Housing and Property Chamber
First-tier Tribunal for Scotland

Decision

Section 17 and 19 (3) of the Property Factors (Scotland) Act 2011 ("the Act") and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference numbers: FTS/HPC/PF/24/5709 and FTS/HPC/LM/25/0488

Re: 11/3 King's Meadow, Edinburgh EH16 5JP and King's Riding Estate, off Peffermill Road, Edinburgh, EH16 5JP ("the Property")

The Parties:

Ms Emma Wynn and Ms Megan Wynn, 11/3 King's Meadow, Edinburgh EH16 5JP ("the Applicants")

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

Tribunal Members:
Martin J. McAllister, Solicitor, (Legal Member)
Andrew McFarlane, Chartered Surveyor, (Ordinary Member)
(the "tribunal")

Decision

I) The Respondent has breached the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021 and has failed to comply with the property factor's duties.

II) The tribunal proposes to make a property factor enforcement order ("PFEO") requiring the Respondent to
(a) pay the sum of ONE THOUSAND THREE HUNDRED POUNDS (£1300) to the Applicant and
(b) provide copies of all electricity invoices on a list prepared by the Applicants and submitted to the Respondent within fifteen days of service of the Decision and the PFEO.
(c) relieve the Applicants of any liability for payment of the replacement lock of the services cupboard door.
(d) relieve the Applicants of any liability for the insurance excess referred to in the applications.

The PFEO requires to be complied with within forty two days of service of the decision and PFEO on the Respondent.

Background

1. These are applications by the Applicants in respect of the Property in relation to the Respondent's actings as a property factor. The applications are in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act).

2. There are two applications: one relating to the residential unit at 11/3 King's Meadow, Edinburgh (FTS/HPC/PF/24/5709) and the other relating to the common areas of the development in which the residential unit is situated (FTS/HPC/LM/25/0488).

3. The application 5709 alleges that the Respondent has failed to comply with Sections 1,2,3,4,5,6, 11 and 12 of the Overarching Standards of Practice, Sections 1.2, 2.1,2.4,2.6,2.7,3.1,3.2,4.3,4.4,4.6,4.11,6.4,6.9,6.10, 6.12 and 7.1of the 2021 version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code").It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act. The application was dated 12 December 2024 and was accepted by the Tribunal for determination on19 February 2025.The application was accompanied by a number of documents.

4. The application 0488 alleges that the Respondent has failed to comply with Sections 2,3,5,6, and 11 of the Overarching Standards of Practice, Sections 2.1,2.4,2.7,3.1 and 3.2 of the Code. It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act. The application was dated 3 February 2025 and was accepted by the Tribunal for determination on 19 February 2025. The application was accompanied by a number of documents.

5. On 8 July 2025, the Respondent emailed the Tribunal and stated: "We confirm we do not intend to attend the hearing and wish for our written submissions to be relied on."

6. A case management discussion was held by teleconference on 24 July 2025. The Applicants participated and there was no appearance by the Respondent.

7. Subsequent to the case management discussion, the Applicants submitted written representations and the Respondent confirmed that it did not want to participate in a hearing.

The Hearing

8. A Hearing was held in George House, Edinburgh on 21 October 2025. The Applicants were present and participated.

9. At the case management discussion, the Applicants had helpfully set out some useful background information about the Property.

10. The Applicants purchased 11/3 King's Meadow, Edinburgh in January 2022. It is a flat situated in a three -storey block of six flats with two flats situated on each floor. There is no lift. The development of King's Riding Estate consists of three blocks, each containing six flats, which was built in 1995. There are dedicated parking spaces for each residential unit. The development contains hard and soft landscaping and there are whirlygigs for clothes drying. There are no exclusive garden areas for proprietors. The Respondent manages the maintenance of the common areas within the development. This includes cleaning of the common areas within each block of flats as well as gardening.

11. Both parties had submitted written representations and productions. The Applicants had produced a consolidated inventory of productions.

Preliminary Matters

12. In their written submissions, the Applicants had provided information on various issues which they had with the Respondent and had then made representations on why, in their view, the Respondent had failed to comply with certain paragraphs of the Code in respect of these issues. On 6 October 2025, the Applicants made further written submissions which provided additional information on issues already referred to in the applications. These further submissions also referred to new issues.

13. The applications were accepted for determination on 19 February 2025. The tribunal determined that it would be inappropriate to deal with any alleged breaches of the Code or failure to carry out the property factor's duties which occurred after the date of acceptance of the applications. It noted, however, that some information provided by the Applicants and relating to a period after that date may be relevant if it referred to a course of conduct which was present before and after 19 February 2025.

14. The Respondent's written submissions are dated 18 June 2025. They are set out in a format which addresses each issue raised by the Applicants. In relation to some issues, the Respondent's invite the Tribunal not to "include" certain issues "in the case." The basis of this is that the Respondents submit that, if certain issues were not included in its Stage 1 and Stage 2 complaints process, they should not be open for determination.

15. The tribunal considered the position of the Respondents. The statutory provision is contained in Section 17 of the Act:

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

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

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

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

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

16. The tribunal considered the documentary evidence provided by the Applicants. They had intimated to the Respondent their concerns about each issue referred to in the applications and their position is that, notwithstanding such intimation, the Respondents had failed to resolve matters. The statutory position is clear. There is no requirement that a homeowner must comply with the particular complaints process of a property factor. Before making an application, a homeowner must make intimation to a property factor. Thereafter, if a property factor fails to resolve the matters raised to the satisfaction of a homeowner, an application can be made to the First-tier Tribunal.

17. The issue was considered in the case of Plimbley v Edinburgh Block Management (UTS/AP/24/0041). In that case, the First-tier Tribunal determined that the homeowner had not fully complied with the complaints process of the property factor and had only engaged in the first step. The property factor had argued that the communication it had received from the homeowner had been an expression of concern and not a complaint. In the Upper Tribunal, Sheriff Dunipace did not agree with the First-tier Tribunal and determined that the correspondence from the homeowner to the property factor set out what the issues were and that the matters exercising the homeowner would have been clear. Sheriff Dunipace made reference to Section 17 (3) (b) of the Act which refers to a property factor's "failure to resolve a concern." The Upper Tribunal made clear that it was the communications between a homeowner and a property factor which were important and not the rigid following of a complaints procedure.

18. In the case before it, the tribunal determined that it would be appropriate to address each issue contained in the applications since it was satisfied from the documentation submitted by the Applicants that the Respondent had been made aware of their concerns.

19. The tribunal determined that it would be appropriate to deal with the applications together and that it would be appropriate to deal with each issue in the order set out by the Applicants.

Findings in Fact

20. The Applicants are the proprietors of the Property.

21. The Respondent is a property factor and it manages the development of which the Property is part.

22. The Respondent incorrectly charged the Applicants in respect of services provided by All Round Cleaning, a contractor.

23. The Respondent gave incorrect information to the Applicants in respect of the invoice from All Round Cleaning.

24. The Respondent failed to timeously resolve the issue with regard to the All Round Cleaning invoice which remained on the Applicant's account longer than it should have.

25. The Respondent incorrectly charged the Applicants for a gas invoice.

26. The Respondent has made a partial refund of the incorrectly charged gas invoice.

27. The Respondent failed to timeously resolve the issue with regard to the incorrect charge for a gas invoice which remained on the Applicant's account longer than it should have.

28. The Applicants were charged a sum in respect of an insurance excess arising from reinstatement works to a flat in Block 5 following a leak in the roof.

29. The damage caused to the roof which required repair was reported to the Respondent on 3 November 2021, prior to the Applicants' ownership of the Property.

30. The Respondents had knowledge of the roof repair prior to the Applicants' ownership of the Property.

31. Prior to ownership of the Property, the Applicants were not advised of the damage to the roof of block 5 and the potential liability for costs in relation thereto.

32. The Title sheet of the Property does not include an obligation for the owner of the Property to be responsible for repairs to Block 5 in the Development.

33. The Respondent failed to provide a copy of a grounds maintenance schedule which had been requested by the Applicants.

34. The Respondent delayed in providing the Applicants with copies of invoices for grounds maintenance.

35. The Respondent failed to provide a document vouching attendance of the grounds maintenance contractor.

36. The Respondent failed to properly take into account matters raised by the Applicants in relation to what they considered to be charges which were in dispute.

37. The Respondent failed to properly deal with the issue of the broken service cupboard and delayed in having the matter resolved.

38. The Respondent lost the key for the service cupboard and improperly charged the Applicants for a share of the cost for replacement of the lock.

39. The Respondent failed to comply with the response times set out in its written complaints procedure.

40. The Respondent failed to respond timeously to concerns raised by the Applicants.

41. The Respondent applied a policy of rounding up contractor and utility invoices.

42. The Respondent failed to deal adequately with the provision of electricity accounts requested by the Applicants.

43. The Respondent failed to disclose information on the tendering process for the appointment of a supplier for electricity.

44. The Respondent failed to provide information on whether it had been paid commission in relation to the contract for the supply of electricity.

45. The Respondent failed to deal adequately with the provision of information to the Applicants in relation to the ceasing of the fixed tariff electricity account for the development and failed to explore any means to mitigate the consequent increases in charges.

46. The Respondent changed the level of its delegated authority without reference to the Applicants.

47. The Respondents instructed solicitors to pursue the Applicants for debt when some matters included in the sum sought were in dispute and still subject to the Respondent's complaints process.

Reasons

48. The tribunal had regard to the written representations submitted by each party, the documentation lodged by the parties and the oral evidence provided by the Applicants.

49. It is useful to set out the various paragraphs of the Code which the Applicants allege the Respondent has failed to comply with:

Overarching Standards of Practice

OSP1. *You must conduct your business in a way that complies with all relevant legislation.*

OSP2. *You must be honest, open, transparent and fair in your dealings with homeowners.*

OSP3. *You must provide information in a clear and easily accessible way.*

OSP4. *You must not provide information that is deliberately or negligently misleading or false.*

OSP5. *You must apply your policies consistently and reasonably.*

OSP6. *You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.*

OSP11. *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*

OSP12. *You must not communicate with homeowners in any way that is abusive, intimidating or threatening.*

Paragraphs

1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

- *within 4 weeks of the property factor:-*

  agreeing in writing to provide services to them; or

  - *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*
  - *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
  - *at the earliest opportunity(in a period not exceeding 3 months) where:*
  - *substantial change is required to the terms of the WSS.*

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

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 that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

The Code requires that:

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

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

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 as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

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

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 and fee income.*

4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.

4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.

4.6 A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe.

4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).

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 this 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. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

6.10 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the contract.

6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*

- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*

- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*

- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*

- *Where the property factor provides access to alternative dispute resolution services, information on this.*

50. The Applicants helpfully set out their complaints dealing with each issue in turn in their written submissions and the tribunal followed the Applicants' headings when considering the applications

Alleged Improper Charge All Round Cleaning Contractor

51. The facts are not disputed.

52. In the quarterly invoice for the period November 2023 to February 2024, the Applicants were charged £7.80 for cleaning for March 2022 in respect of the cleaning contractor, All Round Cleaning. This was the month when a new cleaning contractor took over the work and All Round Cleaning only attended for one week and the charge was for the whole month.

53. The Applicants raised the matter with the Respondent's employee responsible for the development. Nine weeks later he responded and stated that the contractor "was on site until the end of March 2022. This charge is due for payment." The Applicants also did not get an explanation of why the charge had been made almost two years after the event.

54. Subsequently, the development manager conceded that the charge should not have been made and he apologised and stated that it would be corrected on the next invoice.

55. The Applicants did not receive a credit and the charge formed part of the Respondent's threat of late payment charges and legal action.

56. Despite assurances from the Respondent that the matter would be dealt with and a credit applied to their account, the matter was still unresolved when the application was submitted to the Tribunal.

57. In its representations of 27 May 2025, the Respondent conceded that its employee had given incorrect information to the applicants and that an explanation and an apology had been given to the Applicants when they had raised the matter in the complaints process. The representations state that Respondent notes that, despite its undertaking to resolve the matter when it responded to the complaint, an appropriate credit had not been made and would be dealt with in the August invoice. The Applicants confirmed that this had been done.

58. The tribunal considered that there was no evidence that the Respondent had been dishonest and that it had been negligent in making the original charge and then, when brought to its attention, had been negligent in stating that the contractor had carried out work for the whole of March 2022. The matter was compounded by the Respondent failing to make the appropriate credit to the Applicants' account when it had accepted that it had made a mistake. The Respondent had also delayed in providing a response, albeit incorrect, when the matter was first raised by the Applicants.

59. The tribunal had regard to the representations made by the Respondent and determined that there was a breach of OSP 4, OSP6, OSP11, 2.1, 2.7 and 3.1 of the Code.

Incorrect Charge for Gas

60. It was a matter of agreement that an incorrect charge for gas amounting to £6.09 was applied to the Applicants' quarterly invoice for May- August 2022. This was stated be for a charge for gas. It was accepted that the development does not have a gas supply.

61. The Applicants raised the matter with the Respondent's employee responsible for management of the development on 27 December 2022 and did not receive a response.

62. The Respondent intimated that it would apply a late payment charge because the Applicants had not made payment.

63. The Applicants submitted details and supporting evidence that they had raised the matter with the Respondents on numerous occasions.

64. On 25 September 2023, the Applicants intimated to the Respondents that they wanted to put their account in dispute, partly because of the issue of the unresolved gas account.

65. On 27 October 2023, the Respondents advised the Applicants that the relevant amount had been refunded on their August- November 2022 invoice. The Applicants position was that the wrong sum had been refunded and that, at that time, they were still owed £4.53.

66. In response to the Applicant's complaint on the matter, the Respondents said that the invoice was actually for an electricity account and agreed to refund £4.53 as a gesture of goodwill.

67. The Applicants requested a copy of the electricity invoice. This has never been received by them. They confirmed that the sum of £4.53 was credited to them in August 2024.

68. In its representations, the Respondent stated that there had been an invoicing error and that the credit of £4.53 would be applied to the August 2025 account. The representations state that late payment charges have either been refunded or would be. The Respondent stated that the sum of £4.53 was in respect of an electricity charge.

69. In its representations, the Respondent stated that the charge had been in respect of another development and that it had changed internal processes so that charges would be allocated to the correct development.

70. The tribunal had regard to the representations of the Respondent and the oral evidence and written representations of the Applicants.

71. The tribunal did not consider that there was evidence of the Respondent being dishonest in relation to this matter. The Respondent was negligent in making the initial charge and thereafter took too long to resolve the issue. This would have been straightforward for it to do. The Respondent's development manager delayed in dealing with the matter and responding to the Applicants' concerns and then did not credit the correct sum to their account. The Respondent applied late payment charges in respect of this charge and the tribunal considered this to have been unacceptable. The failure of the Respondent's development manager in the matter of the incorrect charge can reasonably be interpreted as demonstrating a deficit in appropriate training. The Respondent's position is that the charge of £4.53 was in respect of an electricity charge but they never made available to the Applicants, a copy of the relevant invoice, despite having been asked to do so.

72. In considering all matters, the tribunal determined that the Respondent had failed to comply with OSP4, OSP6, OSP11, 2.1, 2.7 and 3.1of the Code.

Various Electricity Invoices

73. The factual position is clear and is not disputed. The Applicants asked for copies of electricity invoices which related to charges which featured in the November 2023-February 2024 quarterly invoice. The Respondent's development manager delayed in responding to their request for this vouching and copy invoices were not received until almost nine weeks after they had been asked for. Three invoices were omitted and the Applicants engaged with the Respondent's complaint procedure and the missing invoices were provided some four months after they had been requested.

74. The Applicants did not make payment in respect of the electricity charges for which invoices had not been provided and this attracted late payment charges and was included in the Respondent's threat of legal action for non -payment.

75. The Respondent's representations state that it cannot provide an explanation for its property manager's delay in providing the invoices. The representations do not address the issue of late payment charges or the inclusion of this "non payment" in the threat of legal action for debt.

76. The tribunal did not consider that there was evidence of the Respondent being dishonest in relation to this matter. The Respondent was negligent in not providing the copy invoices timeously and it did not respond in a reasonable manner to the Applicant's request for information and to enquiries which they had made. This should have been a straightforward matter for the Respondent to deal with.

77. In considering all matters, the tribunal determined that the Respondent had failed to comply with OSP6, OSP11, 2.1, 2.7 and 3.1 of the Code.

Insurance Excess

78. The Applicants' May- August 2022 invoice showed a charge for a share of an insurance excess. Since they had no knowledge of any insurance claim relating to the Property or the development, they raised the matter with the Respondent's development manager.

79. The Applicants were advised that the excess was in respect of a claim following a leak in the roof of block 5, not the block in which the Property is situated. The Applicants were advised that the damage to the roof was reported on 3 November 2021.

80. The Applicants' position is that the damage to the roof occurred prior to their ownership of the Property and that they were not made aware of it prior to the purchase settling.

81. In their written representations, the Applicants refer to the Respondent's written statement of services which sets out the process prior to purchase and the property factor's obligation to advise a prospective purchaser (through the solicitors acting in the purchase and sale) of any debt or pending projects.

82. The Applicants also state that they have not been advised of when the work took place and that this amounted to lack of transparency.

83. The Applicants also make reference to their title and do not consider that the terms of the burden provisions allow for them to be responsible for a share in the costs of maintenance of other blocks in the development.

84. The Respondent's written representations on the matter do not focus on the issues raised by the Applicants. They state that the development schedule states that "insurance excesses will be charged equally over the policyholders." The representations state that the invoice from Robb Reinstatement Services was

raised on completion of the works and was after the commencement of the Applicants' ownership of the Property.

85. The tribunal noted that the Applicants position was that they were not due to pay a share of the insurance excess for two reasons: the first is that the event giving rise to the charge occurred prior to their ownership and the second is that they were not obliged to pay a share of the insurance excess as a consequence of a burden in their title.

86. The Respondent's position is that the invoice was raised during the Applicants' ownership of the Property making them liable for a share and that, according to the Development Schedule, any insurance excess requires to be charged equally to all policyholders.

87. The tribunal considered what an insurance excess is. It arises when a repair is done to a property which is covered by an insurance policy. Often, there is an excess which effectively means that that the property owner requires to pay a set amount of the cost of the repair before an insurer pays the balance.

88. In the particular circumstances of the Respondent's claim on the Applicants, the Respondent had knowledge of the repair on 3 November 2021 which was before the Applicant's purchase of the Property in January 2022. The normal course of action when a factored property is sold is that the solicitor acting for a seller makes enquiry of the property factor seeking information on what repairs are in contemplation and whether there is any obligation on the proprietor of the property to make payment to any party. Costs can then be apportioned at the date of sale.

89. The Respondent had knowledge of the roof repair prior to the sale to the Applicants and it is reasonable to assume that this matter should have been taken into account when it was making representations to the seller's solicitor. It may have been confident that the insurer would pay for the repair and, if that was the case, it would have had knowledge of the certainty of an insurance excess which would have been require to be paid at some point in the future. Since this was in respect of a matter which arose prior to the Applicants' ownership of the Property, the tribunal considered that this should not have been charged to them.

90. The tribunal also considered the Applicants' argument that they have no responsibility for repairs to Block 5. The Deed of Conditions registered on 25 July 1996 states the developer's intention to erect three tenements of flats. It gives each flat owner a right of common property to the common parts of the tenement where the flat is situated. The Deed of Conditions registered on 30 October 1996 provides for each flat in the development of three tenements to have an obligation to pay a one eighteenth share of the cost of maintenance of the hard and soft landscaped areas of the development.

91. Put simply, if a roof had to be replaced in the tenement where the Property is situated, the six proprietors in the tenement would require to pay for this and the proprietors of the flats in the other two tenements would have no liability. A repair had to be carried out on Block 5 and the costs were met by the insurer albeit with

an insurance excess. Such insurance excess should have been paid by the proprietors of Block 5.

92. It is understandable that there is an insurance policy covering the whole development and that the Respondent's written statement of services may include a statement that any insurance excess requires to be paid by all proprietors. This cannot override the terms of the title.

93. The tribunal did not consider that there was evidence of the Respondent being dishonest in relation to this matter. The Respondent had delayed in providing information to the Applicants.

94. The Respondent did not follow the pre-sale protocol in provision of information to prospective purchasers but, more fundamentally, it failed to have regard to the title provisions relevant to the Property and was negligent in this regard.

95. The tribunal determined that the Respondent had failed to comply with OSP6, 2.1,2.4,2.7, 3.1 and 3.2 of the Code.

Late billing and failure to provide various electricity invoices

96. The Applicants' invoice for the quarter ending February 2024 included electricity charges from a range of dates in 2022 and 2023. The particular invoices were not on the Respondent's online portal and the Applicants raised a dispute with the Respondent on 4 March 2024.

97. The Applicants said that there had been a history of improper charges and that it was important for them to have vouching for what was being charged, particularly considering that some charges appeared to be two years old.

98. Despite repeated requests for information on this matter, the Applicants did not receive the requested invoices. The tribunal noted from the documentation submitted by the Applicants that the Respondent delayed in responding. It also noted the response to the Applicants' complaint when the Respondent said that all invoices should be available on the portal. The complaint was made because the invoices were not available there.

99. The tribunal did not consider that there was evidence of the Respondent being dishonest in this matter but it certainly displayed a lack of transparency. The information was not on the Respondent's online portal and the Respondent delayed in providing a substantive response to the request for the information and then failed to provide it.

100. The tribunal determined that the Respondent had failed to comply with OSP2, OSP3, OSP6, OSP11, 2.1, 2.7,3.1 and 3.2 of the Code.

Grounds Maintenance Attendance

101. The Applicants' concerns with regard to grounds maintenance are concerning the quality of the work carried out by the contractor and its frequency of attending and also the failure of the Respondent to provide information and documentation in relation to the contract for grounds maintenance.

102. The Applicants considered that the gardening and litter picking work was not being carried out to an acceptable standard. They asked the development manager to provide evidence of when the contractor had attended. In simple terms, the Applicants disputed that the contractor had attended when it should. The Applicants raised the matter with the Respondent on 9 February 2024 and raised concerns about the winter gardening service for the months of December 2023, January 2024 and February 2024. Thereafter, they raised concerns about March 2024. The Applicants said that they believed that no work was done during these periods. They said that they believed this because of the state of the bushes and shrubs and the litter and debris in the development. They said that they worked from home and were not aware that the contractor had been on site during these months.

103. In response to the concerns raised, the Respondent cited two dates in January and February 2024 when the gardening contractor had attended. The Applicants disputed this.

104. The Applicants referred to the FAQ section on the Respondent's website which states in relation to garden maintenance: *"Our suppliers are expected to complete a schedule confirming works undertaken during each visit which is then provided to us to review and then upload to James Gibb+."* The Applicants said that the information in relation to the grounds maintenance for the development never appeared on the portal. They said that they asked the development manager to give them a copy of the schedule which he failed to do and that he also did not provide information on visits for December 2023 and March 2024 which they had asked for.

105. The Applicants raised the matter as a complaint and the Respondent informed them that "the contractor has confirmed their attendance on a monthly basis." The complaint response also states that "there is no requirement for them to submit proof of attendance after each visit." The Applicants' position was that this was contrary to what was stated in the Respondent's website.

106. In the complaints process, the Applicants submitted photographs of the landscaped areas of the development which showed litter. Photographs were also submitted to the tribunal.

107. In their written representations, the Respondent disputes that evidence has been provided which would show non -attendance of the contractor for the full winter period concerned. They submit that litter would gather between visits. The Respondent refers to a photograph which it states was taken by the development manager on 17 January 2024 which shows the landscaped area to be in a reasonable condition. The representations also refer to the development manager's site report from April 2024 which shows the landscaped areas to be maintained with the exception of one bed which required attention. The

Respondent also relied on the minutes of the AGM which was held on 31 January 2024. The representations make reference to the minutes recording that *"with regard to the gardener overall they are happy with the service provided."*

108. The Applicants said that many homeowners had been unhappy with the gardening service and that the contractor had now been put on notice. They referred to the AGM minutes where the development manager agreed to put a sign in sheet in the development for the contractors to sign when they attended. Their position was that this would not have been necessary if the contractors had been attending as they should. They also stated that the minutes refer to inadequate litter picking.

109. The tribunal considered that it was difficult to determine whether the grounds had been adequately maintained during the winter period of 2023/2024.

110. The tribunal was disappointed that, in its representations, the Respondent had chosen not to address the issue raised by the Applicants in relation to being provided with evidence that the contractors had attended. The Respondent had stated on its website that such contractors would require to complete a schedule showing what work had been done and information on dates of attendance. The tribunal drew its own conclusion from the Respondent's failure to produce such a schedule. It is reasonable to conclude that such a schedule does not exist. It is a reasonable assumption that this demonstrates the Respondent's failure to adequately supervise the contractors. The Respondent had failed to comply with the reasonable request of the Applicants to be provided with evidence of attendance of the contractors.

111. The tribunal determined that, in the non -provision of evidence of attendance of the contractors and in its failure to ensure adequate supervision of them, the Respondent had failed to comply with OSP6, OSP11, 2.4 and 3.1 of the Code.

Above and Beyond Cleaning

112. Above and Beyond Cleaning was the cleaning contractor from March 2022.The Applicants' position is that they had raised concerns with the Respondent about the standard of cleaning and the contractor's failure to meet their contractual obligations. They state that their concerns were raised with the development manager in April 2023 and May 2023 but that matters did not improve.

113. In June 2023, the Respondent balloted the homeowners and asked if the cleaning contractors should be removed. In its representations, the Respondent stated that a ballot was issued to homeowners on 12 June 2023 and the tribunal had a copy of the document entitled "Stairwell Cleaner Ballot." The form asked homeowners to indicate whether they were happy or unhappy "with the price and quality of the stairwell cleaning" and whether or not they would like the Respondent to seek quotes for a replacement contractor.

114. In its representations, the Respondent stated that the ballot was issued to the eighteen homeowners in the development and that six responses were received. Three of those were from homeowners in Block 11 where the Property is situated.

One response was from the Applicants who indicated that they were not happy with the contractor and the other two indicated that those homeowners were satisfied. The Respondents submitted copies of minutes of annual general meetings of homeowners which were held on 21 June 2022 and 31 January 2024. The earlier minutes make no reference to the cleaning contractors and the later minutes state: “The quality of the cleaning and grounds maintenance was discussed. Overall, the owners were happy with the work. However, a few points were raised.”

115. The Applicants said that they were still unhappy with the standard of cleaning and submitted photographs to the Respondent which they said supported their position that cleaning of the stair area was not being done properly. They said that they were ignored by the Respondents.

116. The Applicants engaged with the Respondent’s complaints process and, in their written representations, expressed concern at the nature of the response where the Respondent’s Senior Property Manager referred to “his close working relationship and personal experience with the cleaning company, which appeared to seek to dismiss or diminish our concerns.” The representations state that the Applicants consider that this demonstrates a breach of paragraph 7.4 of the Code which refers to investigations being carried out in a fair and unbiased way. The Representations state that the Stage 2 repairs response also was dismissive of their concerns.

117. The Applicants said that they were not provided with the result of the ballot in a timeous manner.

118. In relation to the specification for cleaning, the Applicants said that the Respondent had produced three different versions. One was provided to them, another was uploaded to the Respondent’s portal which contained fewer duties than the one provided to the Applicants. The Applicants said that they had not been advised of any variation of the cleaning contract. The Applicants said that, in the Stage 2 response in the complaints process, they were provided with another version which did not include monthly cleaning of windows.

119. The Applicants said that they withheld payment for cleaning charges in the hope that this would encourage the Respondent to resolve the issue.

120. In its representations, the Respondent states that the majority of homeowners were satisfied on the standard of the cleaning service but it accepts that a letter with the ballot results should have been issued to the Applicants.

121. The tribunal considered matters. Whether cleaning is carried out to a satisfactory standard is a subjective determination and the tribunal could make no judgement on whether the internal parts of Block 11 were cleaned in an acceptable manner.

122. It is unfortunate that the Respondents chose not to address the issue raised by the Applicants in relation to the three different specifications for cleaning. In the absence of such representations, the tribunal accepted that this did not evidence

that the Respondent was careful and diligent in the way it dealt with the cleaning contract. If it is the case that the cleaning had not been carried out to a satisfactory standard, it would hardly be surprising because of such confusion in the specification. The tribunal noted that the Respondents accepted that it had not sent a copy of the ballot results to the Applicants.

123. In the whole matter of the cleaning contract, there was no evidence that the Respondent had been dishonest or unfair but rather had been negligent in the way it dealt with the contract and responded to the concerns of the Applicants.

124. Whilst the tribunal could not make a judgement on whether the cleaning contractor had carried out its work in a proper manner, there was no evidence that, having received notice of the Applicants' concerns, the Respondent had made contact with the contractors with regard to the alleged unsatisfactory work.

125. The tribunal determined that the Respondent had failed to comply with OSP4, OSP6, OSP11, 3.1 and 6.12 of the Code

Alleged Improper Legal Action 1

126. The Applicants state that the Respondent's quarterly invoice for the period November 2023 -February 2024 contained items which they did not agree with and they disputed them with the Respondent. They said that they paid the invoice after deduction of the disputed items.

127. On 27 March 2024, the Respondent wrote to the Applicants and stated that their outstanding balance was £226.77 and that none of the items comprising this amount were in dispute. The Applicants did not consider this to be the case and had emailed the Respondent's development manager on 4 March 2024 setting out a breakdown of the disputed sums.

128. When the Applicants received the letter dated 27 March 2024, they contacted the Respondent and told it that the whole sum of £226.77 was in dispute. They said that the Respondent did not timeously respond to this.

129. The Applicants stated that they eventually received some information from the Respondent. On 20 May 2024, the Respondent's development manager accepted that he had not supplied all the information requested and admitting that a particular charge should not have been included.

130. On 21 May 2024, the Applicants received a letter from the Respondent's solicitors in which court action was threatened unless the sum of £226.77 was paid within seven days. The Applicants considered such a letter from an agent of the Respondent was threatening and intimidating in circumstances where the Respondent had not provided all the information which had been asked for and had accepted that at least one of the matters included in the sum of £226.77 was not properly charged. The Applicants said that the letter scared them.

131. In its representations, the Respondent states that "we accept that details of all disputes may not have been logged correctly under the system." In the

representations, the Respondent states that the balance on the Applicants' account had not been clear since June 2022 which predated the dates "quoted by the Applicants for disputes."

132. In its representations, the Respondent states that "it is clear that there has been confusion at the time on what should be classed as a valid dispute" but it does not accept that the solicitor's letter is threatening or intimidating.

133. The Respondent's representations state: "We do accept the communication from the Property Manager during these periods should have been clearer and clearer notes made on the system."

134. The tribunal accepted that the Respondent had breached its written statement of services and that, in its representations, it accepted this to be the case.

135. In the matter of the threat of legal action, there was no evidence that the Respondent had been dishonest or unfair but rather had been significantly negligent in the way it dealt with charges which the Applicants had disputed.

136. There was no evidence that the Respondent had provided information that was deliberately misleading but the Respondents displayed a high level of negligence in not dealing properly with queries raised and then instructing solicitors to threaten court action for non- payment of a sum which was not due. The non- provision of information and the instructions to its legal agents constituted a breach of OSP4 and OSP6.

137. The Respondent had not responded timeously to enquires made by the Applicants about charges and breached OSP11.

138. The letter of the Respondent's solicitor sought payment for a sum not due and, in the absence of payment, threatened legal action. The letter should not have been sent but the tribunal did not consider that its terms were abusive, intimidating or threatening.

139. The Respondent has breached paragraphs 2.1, 2.7, 4.3 and 4.11 of the Code for the reasons stated in the preceding five paragraphs.

Issue with the broken service cupboard door.

140. The Respondent made no representations on this matter because it said that the issue had not been included by the Applicants in the complaints process and it invited the tribunal to dismiss this part of the Application.

141. The tribunal was satisfied that the Respondent had received notification of the Applicants' concerns and that it was therefore appropriate to consider it.

142. Cabling work was carried out in the building of which the Property forms part. The Applicants said that the Respondents informed them that no authority had been given by it for such work to be done.

143. In connection with the cabling work, the contractors required access to a service cupboard in the building and had forced entry to it. After the work was completed, the cupboard was left unsecured because the lock was broken. The Applicants said that this was concerning because the cupboard contained electricity cables and fuse boxes etc. The Applicants considered that unsecured access to the cupboard was a safety concern.

144. The Applicants reported the issue to the Respondent's development manager on 7 November 2023 who advised them that he had asked the contractor to return and repair the door. The Applicants said that the contractor returned on 24 November 2023 but the necessary repair was not carried out and the door was left unsecured.

145. The Applicants said that they had persistently tried to get the Respondent to address the matter but that it remained unresolved and, in May 2024, the Respondent wrote to them requesting permission for CityFibre cables to be installed in the building.

146. The Applicants responded and advised the Respondent that the work had already been done and that they still awaited resolution of the non-secure cupboard door.

147. The Applicants said that, on 21 June 2024, the Respondent's development manager responded to an email which they had sent him on 20 December 2023 which had been about the cupboard door. The response stated that the development manager was "looking into" the issue.

148. The Applicants said that the door was eventually repaired and fitted with a new lock in October 2024.

149. The Applicants said that their concerns were that it took almost a year for the issue to be resolved and that the Respondent did not properly deal with their concerns. They also said that they thought that matters had been delayed because of the content of the development manager's report on an inspection which he had carried out on 9 April 2024. Paragraph 4.10 of the report states that the communal service cupboards were securely locked. The Applicants stated that on 9 April 2024, the communal service cupboard was clearly not secure.

150. The tribunal accepted that the Respondent had breached its written statement of services in relation to the timescale for responding to queries raised by homeowners. It had also failed to follow its complaints procedure.

151. The development manager's site report was inaccurate. It did not seem to the tribunal that this was an accidental error. The Respondent had been told about the insecure door and its property manager inspected the building on 9 April 2024. In this regard, the tribunal did not consider that the Respondent was honest when it prepared the site report. The tribunal determined that the Respondent had failed to comply with OSP2, OSP4,OSP6,OSP11and had failed to comply with paragraphs 2.1, 2.7,6.4,6.12 and 7.1 of the Code.

Further issue with service cupboard door

152. In additional representations made by the Applicants on 17 June 2024, they stated that there was a further issue. The door was reinstated at no charge to homeowners by the contractor which had been responsible for the original damage. Subsequent to that, the cleaning contractor could not access the cupboard to use the power socket situated there because there was no key made available.

153. The Applicants said that the Respondent had appeared to misplace the only key for the replacement door lock. The Applicants stated that they had raised the matter with the Respondent on 15 October 2024 but that the matter was not resolved. In February 2025, the Respondent's property manager conceded that it had not dealt with the complaint and promised to provide an update "in due course."

154. The Applicants stated that, during the period the matter remained unresolved, the Respondent would have been unable to record any meter readings during its quarterly inspections. The issue also gave problems for the cleaning contractor who could not use a mains powered vacuum cleaner.

155. The Applicants said that a locksmith replaced the lock on 24 April 2025 and told them that there was nothing wrong with the lock that he was replacing.

156. The Applicants advised the Respondent that they would not expect to pay for the replacement lock but that they were on the May 2025 invoice.

157. The tribunal noted that the applications had been accepted for determination on 19 February 2025. It required to consider whether matters arising after that date could be considered by it. In the particular circumstances of this issue, it determined that it could. The issue of the service cupboard continued after 19 February 2025 and it was appropriate that any matters after that date should be considered.

158. The tribunal did not consider that, in relation to the matter of the key and replacement of the lock, the Respondent was dishonest and unfair notwithstanding that it displayed incompetence.

159. The tribunal determined that the Respondent had been negligent in dealing with the information in relation to the locked service cupboard and the absence of a key. It had also failed to carry out its services in this regard using reasonable care and skill and in a timely way. The tribunal determined that the Respondent had breached OSP 4 and OSP 6.

160. The tribunal did not consider that the Respondent had failed to apply its policies consistently and reasonably, notwithstanding that, in dealing with this matter, it displayed incompetence.

161. The Respondent did not deal appropriately and timeously with regard to the issues raised by the Applicants in relation to the locked cupboard and the key. The tribunal was satisfied, on the evidence of the Applicants and the copy emails

submitted by them, that the Respondents had not responded appropriately to the Applicants on this matter and had breached OSP 11 and paragraphs 2.1 and 2.7.

162. The Respondent had clearly not applied its complaints handling procedure reasonably and had breached paragraph 7.1 of the Code.

163. The Respondent had not required to liaise with any third party, such as contractors, with regard to the key. Any problems in resolution of the matter was due to the Respondent's failure to act and the tribunal therefore did not determine that the Respondent had failed to comply with paragraphs 6.4 and 6.12 of the Code.

Failure to comply with written complaints procedure

164. Put simply, the Applicants' position was that the Respondent had failed to comply with its written complaints procedure. The Respondents did not make representations on this aspect of the Applicants' applications.

165. Elsewhere in this decision, the tribunal has recorded that the Respondent had failed to deal properly with matters of concern raised by the Applicants. Section 7.5 of the Respondent's written statement of services states that homeowners should receive a final response within twenty five days. The tribunal accepted that there was evidence that this was not adhered to.

166. The tribunal determined that the Respondent had failed to comply with OSP 11 and paragraphs 2.1, 2.7 and 7.1 of the Code and had failed to comply with the property factor's duties.

Overcharging of Items

167. The Applicants' position is that they were overcharged because of the Respondent's practice of "rounding up" charges from the cleaning contractor. In its submissions, the Respondent accepted that there had been rounding up and that "it was no longer an issue" in the development. The Respondent stated that it had arranged for a refund of £0.05 to be credited to the Applicants' account.

168. The Applicants' said that the Respondent's practice of rounding up was not applied consistently. In their written representations, the Applicants stated that the rounding up practice had meant that the Respondent had been able to collect £531.90 per quarter from the development for the cleaning bill, rather than the £531.72 charged by the cleaning contractor.

169. The tribunal considered matters. It did not consider that this was a deliberate attempt by the Respondent to take money it was not entitled to. The individual sums involved were *de minimis*. The Respondent has ceased the practice and, taking all matters into account, the tribunal did not find that, with regard to this issue, the Respondent had failed to comply with the Code

Electricity contracts 2024 and inaccurate invoices

170. The Respondent submitted that this issue should not be dealt with by the tribunal and that it should be dismissed because it had not been dealt with through its procedure for complaints. The tribunal was satisfied that the Respondent had been advised of the Applicants' concerns and that it was therefore appropriate to deal with the issue.

171. In the quarterly invoice sent to the Applicants by the Respondent, the communal electricity cost for the block in which the Property is situated was stated to be £255.85. This was for the period from April-June 2024. In their representations, the Applicants state this to be an increase of 451% on the account for the preceding quarter.

172. The increase in utility costs was a consequence of the ending of a fixed term contract with SSE in March 2024.

173. The Applicants stated that the Respondent's intention was to consolidate all electricity contracts in its property management portfolio to a single energy contract from 1 September 2024.

174. The Applicants said that they considered that the Respondent's desire to consolidate energy contracts across its whole portfolio was prejudicial to them. They had not been told in advance of this intention and had not been asked for their agreement. They said that the Respondent, in their view had not explored any interim options such as a short -term contract. In allowing their contract to fall into an expensive variable rate was in the Applicants' view, a demonstration of the Respondent's incompetence.

175. On 1 September 2024, the Applicants raised their concerns with the Respondent and its property manager responded stating that it "had no choice but to accept the out of contract rates" because a decision had been made to move all developments managed by the Respondent to a single energy contract effective from 1 September 2024.

176. On 7 October 2024, the Applicants requested information on the new electricity contract including tendering arrangements and whether any commission had been paid to the Respondent. No response has been received.

177. The Applicants stated that, in its response to the complaint raised by them, the Respondent referred to the lapse of the "current contract" at the end of August 2024. The Applicants' position was that this was inaccurate and misleading information since the contract with SSE had expired in March 2024.

178. The Applicants said that a further issue was that electricity invoices they had seen were addressed to Trinity Factoring Services Ltd and that they never received a satisfactory explanation for this, despite asking for one. The Respondent advised the Applicants that it would have the invoices amended but did not do so. The Respondent failed to provide the Applicants with copies of the electricity invoices which they requested.

179. In a letter dated 15 October 2024, which was sent to homeowners of the development, the Respondent's property manager stated that the new electricity supply was deemed to be non- residential and therefore attracts a business rate. The Applicants' position is that this is inaccurate and that any electricity supply serving a residential unit should be treated as residential.

180. The Applicants said that the Respondent had not followed its written statement of services. It had not provided details of any commission which may have been paid to it, despite the Applicants requesting information in this regard and it had not complied with the written statement of services under its obligations under the communication section.

181. The tribunal considered the Respondent's treatment of the Applicants in relation to this matter to be regrettable. It must have known that the fixed rate tariff was coming to an end. It knew that it intended to transfer all its managed developments to a single energy contract. It may have been perfectly reasonable todo so but it provided no information to the Applicants on why it was taking this course of action. It might have been to the advantage of the homeowners in the development, but the Respondent has not provided a response to the Applicants which supported this. It has provided no substantive reason for the change. It is also unfortunate that the first the Applicants knew about the change was when a significant increase for electricity charges was noticed in their quarterly account. The Respondent did not inform them or consult with them.

182. The issue of homeowners being charged business utility rates is also confusing. The common areas in each block are ancillary to the residential units and essential to provide access. There seems no reason why the Respondent has negotiated a contract at non-residential rates. It may be that the negotiated rates are good and perhaps better than if the development had a separate residential tariff. It is simply not known and the tribunal is entitled to draw its own conclusions given the Respondent's failure to respond to the Applicants' various concerns and queries.

183. Taking all matters into account, the tribunal determines that the Respondent, in failing to follow its written statement of services, has failed to comply with the property factor's duties and has breached OSP2, OSP3, OSP6, OSP11 and paragraphs 2.1,2.4,2.7, 3.1,3.2,6.9 and 6.10 of the Code.

Change to delegated authority

184. The Respondent submitted that this issue should not be dealt with by the tribunal and that it should be dismissed because it had not been dealt with through its procedure for complaints. The tribunal was satisfied that the Respondent had been advised of the Applicants' concerns and that it was therefore appropriate to deal with the issue.

185. The Applicants' issue is that they consider that the Respondent had unilaterally altered the level of delegated authority for repairs. They referred to the title for the Property where it states that the property factor has an authority to act up to £20 plus VAT in respect of each household.

186. The Applicants said that any works above the level stated in the title deeds must be approved by a majority of homeowners with no fewer than two homeowners for each block represented.

187. The Applicants raised the matter with the Respondent who replied advising that there is no longer “a delegated authority level for King’s Meadow.” In its response, the Respondent referred to changes made to its written statement of services.

188. The Applicants’ position is that the Respondent acted beyond its powers in unilaterally changing the level of delegated authority for repairs without consultation and approval of the homeowners in the development. The Applicants also consider that the written statement of services does not refer to a change in delegated authority.

189. The Applicants said that there had been changes to the written statement of services which they had not been alerted to.

190. The written statement of services states that, where the title does not provide a delegated authority for repairs, the Respondent will act according to established custom or as directed by a properly constituted and quorate meeting of homeowners.

191. The tribunal had no difficulty in determining that there is a level of delegated authority for repairs in the development and that, from the correspondence submitted, the Respondent had disregarded this and proceeded as if there was none.

192. The tribunal determined that, in this regard, the Respondent had not complied with the property factor’s duties.

193. The tribunal did not consider that, in relation to this matter, the Respondent had behaved dishonestly or had intentionally sought to mislead. It was negligent in not paying proper attention to the terms of the title of the Property and in its provision of information to the Applicants. The documentation submitted by the Applicants supported their position that the Respondent had not responded timeously to the concerns raised by them. The tribunal determined that the Respondent had breached OSP4, OSP11and paragraphs 1.2, 2.1, 2.6 and 2.7 of the Code.

Improper late payment charge and legal action threat 2

194. The Applicants said that, on 3 October 2024, the Respondent applied a late payment charge of £40 on their account. They said that the items unpaid by them were part of an ongoing complaint to the Respondents and were in dispute. They had engaged with the Respondent’s complaints process. They said that the matters in dispute were in relation to cleaning and gardening work and that they also had raised a query about electricity accounts.

195. The Applicants had paid invoices from the Respondent under deduction of the sums in dispute and which had been intimated to them. They said that they received no late payment warning and intimation that a charge would be applied.

196. On 7 October 2024, the Applicants queried the late payment charge with the Respondent's property manager and, on 10 October 2024, he confirmed that he would investigate and respond. No response was received.

197. On 11 October 2024, the Applicants received a letter from solicitors acting on behalf of the Respondent which intimated that court action would be commenced if a balance of £156.61 was not paid. This sum included the late payment fee of £40.

198. On 29 November 2024, the Applicants wrote to the Respondent indicating that it should not be threatening legal action when they were disputing items in the account.

199. The Respondent replied to the Applicants and did not accept that the charge should not have been applied. It contended that there were unpaid amounts which were not in dispute and that it was therefore not inappropriate to apply the late payment charge and for the Respondent to instruct its solicitors in the matter.

200. It is unfortunate that the Respondent chose not to make representations on this matter. On the balance of probabilities, based on the oral evidence of the Applicants and the correspondence submitted, the tribunal determines that the Respondent should not have applied a late payment charge and should not have instructed solicitors. Even if the Respondent had made an analytical examination of the outstanding sums due and decided that some were not in dispute, it is unfortunate that it took the steps it did, given the history of the representations by the Applicants and the clear position that some charges were in dispute.

201. It was clear from the correspondence submitted that the Respondent had delayed in responding to the concerns and queries raised by the Applicants.

202. The tribunal determined that, in this matter, the Applicants had not been treated fairly by the Respondent. The tribunal accepted that, in its response to the Applicants' letter of 29 November 2024, the Respondent was negligent in the information it provided. It did not consider that the letter from the solicitors was abusive, intimidating or threatening. The Respondent had not taken legal action against the Applicants but its agent had threatened to do so. The tribunal determined that the Respondent had breached OSP2, OSP4, OSP11,2.1,2.7,3.1,4.3 and 4.6.

Submissions

203. The tribunal heard submissions from the Applicants. They said that they had been extremely upset and stressed at the manner in which they had been treated by the Respondent. They said that they had expended a significant amount of time and effort in trying to get responses from the Respondent and in preparation for the application to the Tribunal. They said that this included time off work.

204. The Applicants submitted that the Respondent should refund the management fees for the period where it had not provided adequate service. They said that the period considered by the tribunal in the applications extended over six quarters.

205. The Applicants submitted that they should receive substantial compensation.

Discussion and Determination

206. The tribunal had no hesitation in finding that the Respondent had not carried out the property factor's duties and had not complied with the Code. It was unfortunate that it chose to engage with the Tribunal process in a limited manner and not to participate in either the case management discussion or the hearing.

207. In finding a failure to comply with the Code and to carry out the property factor's duties, the tribunal required to consider the terms of an appropriate PFEO.

208. The tribunal considered it appropriate that the Applicants be provided with copies of the electricity accounts which they had requested.

209. The tribunal considered it appropriate that the Applicants are not required to pay the insurance excess referred to in the foregoing decision.

210. The tribunal considered it appropriate that the Applicants be relieved of any responsibility for the cost of the replacement lock on the door of the services cupboard.

211. The tribunal considered the matter of making an order of compensation to be paid to the Applicants by the Respondent. It considered it appropriate that it should make such an order. Quantifying what is appropriate is a matter of judicial discretion and is a balancing exercise. On numerous matters, the Respondent had failed to properly deal with the Applicants who were paying it management fees. That is a factor in considering the level of compensation. It was clear from the correspondence before the tribunal and from the oral evidence of the Applicants that they had been put to considerable inconvenience, as well as worry and stress. Taking all matters into account, the tribunal determined that it is appropriate that the Applicants be paid the sum of £1,300 in compensation by the Respondent.

212. In terms of Section 19(2) of the 2011 Act,

> "in any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so-
>
> (a) Give notice of the proposal to the property factor, and
> (b) Allow the parties an opportunity to make representations to them."

A document containing the proposed property factor enforcement order is issued of even date with this Decision.

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.

Martin J. McAllister
Legal Member
9 December 2025