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

Notice of proposal to make a Property Factor Enforcement Order made under Section 19(2)(a) of the Property Factors (Scotland) Act 2011 ("the Act") following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act

Chamber Ref: HOHP/PF/16/0130

The Parties:-

Mrs Gillian Munro residing at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA ("the homeowner")

And

Apex Property Factor Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the property factor")

The Property:-

Subjects at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA

Tribunal Members

Mr James Bauld (Legal Member)
Mr Mike Links, Surveyor (Ordinary Member)

This document should be read in conjunction with the Tribunal's decision under section 19(1)(a) of the Act on the same date.

The Tribunal proposes to make the following Property Factor Enforcement Order

1. The property factor is required

- to provide a list of all monies paid in advance in respect of mandated maintenance accounts by the homeowner in respect of works which have not been carried out,
- obtain her agreement that this list accurately reflects all monies paid by her in respect of such matters and then
- make payment of these amounts to the homeowner within six weeks of the date of this order

2. The property factor is required

- to recalculate all invoices in respect of factoring charges and common charges which have been remitted to the homeowner and to adjust all invoices to reflect the correct share of common charges to 1/61st rather than 1/45th.
- provide copies of all such adjusted invoices to the homeowner
- to obtain agreement with the homeowner that these invoices accurately reflect the correct mounts which should have been charged
- agree a figure which reflects the difference between the amount actually paid and the amount correctly due and
- make payment to the homeowner of that amount within six weeks of the date of this order.

In the event that agreement on the sums to be paid cannot be agreed the Tribunal will determine the appropriate amounts and will make a further order as required

The property factor is also directed to ensure that all future accounts remitted to the homeowner reflect the correct share of common charges allocated to the homeowner's property

Section 19 of the 2011 Act provides as follows:
"... (2) In any case where the Tribunal proposes to make a property factor enforcement order, they 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.

(3) If the Tribunal are satisfied, after taking account of any representations make under subsection (2)(b), 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, the Tribunal must make a property factor enforcement order..."

The intimation of the Tribunal's Decision and this notice of proposal to make a PFEO to the parties should be taken as notice for the purposes of section 19 (2) (a) of the Act and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19 (2) (b) of the Act reach the First-tier Tribunal's office by no later than fourteen days after the date that the Decision and this notice is intimated to them. If no representations are received within that timescale, then the Tribunal is likely to proceed to make a property factor enforcement order ("PFEO") without seeking further representations from the parties

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.

J Bauld 4 May 2017

James Bauld, chairperson

E Barr .....Witness

Trainee Solicitor .....Designation

7 West George Street,
Glasgow,
G2 1BA

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 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: HOHP/PF/16/0130

The Parties:-

Mrs Gillian Munro residing at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA ("the homeowner")

And

Apex Property Factor Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the property factor")

The Property:-

Subjects at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA

Tribunal Members

Mr James Bauld (Legal Member)
Mr Mike Links, Surveyor (Ordinary Member)

Decision

The Tribunal determined that the property factor had failed to comply with certain duties arising from the Property Factors Code of Conduct ("the Code") and accordingly determined to make a Property Factor Enforcement Order.

Background

1. By application dated 21st November 2016, the homeowner applied to the then Homeowner Housing Panel for a determination that the property factor had failed to comply with the various sections of the Code. In particular the homeowner alleged that the property factor had breached sections 1A (a) and 1A (b), 2.1, 2.2, 2.4, 3.3, 3.4, 3.5a, 4.5, 4.7, 5.5, 5.6, 5.7, 5.8, 6.1, 6.3 and 6.6 of the Code.

2. On 1st December 2016 the jurisdiction of the Homeowner Housing Panel was transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of various regulations and legislation.

3. By minute of decision dated 11th January 2017 a convenor of the Housing and Property Chamber in terms of the powers delegated to him remitted this application to the Tribunal and determined that the appropriate application paperwork would be all documents sent by the homeowner to the Tribunal in the period from 8th September 2016 to 10th January 2017

4. The application having been referred to the First-tier Tribunal for Scotland (Housing and Property Chamber a hearing was set to take place on 23rd March 2017 at Wellington House, Glasgow

Hearing

5. The hearing took place before the Tribunal on 23rd March 2017 at Wellington House. The homeowner was present at the hearing.

6. The property factor was not present at the hearing nor represented. Prior to the hearing taking place the property factor had written to the Tribunal office on a number of occasions suggesting that the hearing should be adjourned and the homeowner's application should be rejected. The property factor had written to the office by correspondence dated 9th February 2017, 6th March 2017 and 20th March 2017. In each of these letters the property factor indicated their belief that the homeowner was still being dealt with under the property factor's internal complaints procedure and that the application was premature and should be rejected until the property factor's complaints process had been exhausted. In response to each of those letters the property factor was advised that the Tribunal would deal with the matter at the hearing.

7. By letter dated 22nd March 2017 the property factor indicated to the Tribunal office that they had decided not to attend the hearing and again made reference to their belief that they were still dealing with the homeowner under their own complaints procedure. They indicated in the letter that they felt that their position was being prejudiced by not being allowed to try and resolve the matter with the homeowner. Again they indicated that the Tribunal should reject the application until the complaints process had been exhausted. The letter of 22nd March was accompanied by a significant bundle of papers extending to almost 500 pages. The letter was delivered to the Tribunal office at 4.50 pm. The letter was signed by Neil Cowan who was designated as the office manager.

8. At the hearing the Tribunal considered the terms of the letter received dated 22nd March. The Tribunal noted that it was in nigh identical terms to the previous correspondence which had been submitted. The Tribunal noted that the papers which were attached to the letter were lodged outwith the time specified in the relevant regulations, namely the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 ("the Regulations"). Rule 19(2) of the Regulations allows the First-tier Tribunal to receive a document late if it is satisfied that there is good reason to do so. The rule also provides that in determining whether to allow a document to be lodged late the First-tier Tribunal will have regard to whether to do so is fair in all the circumstances. In this regard, the Tribunal took the view that these documents had been lodged on the eve of the hearing and no opportunity had been given to the homeowner to consider them. The Tribunal themselves had no opportunity to consider the volume of documents which had been lodged. Accordingly the Tribunal determined that the documents and representations which had been lodged by the property factor would not be received by the Tribunal.

9. The Tribunal also required to consider whether or not the request by the property factor to adjourn the hearing should be granted. The Tribunal decided that they would not adjourn the hearing. Rule 26 of the Regulations indicates the basis upon which an adjournment may be granted. The Tribunal took the view that the hearing should not be adjourned as the Tribunal were of the view that they could deal with the proceedings justly based upon the evidence which had been lodged by the parties.

10. The Tribunal also considered whether the homeowner's application was premature as contended by the property factor. The Tribunal noted that the homeowner and property factor had been in extensive correspondence since at least August 2016. The Tribunal had sight of papers lodged with the homeowner's application which included copies of correspondence from the homeowner dated 6th August 2016, 20th September 2016, 23rd November 2016 and

12th October 2016. Each of these letters set out in detail the complaints raised by the homeowner. Each of these complaints had received a response from the property factor. The homeowner had also produced a letter dated 23rd November which collated the various complaints which she had made and the responses which had been made by the property factor. The Tribunal also noted that within the papers which had been lodged on behalf of the homeowner were two copies of a written statement of service apparently issued by the property factor. One document was undated and indicated that the property factor had a complaint handling procedure. That version indicated "complaints will be dealt with as quickly as possible, handled fairly and sensitively and fully investigated". No timescales were set out for the investigation of complaints in that version. A second version of the written statement of services apparently dated December 2016 was also exhibited. That process indicated that the property factor aimed to resolve complaints "within 21 working days of receipt of the complaint". If that could not be done then it would be referred to "a manager" who would investigate further and that would be done within 21 working days of the complaint. If that did not resolve matters then the matter should be referred to the director of the company who again would review and respond within 21 working days. The homeowner had complained by letter dated 6th August 2016. Even accepting the second version of the written statement of services the complaints process should have been completed within 63 working days. That is a period of approximately 12 weeks. The complaints process should have been exhausted by December 2016. The hearing of the Tribunal was in March 2017. The Tribunal took the view that the property factor had had ample time in terms of their written statement of services to process this matter through their complaints procedure. Accordingly the Tribunal decided they would not adjourn the Tribunal hearing on the basis that the internal complaints process had not been exhausted. The property factor had had ample opportunity to resolve this matter but had failed to do so. The Tribunal noted that the last correspondence from the property factor to the homeowner was a letter of 23rd January 2017 in which the property factor indicated to the homeowner that they had received her letter of 24th December 2016 and that they were currently in the process of issuing a pro forma invoice for the documents which she had requested. They indicated they would require immediate payment before they could release the documents. No invoice had yet been sent to the homeowner in respect of these matters. Accordingly, the property factor had been asked to provide documents by the homeowner but had failed to do so despite the homeowner being willing to meet any reasonable payment request. Accordingly, the Tribunal determined that they would proceed with the hearing in the absence of the property factor.

11. The Tribunal having determined that they would proceed with the hearing indicated that they would take evidence from the homeowner with regard to each of the alleged breaches of the Code of Conduct. The homeowner agreed to proceed in this fashion. Each section of the Code was dealt with separately.

12. **Section 1 – written statement of services**.

The homeowner raised complaints in respect of alleged breaches of section 1.1a A a and 1.1a A b. These sections require the written statement of services to set out the the basis of authority which the factor has to act and if applicable a statement of any level of delegated authority, for example financial thresholds for instructing works. The homeowner indicated that Apex had taken over as property factor in April 2012. A letter of 7th April 2012 from the Apex to all the homeowners was produced. It indicated that Apex had purchased the assets of a company called FSE (Scotland) Limited who were in liquidation. The written statement of services which had been provided indicated that Apex had been instructed in accordance with "the provisions of the title deeds for the development". The homeowner accepted that FSE (Scotland) Limited had been the nominated factor in terms of the title deeds and seemed to accept that the purchase of their assets by Apex did allow them to act as factor. The homeowner did concede that Apex had been acting as factor for a period of almost five years without challenge and accordingly it appeared that the homeowner was not insisting upon the alleged breaches under this heading. The homeowner also accepted that the property factor did not tend to carry out significant works without seeking approval from the various owners and she referred to these types of works as being "mandated". By this it appeared she meant that the property factor would write to the homeowners and indicate that certain works would be done and payment would be required in advance of those works being done. The

homeowner also indicated that when she purchased the property FSE had been the property factor and she seemed happy that the rights to factor had been transferred to Apex.

13. **Section 2 – Communication and Consultation**. The homeowner raised complaints under this section in respect of paragraphs 2.1, 2.2 and 2.4.

14. Section 2.1 of the Code indicates that a property factor must not provide information which is misleading or false. The homeowner's position is that she has on several occasions been provided with information which was misleading or false. She referred to an account in March 2016. She indicated that she had been billed on 21st July 2014 in respect of a door replacement which has never taken place. She was billed £220 as was each flat. She indicated that the door entry system has never not functioned nor has it ever been broken. She indicated that she had received a maintenance mandate in respect of the door entry system dated November 2012 which showed a cost as per estimates including VAT totalling £2,520. She was asked for and made an advance payment of £56 towards her share. She was then billed for a further £220 making a total of £276. She has no idea how that figure was calculated. Her position is that this was misleading or false. Additionally she has complained on a number of occasions to the factor on the basis that they are charging her a 1/45th share of the costs of maintenance of the building. Her title deeds make it clear that she should be charged a 1/61st share. In a letter dated 9th November 2016, in response to a detailed letter of complaint from the homeowner, the property factor indicated that the homeowner was "entitled to pay 1/45th share of the block insurance policy based on the total number of flats in the block". They admitted that the title deeds do state 1/61st but that included "the 16 garages which we do not factor". The homeowner had lodged a copy of the Land Certificate which relates to her flat which very clearly shows the apportionment of the common charges amongst the various properties within the block. The title deeds clearly describe the block as comprising 45 flats, 16 garages and one storage area and indicate that the total cost of the common charges including common insurance, shall be 1/61st share per flat and a 1/61st share per garage or storage area. Accordingly the property factor's statement that she was liable for a 1/45th share was clearly false.
15. Section 2.2 of the Code indicates that property factors 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 indicated that she had received correspondence from Apex which she believed was a threat that she would be evicted by the Council. The letter of June 2015 which was signed by Neil Cowan (therein narrated as "maintenance co-ordinator") made reference to an invoice issued on 30th September 2014 in respect of proposed structural surveys. It indicated that the factor may refer the matter to the local authority as a possible "dangerous building". The letter indicated that if the council issued a dangerous building notice then that could result in them instructing works and that the owners would have no control over the costs. The letter also stated "if the council do not have the funds to carry out the works they may then evict all residents until repairs are completed satisfactorily". The homeowner contacted Renfrewshire Council having received this letter and was advised by the council that they had no recorded enforcement case against the address and confirmed that it was unlikely that they would progress the matter any further unless the "railings pose a significant public safety issue". The homeowner's position was that the letter of June 2015 was clearly threatening and was not a letter which was a reasonable indication that the factor may take legal action against her. She accepted that at one point the factor had actually raised a small claims summons against her which she had settled.

16. Section 2.4 of the Code requires a property factor to have a procedure to consult with homeowners and seek written approval before providing certain works or services which will incur charges for fees in addition to those relating to the core service. On being questioned by the Tribunal the homeowner conceded that the property factor did have such a procedure and indeed regularly consulted with the homeowners seeking approval prior to carrying out certain works and services. She had been asked on a number of occasions to confirm by signing a mandate that she was happy to make payments for certain additional works.

17. **Section 3 – Financial Obligations**. The homeowner complained that the factor was breaching sections 3.3, 3.4 and 3.5a. With regard to section 3.3, the Code requires property

factors to provide to homeowners in writing at least once a year a detailed financial breakdown of charges made and a description of the activities and works carried out. It also requires a property factor to supply supporting documentation and invoices in response to a reasonable request from the homeowner. The Code allows the factor to impose a reasonable charge for copying these documents. In this case the homeowner complained that she had understood this to mean that they would give an indication of future charges. On questioning by the Tribunal she accepted that the Code did not require that to be done. She then raised queries with regard to the invoices which were received from the property factor which she said did not provide the necessary detail. She indicated she had written to them on December 24th 2016 asking for copies of various documents and had received a reply on 23rd January 2017 from the property factor indicating that they would provide copies of the documents upon payment of an invoice. She had still not received the invoice. Accordingly she had no idea what charge was being sought by the property factor. She indicated she would be happy to pay a reasonable charge for copying.

18. Section **3**.4 of the Code requires property factors to have in place procedures for dealing with advance payments made by homeowners where the homeowner requires a refund. In this case it was clear that advance payments had been taken for certain proposed works but that the works had never actually been undertaken. The homeowner wished those payments to be refunded. They had not been.

19. Section 3.5a of the Code requires that homeowners' floating funds must be held in a separate account form the property factor's own funds. The homeowner indicated that after the appointment of Apex as factor she paid another float of £100 to them. She accepted that the float which had been previously paid to FSE had probably been lost in the liquidation of that company. The homeowner accepted that she did not know how these monies were held by the property factor but could not advise the Tribunal whether they were not held in accordance with the Code.

20. **Section 4 – Debt Recovery**. The homeowner had raised complaints in terms of sections 4.5 and 4.7 of the Code. Section 4.5 requires the property factor to have systems in place to ensure regular monitoring of payments due from homeowners and to issue timely written reminders to inform homeowners of amounts outstanding. Section 4.7 requires a property factor to be able to demonstrate they have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share prior to charging any remaining homeowners if they are jointly liable for such costs. The homeowner admitted that the property factor does issue letters and that they appear to take reasonable steps to recover unpaid charges. Indeed, she had been subject to the debt recovery procedure undertaken by the property factor. She indicated that her position was that their system is clearly not successful as they are now saying there is £47,000 of outstanding debts in relation to this development and she is worried that they will spread that debt amongst the owners who are actually paying. However, she accepted that there appeared to be no breach of other relevant provisions of the Code under this heading.

21. **Section 5 – Insurance**. The homeowner made various complaints under this section. She alleged breaches of sections 5.5, 5.6, 5.7 and 5.8. Section 5.5 requires the property factor to keep homeowners informed of the progress of any claim or to provide them with information. In this regard, having reviewed the matter the homeowner accepted that in respect of an ongoing insurance claim she had been kept advised by the property factor.

22. Sections 5.6 and 5.7 require a property factor firstly to be able to show how and why they appointed the insurance provider and secondly, to provide any documentation relating to any tendering or selection process in respect of same. The homeowner here had been told that a block policy had been arranged with LV Insurance. She had never been given any information about how LV had been chosen. She was originally allowed to opt out of a common insurance policy despite the terms of the title deeds making it clear that a common insurance policy is required. She had arranged her own buildings insurance via Direct Line at

one point. On questioning the property factor she was advised that they had obtained four telephone quotes. They produced no evidence of any written quotes or any tendering process.

23. Section 5.8 of the Code requires the property factor to inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance and to adjust this frequency if they are instructed by the appropriate majority. The homeowner indicated that she had never been advised of the frequency of this. She indicated that a recent revaluation had been carried out and it had cost just over £100 per homeowner. She had never been advised of the periods during which this was done nor had she been told when it would next be expected. The property factor's written statement of services from December 2016 indicated a recommendation from them that a professional valuation is "obtained periodically" in respect of insurance valuations.

24. **Section 6 – Carrying out repairs and maintenance**. The homeowner had indicated a complaint of a breach of section 6.1 of the Code which requires a property factor to have in place procedures to allow homeowners to notify the factor of matters requiring repair, maintenance and attention. The homeowner did however accept that there is a procedure in place whereby she can contact the property factor to request repairs. She indicated she did not wish to insist upon this alleged breach of the Code. The homeowner also claimed a breach of sections 6.3 and 6.6 of the Code. With regard to 6.3, this is a requirement to show how and why contractors were appointed by a property factor. She seemed to be complaining about proposals to do a roof repair. Section 6.6 requires property factors to make available any documentation relating to any tendering process unless there is commercially sensitive information contained in it. The homeowner indicated she had written on 24th December asking for certain information and had been told by the property factor that they have an "open door policy". However she indicated she has never actually been told that she can come to their office and view the documents. She was still awaiting receipt of the various documents and again referred to the letter of 23rd January 2017 which mentioned an invoice which was to be sent to her which she had still not received. She again indicated that if she had been asked to pay a reasonable sum to obtain copies of documents she would have paid it.

25. Throughout the hearing the homeowner was asked questions by the members of the Tribunal and answered them in an open and honest manner. She referred the Tribunal to the various documents which she had produced including copies of the various letters of complaint she had sent to the property factor and their responses. She also produced a copy of her relevant land certificate and the written statement of services.

26. The Tribunal asked the homeowner to indicate what she wished the Tribunal to do if they found in her favour in respect of her complaints. She indicated that what she wished was to have a refund of all the charges which she has paid in advance for works which have not been done. She had provided a list of these calculations. She indicated these came to a total of £426.24. She further indicated that she wished to be refunded in respect of the overbilled amounts. She pointed out that the percentage which she had paid has been wrong. She confirmed her position that she should be paying a 1/61st share of the common repairs, not a 1/45th share. She indicated that over the period of four and a half years she had made payments in total amounting to £3,663.30. She indicated this had all been calculated on the basis of a 1/45th share of charges rather than a 1/61st. She wished the charges to be recalculated and a refund made.

27. She indicated that she did not wish to have any other payment made by means of compensation for inconvenience. She simply wished to have the finances put back onto the footing that it should have been. She indicated that it had been her decision to raise the matter with the Homeowner Housing Panel and now the First-tier Tribunal and accordingly, she simply wished the Tribunal to make a decision. If the Tribunal found in her favour she simply wished the amounts which she had wrongly paid to be refunded to her. The Tribunal then concluded and thanked the homeowner for her attendance.

Decision

28. The Tribunal carefully considered the evidence they had heard from the homeowner together with the various documents which had been provided.

29. The Tribunal took the view that there had been no breaches of any of the complaints under section 1or section 4 of the Code.

30. The Tribunal however took the view that there had been a clear breach of matters under section 2. Section 2.1 of the Code requires a property factor not to provide information which is false or misleading. The Tribunal took the view that every invoice which had been sent to this homeowner was false. It is based on the factor's erroneous position that the liability on each flat owner in this development is for a 1/45th share not a 1/61st. This is simply false. It is completely contradicted by the title deeds. The Land Certificate in respect of the homeowner's property is absolutely clear and unambiguous. The common charges in respect of this building are split 61 ways between the 45 flats, the 15 garages and a storage area. The Tribunal took the view that it is likely that the various garages are actually owned by some of the flat owners within the building. Accordingly if the factor is simply splitting the bills 45 ways rather than 61 ways then some of these flat owners are being positively advantaged by being not required to pay an appropriate share of the charges in respect of a garage. Accordingly there was a clear breach of section 2.1 of the Code. The Tribunal also took the view that the letter from the property factor indicating that the council might evict her was also a breach of section 2.2. This was a communication which was clearly threatening that the homeowner may lose her home and which was not simply indicating a normal court process. The homeowner was clearly concerned to receive this letter and clearly believed that she may lose her home. Accordingly the Tribunal took the view that the property factor was in breach of section 2.2 of the Code. With regard to section 2.4 of the Code, the Tribunal accepted that the property factor does have procedure to consult with homeowners and this was accepted by the homeowner. Accordingly there was no breach of this section of the Code.

31. With regard to the alleged breaches of section 3 of the Code, the Tribunal took the view that there was a breach of section 3.3. Section 3.3 of the Code requires a property factor in response to reasonable requests to supply supporting documentation and invoices for inspection or copying. The Code indicates that a reasonable charge can be levied. The homeowner in this case has asked for documents. They have not been provided. The property factor has indicated that they will send an invoice but have failed to indicate to the homeowner what charge will actually be imposed. They have also failed to send the invoice. The Tribunal take the view that this is a breach of the Code as the factor is under a duty to respond to the request for the documents. The Tribunal accepts that a charge can be made but that must imply a duty to tell the homeowner the charge which will be imposed. The factor had had ample time to either provide the requested documents or at worst to provide details of that charge and an invoice for same. Similarly, the Tribunal finds that the property factor is in breach of section 3.4. They have been asked by the homeowner to refund certain payments which have been made in advance and they have failed to do so. With regard to the alleged breach of section 3.5a, the Tribunal finds there is no evidence that the factor does not have the appropriate separate account and accordingly this allegation is rejected.

32. With regard to the alleged breaches of section 5, the Tribunal finds that there is no breach of section 5.5. The homeowner seemed to accept that the property factor did keep her advised with regard to the progress of an insurance claim. However the Tribunal does find that there is a breach of sections 5.6, 5.7 and 5.8. There is no evidence which has been provided by the property factor to show how and why they appointed the insurance provider. There is no evidence of any documentation. The only position seems to be that they instructed a broker. Telephone calls are not sufficient in this regard. Accordingly the Tribunal finds that sections 5.6 and 5.7 have been breached. With regard to section 5.8 the Tribunal finds that there is a technical breach here in respect that the property factor has not informed homeowners of the "frequency" with which property revaluations will be undertaken. The Tribunal accepts that a revaluation has been undertaken and that the charge for that has been properly levied against the homeowners. However the property factor should provide a note indicating the frequency with which these revaluations will be done.

33. With regard to the alleged breaches of section 6 of the Code, the Tribunal finds that there is a breach of section 6.6. The property factor has failed to provide the homeowner with specification of the charge being levied in connection with the provision of the various documents requested by the homeowner

34. The Tribunal having decided that there had been breaches of code required to determine whether or not a Property Factor Enforcement Order should be made. The Tribunal took the view that a Property Factor Enforcement Order should be made and the terms of the proposed draft order are attached. The Tribunal regarded the breaches of section 2.1 and section 2.2 as serious breaches of the Code. The Tribunal had no explanation provided to it for the property factor's decision to charge the entirely wrong amounts for common charges to this homeowner and presumably to each and every other homeowner within the building. The title deeds in this case are absolutely clear that the share of common charges is 1/61st. The property factor has no reasonable or logical explanation for charging a 1/45th share. On the basis that the Tribunal had found that the property factor had breached these provisions and other sections of the Code as set out in the decision, the Tribunal took the view that a Property Factor Enforcement Order should be granted. A draft of the proposed Order is issued along with this decision. The parties are invited to make representations to the Tribunal in respect of the proposed order in terms of section 19(2) of the Property Factors (Scotland) Act 2011. Such representations should be remitted to the Tribunal within 14 days of the date of intimation of this decision.

Concluding Comments

35. The Tribunal wishes to express its extreme disappointment that the property factor decided not to attend the hearing or to send any representation. The Tribunal regarded the decision of the property factor to deliver a letter at 4.50 pm to the office of the Tribunal the day before the hearing as disrespectful in the extreme. The Tribunal is designed to be an informal and flexible method of resolving disputes between homeowners and property factors and the stance adopted by the property factor was entirely contrary to the informality and flexibility sought by the Tribunal. The Tribunal has no hesitation in indicating that they do not accept the property factor's position that they were still proceeding through their complaints process. They had had ample time to deal with this matter. The suggestion in one letter that the homeowner had not specifically escalated the matter to the property factor's director was not accepted as reasonable by the Tribunal. It is for the property factor to have a complaints process and they should be escalating matters as appropriate. This homeowner had made several complaints and it was clear that in each successive letter she was escalating her complaint and requiring the property factor to recognise that and to ensure it was passed to the appropriate person within their offices.

Review of Tribunal's decision

36. 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.

J Bauld

4 May 2017

James Bauld, Chairperson Date