

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Proposal regarding the making of a Property Factor Enforcement Order:
Property Factors (Scotland) Act 2011 Section 19(2)**

Chamber Ref: FTS/HPC/PF/17/0141

Flat 3/1 4 Houston Street, Renfrew, PA4 8NR ("The Property")

The Parties: -

**Mrs Doreen Watt, 9 Doune Crescent, Bishopbriggs, G64 3JG
("the Applicant")**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH "the Respondent")**

Tribunal Members:

Josephine Bonnar (Legal Member)

Elizabeth Dickson (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order ("PFEO"):

- (1) The Tribunal order the Respondent to pay to the Applicant the sum of £550 as compensation for their time, effort and inconvenience within 28 days of intimation of the Property Factor Enforcement Order.

Section 19 of the 2011 Act provides as follows:

"(2) 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 it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made 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 First-tier Tribunal must make a property factor enforcement order."

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute an offence

Josephine Bonnar,
Legal Member

4 September 2017

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/17/0141

**Flat 3/1, 4 Houston Street, Renfrew, PA4 8NR
("The Property")**

The Parties: -

**Mrs Doreen Watt, 9 Doune Crescent, Bishopbriggs, Glasgow, G64 3JG
("the Applicant")**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH
("the Respondent")**

**Tribunal Members:
Josephine Bonnar (Legal Member)
Elizabeth Dickson (Ordinary Member)**

DECISION

The Respondent has failed to comply with its duties under section 14(5) and 17(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with sections 1C(e), 2.2, 3.3, 4.5, 6.3, of the Code of Conduct for Property Factors, and failed to carry out its property factors duties.

The decision is unanimous

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 as "The Regulations"

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By application received on 18 April 2017 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Conduct for property factors. The Applicant stated that the Respondent had failed to comply with sections 1,C.e, 2.2, 3.3, 4.5, 4.7, 6.3 and 6.6. of the Code. The Applicant also stated that the Respondent had failed to carry out it's property factor duties in terms of section 17(5) of the Act.
2. On 1 June 2017, a Convenor on behalf of the President referred the matter to a Tribunal for a determination. A hearing was assigned to take place at Wellington House, 134 – 136 Wellington Street Glasgow on 14 August 2017.
3. On 24 July 2017, the Tribunal issued a direction to the parties requiring both parties to lodge documentation by 7 August 2017. The Tribunal also directed that the application would be heard with application FTS/HPC/PF/17/0134 in terms of Regulation 16 as both applications related to the same property factor.
4. In response to the direction both parties lodged a bundle of documents. In a covering letter, the Respondent indicated that he objected to the applications being heard together, and indicated that he did not wish to attend the hearing. He also provided written representations.
5. On 12 August 2017 at 6pm a fax was received from the Respondent again indicating that he would not attend the hearing. No explanation was offered for nonattendance and there was no request for a postponement of the hearing. The fax reiterated the Respondent's objection to the applications being heard together.

Hearing

6. The hearing took place before the Tribunal on 14 August 2017. The Applicant Mrs Doreen Watt attended accompanied by her husband, Mr Gus Watt. Their solicitor, Mr George McDonald attended as representative accompanied by Gina Cameron, a trainee solicitor. Linda Ferguson (owner of another flat in the property) attended as witness for the Applicant. Also present was Mrs Ann Halsey (the other applicant), director of A&M Lettings Ltd, the applicant in the related case. The Respondent was not present.
7. The Tribunal first dealt with some preliminary matters. The first of these was the fax from the Respondent. The Tribunal advised those in attendance of the terms of the fax as this had arrived late on the Friday evening and had not been circulated to the applicants. The Tribunal advised that as there was no explanation for non-attendance and no request for a postponement the Tribunal proposed to continue with the hearing. In terms of the objection to the applications being heard together, the Tribunal advised that this matter had already been determined by the direction dated 24 July 2017. However, as the objection had been raised, the tribunal asked the applicants for their views

on the issue. The applicant and the other applicant confirmed that they had no difficulty with the applications being heard together. The Tribunal proceeded to consider the Respondent's objection. There were 3 reasons given. The first was that different contracts exist, the applicants contained disputed invoices and it would be contrary to the Respondent's business interests for these to be discussed. As the Respondent was not present, no additional information was forthcoming regarding these issues and the tribunal was not satisfied any of these reasons prevented the applications being heard together. Secondly, the respondent indicated that there were data protection considerations and, in particular, the issue of homeowner debt. Again, no additional information was provided at the hearing. The applicants had confirmed that they had no objection to the cases being heard together. Furthermore, the tribunal noted that the hearing is a public hearing. The tribunal also took account of the fact that even if personal data issues arose, there are exemptions in the Data Protection Act in relation to information being processed for the purposes of legal proceedings and furthermore that the Data Protection Act protects people, not limited companies. Lastly, the Respondent indicated that it was contrary to the overriding objective in terms of the Regulations. The tribunal took the view that there was no information to suggest that any party would be prejudiced by the hearing of the applications together and that the overriding objective, to deal with the proceedings justly, would not be undermined by the hearing of the applications together. The Tribunal then proceeded to consider an earlier letter from the Respondent which indicated that the hearing could not proceed until a sheriff court action relating to factoring debt had been concluded. Again, the applicants present had no concerns regarding this issue. The tribunal concluded that as the Sheriff Court had an entirely different jurisdiction from the Tribunal, and as the processes could operate independently of each other, the tribunal was satisfied that the hearing could proceed. Lastly, the Tribunal confirmed that it would hear from the Applicant and her witnesses before hearing evidence from the other Applicant. The Applicant, Mr Watt and Ms Ferguson all gave evidence in relation to the Application.

8. **Section 1 C(e) of the Code – The written statement should set out “the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee”. Failure to carry out property factor duties - regularly altering the statement of services without notice, failing to date the statements of services.** The applicant explained how the Respondent came to be appointed as factor. The previous factors went into administration. The managing director of the Respondent, Christine Davidson-Bakhshee, had been an employee of that company and set up APEX. She called a meeting of the residents of the 3 blocks involved (2 and 4 Houston Street and Wilson Street). She persuaded the residents that they should appoint the Respondent and promised that a much better service would be provided than that provided by the predecessor. The other applicant, Mrs Halsey, had objected to the appointment but had been overruled by the majority. Mr and Mrs Watt advised the Tribunal that they own three properties – the flat which is the subject of the application at 4 Houston Street, a flat at 2 Houston Street and a third at another tenement in nearby Wilson Street. All three were factored by the Respondent. She

advised that the Respondent is no longer the property factor for the property. The Respondent has issued the applicant with 4 separate statements of services at various intervals, each with changes incorporated. All have been undated and do not identify which property they relate to. It is therefore difficult for the applicant to determine which one they should refer to for current services. Their principal objection was that no management fee is disclosed in any of the 4 versions of the document, as required by the Code. The Tribunal proceeded to consider the statements lodged by the Applicant and the Respondent. The respondent lodged a total of 12 statements of services. The versions lodged by the Applicant are undated. Those lodged by the respondent have dates handwritten in the top right hand corner. None specify the management fee to be charged, nor indeed any other charges which might be regularly levied. One version of the statement, produced by the Respondent, refers to an attached schedule of charges. The Applicant confirmed that she has not received a schedule of charges at any time. The tribunal considered the terms of the 4 statements lodged by the applicant, and carried out a detailed comparison of the 3rd and 4th statements which the Applicant received. At least 9 differences were noted. The Respondents written representations did not address this complaint. However, in response to a similar complaint by the other applicant the respondent refers to a statement of services being issued in November 2016, containing one amendment.

9. **Section 2.2 – “You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).”** Mrs Watt advised that she stopped paying her factoring invoices because a payment she had made to a major mullion repair had been applied by the Respondent to other factoring charges, without her consent. The charges in question were in dispute. When she contacted the Respondent to complain, Christine Davidson-Bakhshee was aggressive and abusive on the phone. She said she could apply the payment to whatever she chose and shouted at Mrs Watt saying, “who do you think you are!” and making other similar remarks. The Respondent’s written representations did not address this complaint.
10. **Section 3.3 “You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise) a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying.” Failure to carry out property factor duties– failure to issue timely invoices in accordance with statement of services.** The Applicant explained that no invoices for factoring charges had been issued for a 25 month period although the statements of services indicate that invoices will be monthly. The Applicant directed the Tribunal to the statement of services she received in October 2016. She advised that on 31 October 2016 a letter was issued by the Respondent enclosing this statement of services and invoices for the period July 2014 to October 2016. The letter explained that an IT problem and the Director being off sick were the reasons for the delay. The letter

offered a payment period of 12 months. It was noted by the applicant that the other application before the Tribunal contained a similar complaint, although in that case it had been 33 months without invoices. The Applicant advised that she thought it strange that the Respondent's difficulties had lasted longer in relation to the other tenement. The Applicant explained that during the 2-year period there had been continuing correspondence regarding the mullion repair. She assumed that, apart from the mullion repair, the respondent was no longer providing factoring services as no business could operate without income. As she is a non-resident owner she didn't know whether cleaning and other services were ongoing, but she assumed not. She did not make enquiries regarding the matter. She also advised the Tribunal that she did not find the Respondent's explanation for the delay a reasonable one. She was concerned that the lack of invoices for such an extended period of time meant that there was no way of verifying whether the services charged had been carried out. She tried to make enquiries following receipt of the invoices, where this was possible. She directed the tribunal to one of the invoices which contains a charge for the uplift of a kitchen worktop (invoice dated 17 September 2014). The Respondent was asked for a copy of the invoice for this from the contractor as the charge £120 seemed excessive. A copy invoice was provided, dated 15 July 2014, from Woods Building and Engineering contractors. The Applicant had been surprised that this company had been instructed to remove a discarded item as well as by the cost. Moreover, the local authority provides a service for uplifting rubbish at a much lower cost, although it was conceded that a householder would have to request such an uplift. In addition, the charge of £120 when divided among the various owners did not amount to £15 per household, as shown on the account. The Applicant indicated that she has contacted Woods and they advised that, although they have quoted for work from time to time, they have never been instructed to do any work for the Respondent at the property. This led the Applicant to the conclusion that the copy invoice is not genuine and caused her to question whether other work detailed in the invoices for the 2 year period was in fact carried out. The Respondent's written representations state that the letter of 31 October provides an explanation for the late invoices and further states that apologies were made for the inconvenience together with the offer of a 12 month payment period.

- 11. Section 4.5 "You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely written reminders to inform individual homeowners of any amounts outstanding"** The Applicant confirmed that this complaint is also about the late invoices. The Applicant indicated that as the Respondent failed to issue invoices, it is also in breach of the code by failing to issue reminders during the same period. However, the Applicant conceded that her failure to pay invoices was not as a result of oversight or lack of reminders being received. She had deliberately not paid as she no longer trusted the Respondent.
- 12. Section 4.7 "You must be able to demonstrate that you have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging those remaining"**

homeowners if they are jointly liable for such costs” In the application the applicant refers this section of the code and attached correspondence mentions to a failure by the respondent to trace a missing owner. This is disputed by the respondent in the correspondence. The applicant did not give direct evidence on this matter. The witness Linda Ferguson gave evidence that she had paid the share due by a number of homeowners for the mullion repair. She advised that she felt the repair was important and had offered to pay the unpaid shares on condition that once homeowners had settled up, she would be reimbursed. Although she understands that some of the homeowners have now paid, she has not received any repayment from the Respondent. The Respondent’s written representations do not address this issue.

13. Section 6.3 “On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in house staff”, Section 6.6 “If applicable, documentation relating to tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance”, Failure to carry out property factor duties by providing quotations for major repairs, exhibiting invoices for work carried out and providing written and verbal updates on the progress of the work. The Applicant advised the Tribunal that she and other proprietors became very concerned about the escalating cost of the mullion works which now greatly exceeds the original estimates. There had been no meeting of residents called about this repair or proper consultation – just regular demands for payments. The Applicant was of the view that some of the costs incurred, such as reports and surveys were not needed. Furthermore, the final total of £15000 included £6000 for project management by the Respondent which she considered excessive. The Respondent’s written representations referred to 9 quotes and invoices relating to mullion repairs and which were within the documents lodged. The Applicant confirmed that she had eventually seen these documents, but that they were not provided by the respondent at the time they were obtained or when payments were being sought. In fact, no evidence of competitive tendering had been provided. The Applicant directed the Tribunal to a quote from JCJ Group indicating that the work could be carried out for £3883 plus VAT. Coincidentally, the invoice from GD McFall Ltd, the contractor allegedly instructed to carry out the work is for an identical amount. Eventually the work was done although this only came about because Linda Ferguson, agreed to meet the cost of any share not paid by proprietors. Linda Ferguson advised that even then it took a further 5 months for the work to be completed during which time no updates or explanations were forthcoming. The Tribunal asked about the Respondent’s authority to carry out work, and whether they could instruct work up to a certain value before getting prior authority. The Applicant confirmed that there are no specific provisions in the title deeds nor is there a written contract with the Respondent over and above the statement of services, which does not provide this information as it should. She indicated that she thought the ceiling

was £300, beyond which the proprietors had to be consulted. However, she conceded that there is no paperwork in support of this. In the Respondent's written representations there is reference to mandates being issued to homeowners. Copies of these mandates and covering letters with progress reports are produced. The Respondent further indicates that updates were issued on numerous occasions. These are not specifically referred to but the tribunal noted that a number of letters relating to mullion repair are included in the documents lodged by the Respondent.

14. The Applicant explained that she had not been aware until recently that most of the factoring work was being carried out by in house staff. She had previously asked for invoices in relation to close cleaning and litter picking to satisfy herself that the work being charged was being done. These had not been forthcoming and the Respondent did not explain that in house staff were being used. She indicated that she accepted that in house staff might be more cost effective, but that she had not been given the necessary information to make that assessment. Once she had established the extent to which in house staff were being used, the applicant noted that almost all of the services invoiced were payments to the Respondent direct and not for external contractors. This had never been made clear by the Respondent and she felt it ought to have been. The respondents written representations do not address this issue except to confirm that cleaning, litter picking and landscaping is carried out fortnightly. In its written representations for the other application, the Respondent indicates that they use in house staff because it is more cost effective and that this information has always been freely available.
15. **Failure to carry out property factor duties – continuing to carry out litter picking when told this was not required, charging for close cleaning not carried out.** The Applicant advised that in July 2013 she had informed the Respondent that she did not want litter picking carried out. She said that the response she received was that as she was the only homeowner making this request, the service would continue. She has since discovered that she was not the only one making such a request. The other applicant, Mrs Halsey confirmed in her evidence that she had also made such a request a number of years ago and had also been told that she was the only one. The Applicant stated that she is of the view that the Respondent ought to have acted on her request by writing to all proprietors to establish whether a majority wanted litter picking continued. They did not do so. The Applicant stated that she does not believe that close cleaning is carried every fortnight, as the invoices suggest. She accepts that as a non-resident owner it's not possible to be certain. However, a cleaning schedule for the end of 2016 posted on the wall of the close suggests a monthly clean. Also, at a recent meeting of owners, a couple of owner occupiers confirmed that they did not think it was being done every fortnight. The Respondent indicates in his representations that they received no complaints from the Applicant in relation to litter picking. It goes on to say that cleaning, litter picking and landscaping are carried out fortnightly and any alteration to this service would require a majority of owners. The Respondent refers to and produces timesheets detailing the

carrying out of cleaning and litter picking and a cleaning service rota as evidence of these services.

16. Failure to carry out property factor duties – block insurance is inadequate and applicant has had to arrange their own insurance. The applicant advised the Tribunal that she knows that block insurance is mandatory in terms of the title deeds but has refused to pay same as the Respondent has under insured the property and she has therefore had to arrange her own insurance. When the matter was raised with the Respondent, the Applicant was advised that it would cost £678 to get an insurance re-valuation. The applicant disputes this. She didn't have to pay a valuation when she arranged her own insurance and from enquiries she has made, understands that property factors should have the necessary knowledge and expertise to ensure properties are adequately insured. The Respondent's representations do not address this issue

The tribunal make the following findings in fact:

- (i) The Applicant and her husband are the owners of the property but do not reside there.
- (ii) The Respondent was the property factor for the property. The contract has been terminated
- (iii) On 31 October 2016, the Respondent sent a letter to the Applicant enclosing an amended statement of services and factoring invoices for the period July 2014 to October 2016.
- (iv) The invoices issued to the Applicant for the period July 2014 to October 2016 included charges for fortnightly close cleaning and litter picking.
- (v) Close cleaning and litter picking are carried out by in house staff of the respondent and not by external contractors. The Respondent did not advise the Applicant that most factoring services were being carried out by in house staff.
- (vi) The Respondent has issued the applicant with 4 statements of services. These statements of services do not detail the management fee being charged by the Respondent for its services.
- (vii) The Applicant made a complaint to the Respondent about the use of a payment she had made. The managing director of Respondent staff verbally abused the Applicant.
- (vii) The Respondent did not formally consult proprietors regarding a major mullion repair, before requesting payment for this repair to be instructed.
- (viii) The Respondent did not exhibit contractors estimates and invoices to the applicant when these were requested.

Reasons for Decision

17. In her application, the Applicant states that the Respondent has breached Sections 1.C.e, 2.2, 3.3, 4.5, 4.7, 6.3 and 6.6 of the Code. The Applicant also states that the Respondent has failed to carry out the property factor duties in terms of Section 17(5) of the Act. The Tribunal found the Applicant, Mr Watt and the witness Linda Ferguson to be credible and reliable. They gave their evidence in a straightforward manner, referring to documents they had lodged. No evidence was presented by the Respondent who had lodged only brief representations which did not address all of the complaints. Documents were lodged which were considered by the tribunal.
18. **Section 1.C.e.** The Tribunal considered the terms of the statement of services issued to the Applicant in October 2016 together with the three earlier versions previously received by the Applicant and those lodged by the Respondent. No management fee is identified in any of the versions. The Respondent did not dispute this complaint in its written representations and no evidence was presented to contradict the Applicant's account. The Respondent lodged a version of the statement in its bundle of documents which referred to a schedule of charges being attached. The Tribunal accepted the evidence of the Applicant that no such schedule had ever been received. The tribunal concluded that the Respondent is in breach of this section of the Code.
19. **Section 2.2.** The Tribunal considered the evidence of the Applicant in relation to a telephone call with the managing Director of the Respondent, when she was verbally abused. This was not commented on in the written representations from the Respondent. The tribunal found the Applicant to be reliable and credible in her account of the telephone call and were satisfied that the Director had been abusive and intimidating toward the applicant. The tribunal was therefore satisfied that there had been a breach of this section of the code.
20. **Section 3.3** The Applicant led evidence that no invoices or other statement of account was issued between July 2014 and October 2016. This is not disputed by the Respondent. The Tribunal was not persuaded by the Respondent's explanation for the time lapse. This might have explained a short delay in the issuing of invoices but not a delay of more than 2 years. The tribunal concluded that the respondent had breached this section of the Code.
21. **Section 4.5** The Tribunal considered that the absence of any invoices or statements of account for over 2 years also amounted to a breach of this section of the code. The Respondent's written representations did not specifically address this complaint but the explanation that IT difficulties and a staff members ill health leads the tribunal to conclude that the respondent did not have a proper system in place for monitoring payments or keeping homeowners informed as to their outstanding liabilities. The tribunal therefore

concluded that there had been a breach of this section of the code.

22. **Section 4.7** The Tribunal only heard evidence from Linda Ferguson in relation to the issue of unpaid shares. She had volunteered to pay the outstanding shares for the mullion repair so that it could be completed. She advised that it then took months for the work to be carried out. She also advised that she believes that the respondent has now received payment from some proprietors but has not reimbursed her, although they undertook to do so. Although the tribunal accepted what was said by the witness, there was no specific evidence led that the Respondent did not take steps to recover unpaid costs. There was no evidence presented at all about the alleged untraced owner. The tribunal therefore concluded that the Applicant had not established a breach of this section of the code.
23. **Section 6.3** The Applicant gave extensive evidence regarding this issue. The tribunal noted that following receipt of the invoices for July 2014 to October 2016 on 31 October 2016 the Applicant sought information from the Respondent, and specifically asked for sight of contractor's invoices. She had not appreciated that most of these services had been carried out by in house staff. The tribunal formed the view that for homeowners to be in a position to challenge the use of in house staff, they must first know that they are being used. The employment of in house staff may well have been more cost effective, but the Applicant was entitled to know what she was being asked to pay for. It was unclear from the evidence whether the respondent's failure to advise owners of the use of in house staff was deliberate or simply the result of poor administration. The tribunal noted that the written statement of service did not provide clarity as to what services were covered by the management fee or which were addition to same and therefore result in additional charges. It was evident to the Tribunal that the respondent had not consulted with or otherwise advised the Applicant of the services which their in house staff would be providing. Where external contractors had been used, such as for the removal of an item from the back court, it appeared to the Tribunal that the Applicant had cause for complaint. The choice of contractor and the cost of the work are both questionable, and it does not appear that the respondent made any effort to justify same. Of most concern however, is the actions of the Respondent in relation to the mullion repair. While the tribunal noted that the title deeds do not lay down any process for seeking authority from homeowners, it is usual for property factors to consult with homeowners in relation to major repairs. There are certainly letters, updates and mandates requesting payment. But there does not appear to have been a proper consultation process or any information given about competitive tendering. In particular, copies of quotes were not provided to homeowners in advance. The Tribunal is satisfied that there have been numerous failures by the Respondent in terms of this section of the Code.
24. **Section 6.6** The Tribunal is of the view that the Respondents failures to exhibit information regarding the mullion repair, including copies of quotes obtained, as discussed in paragraph 23 is also a breach of this section of the code. The Respondent eventually provided copies, but not when these were

first requested.

- 25. Failure to carry out property factor duties – failure to issue invoices for 2 years.** Reference is made to paragraph 20 of this decision. The tribunal is of the view that it is part of a property factors duties to issue invoices and statements of account on a regular basis. The Respondent failed to do this and is therefore in breach of Section 17(5) of the Act.
- 26. Failure to carry out property factor duties – failure to provide quotations for major repairs, exhibit contractors invoices or provide proper updates as to the progress of major repairs.** Reference is made to paragraph 23 of this decision. The Tribunal is of the view that it is part of a property factors duties to provide homeowners with copy estimates for major repairs and to exhibit invoices when these are requested. The tribunal accepts that some estimates and invoices were eventually provided, but not at the appropriate time or promptly when asked for. It therefore found the Respondent to be in breach of this section. In terms of updates, the Respondent exhibited correspondence which does appear to provide a fair amount of information as to the progress of the mullion repair. The tribunal was not therefore satisfied that they had failed to provide such updates. However, the failure to exhibit invoices and estimates did amount to a failure to carry out its property factor duties in terms of Section 17(5) of the Act.
- 27. Failure to carry out property factor duties – regularly altering statement of services.** The Tribunal considered this complaint. It is not disputed that the statement has been amended frequently, although the extent of the changes does appear to be in dispute. The tribunal however was not convinced that this amounted to a failure to carry out property factor duties. It is perhaps unfortunate that the document has been amended so frequently. This caused confusion for homeowners, especially as they were undated and it was not clear to which property each related to, but it did not appear to the Tribunal that the legislation prohibits such a practice. The tribunal did not therefore consider this complaint to amount to a failure in terms of the section 17(5) of the Act.
- 28. Failure to carry out property factor duties – Carrying out litter picking against the wishes of homeowners and charging for close cleaning that was not carried out.** The Tribunal had some difficulty with both of these complaints. In terms of the litter picking issue the Tribunal was satisfied that both the Applicant and the other applicant had separately informed the Respondent that they did not want fortnightly litter picking. However, there was no evidence to suggest that a majority the homeowners had made this request or indeed that the Applicant and the other applicant had made the request on more than one occasion, put it in writing or asked the respondent to consult with the other homeowners. It does seem unsatisfactory that the respondent did not act on the complaint. However, there is no evidence that a majority of homeowners wanted the litter picking to stop. In terms of the close cleaning the Tribunal noted that the applicant does not reside in the property and accepted that she could not be certain that cleaning is not taking place. The Applicant is of the view that had invoices been more regularly issued, she

might have investigated and been able to establish whether it was taking place or not. However, the Tribunal was not persuaded that there was sufficient evidence that the service is not being provided fortnightly. The copy cleaning schedule produced by the Applicant, which she advised had been taken from the wall of the close only covered a very short period of time. In the circumstances, the tribunal concluded that this complaint was not established and therefore that there had been no breach of section 17(5) of the Act in terms of same.

29. Failure to carry out property factor duties – inadequate insurance. The Tribunal noted that the Applicant has arranged her own insurance. This appears to be for 2 reasons – the cost of the block insurance and the concern that insufficient cover has been provided. The Tribunal did not see documentary evidence relating to insurance valuation of the property and therefore could not form a view as to the adequacy or otherwise of the cover. It was noted that block insurance is mandatory in terms of the title deeds. In the circumstances, the tribunal was not satisfied that there had been a failure to carry out its property factor duties in relation to this complaint

Proposed Property Factor Enforcement Order

The tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

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.

Legal Member

Josephine Bonnar
4 September 2017