified of the services; perhaps some documentation was sent out.

In response to questions from the Ordinary Member as to whether there were any repairs carried out to the Homeowner's block, Ms Mullen said guttering had been replaced in 2016 as part of the cyclical works. These repairs were not rechargeable. Ms McDougall said there had not been any other large repairs carried out, but there were ongoing works at present.

In summary, Ms Mullen said that bills are sent out annually that confirm the management fee and caretaking activity, therefore, the Factor was satisfied that Section 3.3 had been complied with.

Failure to comply with Section 4.9 of the Code

14. Section 4.9 states: *When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.*

Ms Mullen reiterated her submissions made in respect of the alleged lack of compliance with Section 2.2. Considerable evidence had been led regarding the correspondence from the Factor and there was no suggestion it was intimidating or threatening. The Factor had a requirement to issue bills and letters. Calls were made to discuss matters and financial assistance was offered. These actions do not constitute threatening or intimidating behaviour.

Failure to carry out Property Factor's Duties

15. Ms Mullen said there was no specification of the duties which the Factor was alleged to have failed to carry out. The Legal Member drew her attention to the notification to the Factor dated 17th August 2017, which stated: '*On Wednesday 9th August, I came down to grass cuttings everywhere which I had to clean up. Every week the bin has to be cleaned by myself or neighbours. The bins have to be put back in the correct part as they are always just left anywhere. There is rubbish lying across from my property and has been for months. The area is very untidy. The grass hasn't been cut. My gutters haven't been cleaned. I had to paint my path due to graffiti on it. My common close has cracks and the roof is damaged.*'

Ms Mullen responded to each matter in turn:

- (i) Grass – no date was given for the alleged failure in duties. The representation contained contradictory information stating the grass was cut, and the grass was not cut. There was no further specification.
- (ii) Bin cleaning – there was no evidence that the Homeowner's bins required cleaning every week. The letter of 22nd June 2016 to the Homeowner confirmed that contaminated bins were cleaned, for instance, if food was left in the bin. There was no evidence that the Homeowner's bins were contaminated.
- (iii) Returning bins to store – the bins are put back in the store but this may not be carried out the same day as they are emptied. The Factor's staff do not empty the bins and the Factor cannot control the movement of bins after they are placed back in the store.
- (iv) Rubbish – the caretaking service does not include rubbish collection, although any rubbish on the grassed areas is lifted at the time of grass cutting.
- (v) Untidiness – no complaint had been made by the Homeowner in connection with untidiness prior to the notification of 17th August 2017.
- (vi) Gutters – the gutters were replaced in March 2016. In response to questions from the Legal Member as to whether there had been any complaints about the gutters since they were replaced, Ms McDougall said it was up to the owner to report any blockages or issues. There had been no report of any such thing since the gutters were replaced.
- (vii) Path – the Homeowner had not reported any graffiti at the Property.
- (viii) Close cracks – this matter had not been reported.

(ix) Roof – Ms Mullen said that a repair to the roof was scheduled for February 2018. Due to bad weather, it had to be re-scheduled and was due to be carried out next week, if the Homeowner was in a position to allow entry to her property to gain access to the roof space via the loft. This was under discussion.

Ms McDougall said there were no notes of the Homeowner having complained about any of the issues that she raised in her application. The caretaking manager met her in 2015 and told the Homeowner to contact him if she had any issues with the caretaking service. He introduced the Homeowner to the caretaking supervisor, but there was no contact from the Homeowner.

The Legal Member referred to correspondence from the Homeowner that had been lodged with the Tribunal, where she referred to complaints about the service received. Ms McDougall said that when the Homeowner was asked to expand upon her complaints, she never gave a definitive answer. There had been conversations over the years but nothing specific was referred to. It was all very generalised.

The Legal Member asked if the Factor's caretaking service included inspections of the development. Ms McDougall said there was a mobile caretaking service but she was unable to say how frequently it visited the development. The caretaking manager would be the person to look at the service received.

The Legal Member asked, given that it had been mentioned in a letter that not all the services contained in the Written Statement of Services were applicable to every development, how the Homeowner would know what services were provided at her development. Ms Mullen said this would have been agreed at the start of the service. Ms McDougall said it depended on the title deeds. Ms McGlynn said there was no list of services issued annually to the homeowners.

Responding to questions from the Ordinary Member as to whether there was a specific Written Statement of Services for each development, Ms McGlynn said there was not, but this was something they were going to look at. The Ordinary Member asked if there were any customer satisfaction checks. Ms McGlynn said there were no such checks for the caretaking service but they have done customer consultation. There is no property maintenance carried out routinely – this is only done following customer complaints.

Photographic evidence submitted by Homeowner

Photographs lodged by the Homeowner showed rubbish lying outside the Property on the common path and the grass verges; rubbish and staining in the bin stores; rubbish at the bottom of a bin; unkempt grass verges outside the Property; bins stored in a disorderly manner; graffiti on the concrete beside a door; a fuse box; and various marks on a wall. Only one photograph

was dated – it showed the front path of the Property and was dated 27th January 2016.

Ms Mullen submitted that it was impossible to know if the photographs referred to the particular development or when they were taken.

Ms McDougall confirmed that the photographs had formed part of the Homeowner's defence in court in the debt action previously referred to. It was not clear when they were taken. Ms McGlynn said she could see that the photographs showing the front door and path, and the bin store, were photographs of the Homeowner's development. Ms McDougall said that the dated photograph was taken during the winter months when no grass cutting was carried out. Grass cutting starts in March. She said these photos do not prove that no caretaking service was being carried out and the Factor cannot control the area all the time.

In response to questions from the Ordinary Member as to whether there was any evidence of the current position in relation to the state of the development, or any update requested from colleagues as preparation for the hearing, Ms McDougall said she was confident no issues had been reported. She had not realised that the photographs would be admissible as part of the hearing, and, if she had realised, they could have produced photographs, as had been done for court. Ms McGlynn said they should have visited in the last week or so to assess the state of the development. She said she would now take this up with the manager of the service.

Ms Mullen said in summary that based on what was before the Tribunal there was no evidence of failure to comply with the Factor's duties. The Legal Member referred Ms Mullen to an email from the Homeowner to the Factor's Bernard Singleton dated 23rd May 2013, whereby the Homeowner, following a complaint about the service, was commenting on her delight at activities being carried out on the estate, with her front and back grass having been cut, the gutters cleaned and the bin area looking better. She stated that she would have no issue paying the service charges if she could see the benefits of what she was paying for, and that she hoped the service would continue. The Homeowner also wrote that she was still to receive the detailed invoice of what is included in the charges. Ms Mullen noted this but made no further submission in this regard.

Findings in Fact

16.

- (i) The Homeowner has been the joint proprietor of the Property since 17th November 2004.
- (ii) The Property is registered in the Land Register of Scotland under Title Number REN100578.
- (iii) The Property is a first floor flat in an ex-local authority block of four properties.

- (iv) The Factor became a registered Property Factor with registration number PF000152 on 12th December 2012. The Factor's duty under section 14(5) of the Act to comply with the Code arises from that date.
- (v) The Factor provides grounds maintenance and refuse duties to the development of which the Property forms part.
- (vi) The Factor provides a general property maintenance service only if issues are reported to the Factor by the homeowners.
- (vii) The Homeowner made a formal complaint against the Factor in May 2013. This complaint was not passed to the second stage by the Factor until November 2014. No further contact was made by the Factor until April 2015.
- (viii) The Homeowner made a complaint against the Factor on 10th November 2016 complaining of harassing telephone calls with regards to monies owed to the Factor and the services provided by the Factor. The complaint was investigated and was not upheld by the Factor. The Homeowner was informed of this by letter dated 16th November 2016. The Homeowner took the matter to the second stage of the Factor's complaints procedure on 27th February 2017, expressing concern about the current financial situation, the level of caretaking services and the written statement of services. The complaint was investigated and was not upheld by the Factor. The Homeowner was informed of this by letter dated 2nd March 2017.
- (ix) Decree for Payment of the sum of £2,837.36 with expenses and 8% interest was granted in favour of the Factor against the Homeowner and her co-owner on 2nd February 2016 at Greenock Sheriff Court. A Time to Pay Direction was made with instalments of £80 per month.
- (x) The Homeowner's account continues to be in arrears with a balance of around £600.
- (xi) There was no evidence before the Tribunal that the Factor has communicated with the Homeowner in any way which is abusive, intimidating or threatening, other than giving reasonable indications that the Factor may take legal action.
- (xii) The Factor is in the process of introducing new systems in respect of the factoring services it provides.
- (xiii) The Factor has recommended that the Homeowner take advice on debt related matters. The Homeowner has refused to avail herself of any such advice.

- (xiv) The Factor has failed to provide sufficient information to the Homeowner in writing at least once a year to provide a detailed financial breakdown of charges made and a description of activities and work carried out.
- (xv) The Factor has not failed in carrying out its property factor duties.

Determination and Reasons for Decision

17. The Tribunal took account of all the documentation provided by parties and the oral submissions and evidence led on behalf of the Factor.

Failure to comply with sections 2.2 and 4.9 of the Code

18. The Tribunal did not find that the Factor had failed to comply with these sections of the Code. The Tribunal appreciated that the Homeowner feels that she has been harassed and intimidated, however, that is the Homeowner's perception rather than the fault of the Factor. The Tribunal considered that the Factor had attempted to assist the Homeowner in recommending advice on matters related to debt.

Failure to comply with section 2.5 of the Code

19. The Tribunal found that the Factor had failed to comply with this section of the Code, by failing to respond timeously and as quickly as possible to the Homeowner's complaints and enquiries, over a considerable period since 2013. The Tribunal took into account the three letters produced by the Factor and referred to by Ms Mullen, that indicated that the Factor had dealt with the complaints procedure timeously on two occasions in 2015 and 2016, and a further enquiry from the Homeowner that was dealt with promptly in 2017. The Tribunal considered that the letters merely provided an indication that on three occasions the Factor had responded timeously. The Tribunal took into account the evidence lodged by the Homeowner of considerable delays in 2013, 2014 and 2015, which delays were conceded by Ms Mullen, having taken instructions. The Tribunal also took into account the written submission from the Homeowner dated 8th July 2017, that referred to a further delay of almost a month that occurred after discussion when the Factor had informed the Homeowner that the management fee was changing to a monthly charge. The Tribunal took into account Ms Mullen's submission that the delays were historical and that the Factor's processes had now changed and communications were made timeously; however, the evidence of Ms McGlynn, who was candid, and a credible and reliable witness, was that the Factor's staff were trying to make changes, but the system was open to error, due to the use of manual records and two separate systems of recording calls. The Tribunal took into account Ms McGlynn's evidence that the system could be much improved. On balance, the Tribunal found that, although the Factor was making admirable attempts to improve its systems, the Factor had not responded timeously and dealt with enquiries and complaints as quickly as possible, in dealing with the Homeowner.

Failure to comply with section 3.3 of the Code

20. The Tribunal found that the Factor had failed to comply with this section of the Code. The Tribunal was not persuaded that the letter dated 22nd June 2015, and referred to by Ms Mullen, satisfied the requirements of the Code. There was no evidence before the Tribunal to show that a detailed financial breakdown of charges made and a description of the activities and works carried out was issued to homeowners at least once a year. The Tribunal was surprised at the lack of detail on the Factor's invoices. It was not clear to the Tribunal how a homeowner is to know what services they are receiving. The witnesses for the Factor did not seem to know if or when an individual homeowner was provided with information regarding the services to be carried out at a particular development. The Written Statement of Services is generic and the services described therein are not provided to every development. The invoices issued do not provide the level of clarity and transparency envisaged by section 3 of the Code.

Failure to carry out the section 17 duties

21. The Tribunal did not find that the Factor had failed in carrying out the Property Factor's duties in terms of section 17 of the Act. In the absence of the Homeowner, the Tribunal, though satisfied that the photographs were taken at the Homeowner's property, had no information as to when most of the photographs had been taken, or the current state of the development.

The Tribunal made an observation that the photographs portrayed a dismal picture of the area surrounding the development at the particular time that they were taken. There was an insufficiency of evidence to indicate that the problems were due to any failure in the caretaking services provided by the Factor, but the photographs certainly raise questions as to the level of service being provided, particularly given the significant charges made for the factoring services.

The Tribunal was concerned that a roof repair that was supposed to be carried out in February, which had been delayed due to bad weather, had not yet been carried out.

The Tribunal was surprised that no visit had been made to the development by the Factor's staff in advance of the hearing, and no photographic evidence was provided to the Tribunal to indicate the current state of the development. The Factor's staff ought to have been well aware that the Homeowner had submitted photographic evidence as part of her Application, and it would have been helpful to have had more recent evidence in this regard.

The Tribunal supports the efforts of the Factor to improve the full range of their factoring services and appreciates the candour of their witnesses in accepting that matters could be improved.

Proposed Property Factor Enforcement Order (PFEO)

22. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO.
23. The Tribunal proposes to make a PFEO requiring the Factor to carry out the following within three weeks of the date that the PFEO is issued:
- (i) Write a letter of apology to the Homeowner for their failure in relation to responding timeously to enquires and complaints, and their failure to provide a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for;
 - (ii) Provide the Homeowner with a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for, from 2013 to date;
 - (iii) Pay the Homeowner from their own funds the sum of £100, to reflect the strain and anxiety experienced by the Homeowner over the lack of compliance with the Code.

Right of Appeal

24. 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.

Legal Member and Chairperson

1st June 2018