Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 ("the Act") and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: FTS/HPC/LM/19/2292

The Parties:

Ms Ann Moffatt, 17 Peelwalls Meadows, Ayton, Eyemouth, Scottish Borders TD14 5RX ("the homeowner")

and

Park Property Management Limited, incorporated in Scotland (SC413993) and having its Registered Office at 11 Somerset Place, Glasgow G3 7JT ("the property factors")

Property: 17 Peelwalls Meadows, Ayton, Eyemouth, Scottish Borders TD14 5RX ("the Property")

Tribunal Members – George Clark (Legal Member/Chairman) and Andrew Murray (Ordinary Member)

Decision

The Tribunal has jurisdiction to deal with the application.

The property factors have not failed to comply with their duties in terms of the Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). The property factors have not failed to carry out the Property Factor's duties.

The Tribunal does not propose to make a Property Factor Enforcement Order.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code of Conduct" or "the Code"; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as "the Tribunal".

The property factors became a Registered Property Factor on 13 March 2013 and their duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it and gave consideration to the application by the homeowner received on 22 July 2019, with supporting documentation, namely a copy of the Written Statement of Service, copies of correspondence between the Parties, quarterly Invoices to 31 July 2018 and 16 May 2019, further written representations from the homeowner received on 26 July 2019, 13, 29 and 30 August 2019 and 2 December 2019, and written representations from the property factors, received on 13 December 2019.

Summary of Written Representations

(a) By the homeowner

The following is a summary of the content of the homeowner's application to the Tribunal:

The homeowner's complaint, clarified in later correspondence with the Tribunal, was that the property factors had failed to comply with Sections 1, 1.1a.B.d, 1.1a.C.g, 1.1a.Cj and 6.8 of the Code of Conduct and had failed to carry out the property factor's duties.

Section 1 of the Code of Conduct requires property factors "to provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement". That statement must be provided to new homeowners within four weeks of agreeing to provide services to them and to any new homeowner within four weeks of the Property factors being made aware of a change of ownership of a property which they already manage.

The homeowner said that she had purchased the Property on 13 April 2017. It was not until 3 May 2018 that she received a letter from the property factors advising that they were factors for the Peelwalls site. This was well out with the four-week period set out in the Code of Conduct.

Be Maintained had been awarded the contract in September 2016 and had written to the then owners on 24 January 2017, stating that "following a company merger in September 2016 the new Company is Park Property Management". The letter had been signed by Graeme McEwan for Park Property Management ("PPM") and by Enzo Sauro for Enzo Homes, the developers of the site. On 4 March 2019, Mr Tom McCubbine for PPM had confirmed by e-mail that Be Maintained had already been operating under PPM when they landed the contract for Peelwalls Meadows. On 24 July 2019, a letter from Elaine Adams of PPM stated that this had been a business acquisition and not a merger, which was at odds with the statement in the letter of 24 January 2017.

In her letter of 24 July 2019, Ms Adams had said that the site had not been at a stage of completion to be handed over to PPM until May 2018, but on purchasing the Property, the homeowner had paid a float of £200 which was to be paid to the factors. Assuming this was passed on, PPM would have been aware that a new resident had taken up home at Peelwalls Meadows.

The Invoice received by the homeowner dated 31 July 2018, received in October 2018, had items listed dating back to September 2017, for work carried out on site, for which residents would be charged, so surely residents should have been notified that PPM were their factors. When the homeowner received the keys, there were welcome packs in the kitchen from all companies involved with the building of the house, apart from PPM. It was not until 3 May 2018 that the homeowner was advised by PPM that they were factors for the site.

Section 1.1a.B.d of the Code of Conduct provides that the written statement should set out "the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges...and how these fees and charges are calculated and notified".

The homeowner confirmed to the Tribunal that her complaint was under this Section of the Code of Conduct, but then quoted in her application from Section 1.1a.B.c, "the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency...".

Two issues were referred to in the application under this Section, namely the Play Park and the Septic Tank.

In relation to the Play Park, the homeowner stated that at a meeting on 5 July 2018 PPM had advised that the Play Park did not have the necessary safety certificate and that this was a matter of urgency as the owners could not obtain indemnity insurance without it. The homeowner had agreed to assist PPM in the matter. Active Playground Management had carried out an inspection on 25 October 2017 and the Park had failed on safety grounds. PPM had then contacted the developer, Enzo Homes, who, the homeowner stated, carried out repairs in line with the report from Active

Playground Management and advised PPM that the work was complete. PPM were supposed then to have had the Play Park reinspected, but they had not done so. Mr McCubbine had advised the homeowner that they were no longer using Active Playground Management for Play Park inspections. The homeowner had then contacted Scottish Borders Council who had told her that they used Zurich for such inspections. She had contacted Zurich, requesting that they in turn contact PPM with a view to having the Play Park inspected. PPM had, however, told Zurich that the decision on this had been left to the Residents' Association, but, the homeowner stated, it was not possible for the Residents' Association to organise the inspection, as PPM held all the funds for the site. On the factoring invoice dated 31 July 2018, received in October 2018, the residents had been charged for an installation inspection dated October 2017 and a quarterly inspection dated January 2018. To the homeowner's knowledge, this second inspection had never been carried out, nor were the charges refunded to residents. PPM had failed to carry out their duties regarding reinspection of the Play Park.

With regard to the septic tank, the homeowner stated that PPM had advised at a meeting on 5 July 2018 that the septic tank for the development required emptying urgently and to this end, floats were increased by £200. At the beginning of October 2018, the homeowner had received an Invoice requesting the additional float, but on 16 October 2018, less than two weeks later, PPM had tendered their resignation and on the following day, Mr McCubbine had confirmed that PPM would not be arranging for the septic tank to be emptied and that this would be the responsibility of the new factors. This would not be until March 2019, yet the residents had been advised that the tank could burst at any moment, with environmental and financial implications. Ms Adams of PPM had said in her letter of 24 July 2019 that, after their resignation, owners had been advised that the additional float did not have to be paid, but the homeowner had signed statements from other residents confirming that they had not been so advised. The homeowner had not paid the additional £200, as PPM were not organising the emptying of the septic tank. Her view was that the residents had been "scaremongered" regarding the septic tank.

After PPM tendered their resignation, they refused to assist with any work for Peelwalls site, only paying the bills, for which they held the residents' floats. Their monthly fees were still being paid, so it was their duty to assist with the Play Park issues.

On 29 July 2019, PPM had written to residents advising that monies due to residents would be refunded, as the outstanding debtors at the development had settled the balances due by them.

Section 1.1a.C.g of the Code of Conduct states that the written statement should include confirmation that the property factors have a debt recovery procedure which is available on request.

Section 1.1a,C.j of the Code of Conduct states that the written statement should set out how often the property factors will bill homeowners and by what method they will receive their bills.

Section 6.8 of the Code of Conduct obliges property factors to disclose to homeowners, in writing, any financial or other interests that they have with any contractors appointed.

(b) By the property factors

The following is a summary of the written representations made by the property factors and received by the Tribunal on 13 December 2019:

The property factors had started managing the site on 3 May 2018 and had issued their written Statement of Services the same week. The homeowner had received it at that time. The written Statement of Services confirmed that the property factors have a debt recovery process, a copy of which the homeowner has. The property factors had collected all sums due from owners and had not required a debt apportionment at the end of their tenure. The property factors had carried out repairs and maintenance as required. The Play Park had never been constructed to the required standard and the property factors had informed residents of this. The developer had unilaterally failed to remedy the issue. The property factors had suggested that the owners could pay to make good the outstanding work, but the owners had declined to do so. The property factors were required to maintain the Play Park at the owners' expense once it was of a satisfactory standard. The septic tank would need to be emptied and the property factors had estimated costs and attempted to collect funds in anticipation of these works.

The view of the property factors was that they had carried out their duties in full as required by the legislation and their own high standards. It was unfortunate that the homeowner had bought a property from a developer who had failed to construct the Play Park properly and had located the sewage services in a challenging position that had resulted in far higher than expected costs. The owners should look to the developer, who had failed in its legal obligations.

The property factors stated that their written Statement of Services include reference to their Debt Recovery procedures and their billing arrangements. It also included a statement that they had no financial or business interest in any contractors or suppliers appointed by them on behalf of homeowners.

The Hearing

A hearing took place at Dunbar Town House on the morning of 14 January 2020. The homeowner was present at the hearing and was accompanied by her sister, Mrs Isobel Ward The property factors were represented by their Property Manager, Mr Tom McCubbine and by Mr Paul McDonnell, one of their Directors.

Summary of Oral Evidence

The chairman told the Parties that they could assume that the Tribunal members had read and were completely familiar with all of the written submissions and the documents which accompanied them.

The first part of the homeowner's complaint was the property factors' delay in providing her with a copy of their written Statement of Services. The property factors' response was that the site was not up to standard and that they were unwilling to take on the development while building works were continuing, but they had decided to take it on in May 2018, at which time they sent their written Statement of Services to each owner. They had become the first factors for the development, as there had never been any communication between Be Maintained and the owners.

The second element of the homeowner's complaint related to delays in sending out bills. Specifically, the first bill had not been issued until October 2018, but it had contained items dating back to September 2017. The response of the property factors was that when they took over the development, there were outstanding electricity bills due by the co-owners. This was, they said, not uncommon with new developments, but in this case, they were significant, as they related to the mechanisms of the septic tank. The property factors had paid the bills and apportioned them accordingly, but the bills themselves pre-dated the property factors' taking over the development. They had used the floats to pay the bills but had not been given a list of owners until October or November 2017. The property factors accepted that they knew the homeowner was an owner in September 2017, but contended that the developer was still, in effect, managing the site at that time. The property factors had been willing to take over the development in October 2017, but subject to conditions, particularly the work required to the Play Park. The homeowner accepted that the work to complete the Play Park had not been finished until after the property factors had resigned.

The second factoring bill had been sent out on 1 February 2019. The view of the homeowner was that this fell outwith the three-monthly billing period agreed with the property factors. The property factors told the Tribunal that they had decided not to send out the bill to October 2018, as the amounts involved were very small. Having intimated their resignation, they had decided to hold off sending the bill until the end of their contract, but contended that, as they had sent to homeowners on 1 February 2019, a timetable which set out a longstop date of 1 June 2019 for the final bills, they had complied with their obligations.

The homeowner commented that the property factors might have regarded the sums due as insignificant, but they had then sent out demand notices for an additional float payment by each owner of £200. The property factors responded that this amount had been put on invoices following a quorate vote of the owners. The property factors had recommended the additional float payment, but the decision had been that of the owners.

The property factors advised the Tribunal that the floats had been returned in full with their final account. The had taken an initial decision not to enforce collection of the additional £200, so were not raising court actions specifically for the £200, but if owners owed other money and the property factors were pursuing them, they added the £200.

The Tribunal then heard evidence relating to the two main items of dispute between the Parties, relating firstly to the Play Park and secondly to the septic tank.

Play Park

The Property factors told the Tribunal that the initial inspection of the Play Park had taken place in October 2017. They had written to the developer to say that they expected to take over as factors in October and, had the Play Park passed the inspection which they had instructed, they would have taken over immediately. It was brand new and they had not anticipated that it would fail the inspection. There were other snagging elements, but the Play Park was the main technical reason for the property factors not taking on their role at that time. They were informed by the developer that one of the residents had instructed remedial work, which would be carried out before the next quarterly inspection, but the report by Active Playground in January 2018 said that it still failed. They quoted £10,000 for carrying out the necessary remedial work, but the developer refused to accept that estimate.

The property factors had given the owners two options, they could either pay thousands of pounds for the necessary work or they could take steps to force the developer to carry it out. The property factors had no legal relationship with the developer. It was for the owners to decide what to do. The responsibility of the property factors would have been to ensure it was inspected and maintained, not to upgrade it to an adoptable standard.

The homeowner told the Tribunal that the developer had said they would bring the Play Park up to the required standard, but they wanted the work to be based on a further inspection. The owners had agreed to work with the property factors to resolve the issue, but the property factors had refused to continue with the work after they had intimated their resignation.

The response of the property factors was that they had a quote from Zurich of £500 for a further inspection, but they were not going to instruct an inspection when they

knew it would still fail, having sent the developer quotes in November 2018 for remedial work which they knew had not been carried out in the intervening period.

The homeowner said that she was the person who had obtained the quote from Zurich and she had asked them to send it to the property factors. This must have happened as the owners had then had an e-mail from Zurich indicating that they understood the decision on whether they were to proceed with the inspection was being left to the Residents' Association. The Association, however, could do nothing as it was the property factors who held the funds. Her contention was that the property factors had stopped working for them as soon as they intimated their resignation. The property factors denied this. They had continued to pay bills, but they had received no instructions in relation to the Play Park issue after they tendered their resignation.

Septic Tank

The homeowner repeated what she had set out in her written representations, namely that the owners had been told at a meeting with the property factors that if the septic tank overflowed, there would be major environmental issues as well as financial costs. Accordingly, the owners had agreed to increase their floats by £200. She had, however, spoken to an engineer, whose view was that, on a worst-case scenario, the tank would have to be emptied every 5 years, a best-case scenario being once every 7 years. The homeowner stressed that the owners had agreed to increase the float because they really believed the septic tank needed to be emptied immediately.

The property factors told the Tribunal that domestic septic tanks generally have to be emptied annually. The system installed at what was now the development had originally been intended for a nursing home with 200 residents. When they took over the factoring, the property factors had contacted Scottish Water, who estimated the cost of emptying the tank at £6,000, inclusive of VAT. The property factors had been unable to find out the size of the tank, so could not guess at how frequently it would require to be emptied. They had agreed to monitor the situation every six months. The next inspection would have been due in March 2019. They had thought it prudent to have funding in place to cover the cost of emptying the tank and, with 31 owners in the development, they had presented the facts and recommended an increased float payment of £200 per owner to meet the anticipated costs of what was going to be a complex job when it had to be carried out. It was the owners' decision to make and they had decided to accept the recommendation.

Findings of Fact

The Tribunal makes the following findings of fact:

- The homeowner is a homeowner within the Peelwalls Development of 31 houses.

- The property factors, in the course of their business, managed the common parts of the development. The property factors, therefore, fall within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- The date of Registration of the property factors was 13 March 2013.
- The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- The homeowner made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") received on 22 July 2019 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- On 7 October 2019, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a tribunal for determination. The Hearing was scheduled for 20 November 2019 but was postponed at the request of the property factors and was rescheduled to 14 January 2020.
- The factoring contract for the development was awarded to Be Maintained with effect from 30 September 2016.
- On 24 January 2017, Be Maintained wrote to the developer, advising that "following a company merger" in September 2016, the new company was Park Property Management (incorporating Be Maintained) and that the appointment as development factor would be for a period of three years from the date of the last property sale.
- The homeowner paid a reservation fee for the Property on 13 April 2017. The transaction settled on 31 May 2017.
- An application to strike Be Maintained Limited from the Companies' Register was made in November 2017 and the company was dissolved via a voluntary strike-off in February 2018.
- The solicitors for the developer confirmed by letter dated 4 December 2019 that the management of the development had been assumed by the property factors on 3 May 2018.
- On 3 May 2018, the property developers wrote to the homeowner, introducing the company as the appointed property factors and enclosing a copy of their written Statement of Services.
- Active Playground Management Ltd carried out an Initial Inspection of the Play Park at the development on 25 October 2017 and their Report is dated 2 November 2017. It is addressed to the property factors. They carried out a further inspection in January 2018, their Report being dated 22 February 2018.

Their Initial Report indicates a number of defects carrying a risk of serious injury.

- On 25 June 2018, the developer e-mailed the property factors confirming that all the Play Park works would be done that week.
- On 28 June 2018, the property factors e-mailed the developer asking to be advised when the work was done, so that they could book an inspection for insurance purposes.
- The Powerpoint slides shown at a residents' meeting with the property factors on 5 July 2018 stated that the Play Park did not currently meet safety standards and that the developer had been instructed to correct the situation. The property factors had supplied the developer with a full reinstatement cost, but the developer wished to deal with it in-house. The slides also stated that there had been difficulties with the septic tank due to its location. It could only be emptied by a specialist department of Scottish Water, who had quoted a price of £4,764 +VAT per empty. The best option was one tank empty per annum.
- On 13 July 2018, the homeowner wrote to the developer on behalf of the owners requiring the developer to provide the detail of the action that would be taken to ensure that the Play Park met health and safety legislation. The homeowner had discussed the draft of the letter with the property factors and had sought their input before sending it.
- On 10 October 2018, the homeowner e-mailed Zurich Engineering, stating that the Play Park had failed an inspection but that the developer had confirmed verbally that the work had now been carried out. The homeowner asked Zurich to contact the property factors to take forward the matter of an inspection to enable the residents to open the Play Park and take out insurance and arrange regular inspections
- On 11 October 2018, Zurich Engineering advised the homeowner by e-mail that the fee to inspect the Play Park would be £500 + VAT and that payment would be required up front.
- Zurich Engineering contacted the property factors on 11 October 2018 asking the property factors to contact them if they wanted to proceed with the inspection.
- On 12 October 2018, the property factors advised Zurich Engineering that they had been advised that the decision had been left to the Residents' Association of the development.
- The first bill sent by the property factors to the homeowner covered the period from 1 May 2018 to 31 July 2018 and was sent in October 2018.
- The second bill sent by the property factors to the homeowner covered the period from 1 August 2018 to March 2019 and was sent on 16 May 2019.
- On 19 July 2019, the property factors advised the homeowner that there were two debtors who owed money to the funds held by the property factors, that the debt collection procedure was at an end and that the debt (£736.88) could either

be apportioned across the remaining homeowners or pursued by court action. The letter gave indicative costs of court action, should the residents choose to pursue it.

- On 29 July 2019, the property factors intimated to the homeowner by letter that the outstanding debtors at the development had settled their final balances, removing the outstanding debt and allowing refunds to those owners who had credit balances.
- The property factors intimated to the owners on 16 October 2018 their resignation with effect from 31 January 2019.
- On 1 February 2019, the property factors wrote to the homeowner advising that it had been agreed to be mutually beneficial for them to stay on as factors till 28 February 2019, to facilitate a straightforward handover to the new factors. As a result, the revised timetable would mean that the longstop date for issuing final accounts would also be put back one month, to 1 June 2019.

Reasons for the Decision

Section 1 of the Code of Conduct requires property factors "to provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement". That statement must be provided to new homeowners within four weeks of agreeing to provide services to them and to any new homeowner within four weeks of the Property factors being made aware of a change of ownership of a property which they already manage.

The Tribunal did not uphold this ground of complaint. The Tribunal accepted the evidence of the property factors, which was supported by the letter dated 4 December 2019 from the developer's solicitors, that the property factors did not start to manage the development until 3 May 2018. Prior to that, in anticipation of taking up their appointment, they had been settling bills on behalf of the owners, but the Tribunal accepted that they had been unwilling to fully take on the development until the issues highlighted in the Inspection Report on the Play Park following an inspection in October 2017 were resolved.

The Tribunal noted that the Invoice issued in October 2018 contained items which dated back to September 2017, but accepted that, although the property factors had been settling bills on behalf of the owners, this had been in anticipation of taking on the active management of the development common parts and there was evidence that they had not taken on such management in October 2017, due to the situation regarding the Play Park.

The Tribunal held, on the basis of the evidence before it and on the balance of probabilities, that the property factors had agreed to provide services on 3 May 2018 and, as they had sent the homeowner a copy of their written Statement of Services on

that day, they had not failed to comply with their duty under Section 1 of the Code of Conduct.

Section 1.1a.B.d of the Code of Conduct provides that the written statement should set out "the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges...and how these fees and charges are calculated and notified".

The Tribunal did not uphold this ground of complaint. The requirements of the Code of Conduct relate to owners being informed about matters which may be dealt with and charged for by the property factors which lie outwith the core services. In this case, maintenance of the Play Park and septic tank were part of the core service and the Tribunal identified that the homeowner's complaint related not to additional services and works which might incur additional fees and charges levied by the property factors, but to contractors' charges which might be incurred in bringing the Play Park up to the required standard and in maintaining/emptying the septic tank. Accordingly, the Tribunal could not uphold this ground of complaint.

The Tribunal noted, however, that the issues of the Play Park and the septic tank were very much at the heart of the dispute between the Parties and, as so much of the written and oral evidence had been in relation to these two matters, The Tribunal felt that it should comment on them, as they also had a bearing on the general complaint by the homeowner that the property factors had failed to carry out the Property Factor's duties.

The Parties were in agreement that the Play Park was not completed by the developer to an adoptable standard and the view of the Tribunal was that, in these circumstances, there was no liability on the property factors to maintain it. The liability to bring it up to standard lay with the developer and the Tribunal was satisfied that the property factors had made the position clear to the developer, who then told them that the work would be completed within a week of their e-mail of 25 June 2018.

The Tribunal noted that the homeowner had herself made progress directly with the developer, who had undertaken to carry out the necessary work and to meet the cost of a further inspection when the work was completed, but, in late 2018, when the property factors had intimated their resignation, the position was that they knew that Zurich Engineering had provided the homeowner with a quote of £500 for an inspection, but they also knew from visiting the site themselves, that the Play Park would still fail the inspection. The view of the Tribunal was that, in those circumstances, they did not fail in their duties as property factors by not instructing the inspection as they reasonably believed that to have done so would have been a waste of the residents' money. There appears to have been some confusion between the Parties, as Zurich Engineering, who would have carried out the inspection, had been told by the property factors that they understood that the Residents' Association were to make

a decision on the matter, while the homeowner had expected that the property factors would have contacted the residents to let them know that they thought £500 of their funds would be wasted if the inspection went ahead, although they would instruct it if the residents wished a Zurich report at that time. The confusion was about who should have taken the next step. The Tribunal's view was that the property factors could have been more pro-active at that point, but that it was clear they did not have the residents' instructions to commission the report.

With regard to the septic tank, the homeowner contended that the reason the residents agreed to increase the float was that they thought the need to empty the tank was imminent. The property factors stated that they had merely advised that at some point the tank would need to be emptied and that, as it would be a complex and costly matter, it would be prudent to make provision for the anticipated cost. The property factors' account was supported by the Powerpoint slides of their presentation to the residents of 5 July 2018 and, whilst it was possible that a different impression had been gleaned by the homeowner during verbal exchanges at the meeting, the Tribunal did not see any further evidence in support of the homeowner's contention, so could not hold that the property factors had in any way misled the residents into thinking there was an urgent need to empty the septic tank.

Section 1.1a.C.g of the Code of Conduct states that the written statement should include confirmation that the property factors have a debt recovery procedure which is available on request.

The Tribunal did not uphold this ground of complaint. The written Statement of Services advises owners that precise details are available on request and the property factors provided a copy to the homeowner when she requested it. The homeowner's complaint related to the process for recovering debt and, in the event of failure to recover it, apportioning it across the development. The view of the Tribunal is that this is common practice, and, in any event, the process of apportionment did not take place in this case, as the property factors advised the homeowner on 29 July 2019 that the outstanding debt had been cleared.

Section 1.1a,C.j of the Code of Conduct states that the written statement should set out how often the property factors will bill homeowners and by what method they will receive their bills.

The Tribunal did not uphold this ground of complaint. The written Statement of Services sets out the detailed arrangements for billing the homeowners. Both bills were issued less than three months after the end of the period to which they related. The homeowner's complaint related to the fact that the first bill contained items which went back to September 2017, but the bill was not sent out until October 2018. The Tribunal accepted the evidence of the property factors that they had dealt with outstanding electricity bills in anticipation of taking up appointment in October 2017, but the Play Park issues had meant that they had not in fact fully taken over

management of the development until 3 May 2018. Accordingly, their first billing quarter was the period up to 31 July 2018, but it would of necessity have included the earlier items from September 2017. The property factors had explained to the Tribunal that the sums involved at the end of the second billing quarter (to 31 October 2018) were so small that they took the decision to include them in what would be their final bill, given they had on 16 October 2018, intimated their resignation. The Tribunal regarded their action as reasonable in the circumstances. The second bill issued on 16 May 2019 covered the period to the end of the factoring arrangement. The arrangement was supposed to have ended on 31 January 2019 but had continued to 28 February 2019 and the bill included float repayments credited in March 2019. The view of the Tribunal was that the property factors had issued their final bills within the timescale they had indicated in their letter of 1 February 2019, so there had not been a breach of the Code of Conduct.

Section 6.8 of the Code of Conduct obliges property factors to disclose to homeowners, in writing, any financial or other interests that they have with any contractors appointed.

The Tribunal did not uphold this ground of complaint. The written Statement of Services states that the property factors have no financial or business interest in any contractors or suppliers appointed by them on behalf of the homeowners and the homeowner did not provide any evidence to indicate that the situation might be different. She had expressed concerns about the relationship between Be Maintained and the property factors. The Tribunal accepted that the letter of 24 January 2017 suggested a merger between Be Maintained and the property factors, but the property factors had made it clear that it was not a merger, but a business acquisition on 1 October 2016. The view of the Tribunal is that Section 6.8 of the Code of Conduct covers only arrangements between property factors and contractors, or suppliers appointed by them. It does not extend to the matter of the acquisition by the property factors of the business of Be Maintained.

Failure to comply with the property factor's duties

The Tribunal did not uphold this ground of complaint. The Tribunal had already held that the property factors' conduct in relation to the Play Park, the septic tank and the issuing of bills did not fail to comply with the Code of Conduct and had been reasonable in the circumstances. The other issue raised by the homeowner in relation to the property factors' duties was that they had, in effect, ceased to act after they had given their resignation notice on 16 October 2018. The Tribunal did not find this to be the case. The property factors had continued to pay bills as and when they fell due and had implemented their Debt Recovery procedure, ultimately successfully, against owners whose accounts were in arrears. They had told the homeowners that the next inspection of the septic tank would be due in March 2019, by which time new factors

would be in place and, although there had been some confusion as to whether they or the homeowners should take the next steps in relation to the Play Park, the property factors had not received any instructions to take any further action on their behalf. Accordingly, the Tribunal did not uphold the complaint that they had failed to comply with their duties.

Having determined that the property factors had not failed to comply with the Code of Conduct or with the property factor's duties, the Tribunal did not propose to make a Property Factor Enforcement Order.

Decision

The property factors have not failed to comply with their duties in terms of the Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011. The property factors have not failed to carry out the Property Factor's duties. The Tribunal does not propose to make a Property Factor Enforcement Order.

Appeals

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.

George Clark

Signature of Legal Chair

Date 20 February 2020