Housing and Property Chamber
First-tier Tribunal for Scotland

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

Decision Property Factors (Scotland) Act 2011: Section 19, The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017: Rules 16 and 44

Chamber Ref: FTS/HPC/PF/19/1233 and FTS/HPC/PF/19/1571

7 York Street, Clydebank, G81 2PH ("The Property")

The Parties:-

Mr David Hopkirk, 107 Attlee Avenue, Linnvale, Clydebank, G81 2SF ("the Homeowner")

West Dunbartonshire Council,
16 Church Street, Dumbarton, G82 1QL
("the Property Factor")

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

Background

These are applications by the Homeowner regarding alleged failures of the Property Factor to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors. The application PF/19/1233 was accepted for determination on 20th May 2019 and subsequently passed to members of the tribunal. There was a Hearing on that application on 17th September when evidence was heard, it was decided to have an inspection under Rule 44 of the Rules and for consideration of the application to be adjourned. It was intimated that the Applicant had made another application concerning the Property. On 29th September 2019 this other application PF/19/1571 was accepted for determination and was conjoined for consideration with the existing application under Rule 12 of the Rules.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Regulations," the First-tier Tribunal for Scotland (Housing and Property Chamber) is referred to as "the Tribunal" and West Dunbartonshire Council is referred to as WDC.

Hearing on 17th September in respect of application PF/19/1233

A Hearing was held in the Glasgow Tribunals Centre, 20 York Street, Glasgow.

The Homeowner was present and gave evidence.
The Property Factor was represented by Mr Christopher Anderson, Solicitor. Mr Alan Young, an employee of the Property Factor, was present and gave evidence.

Preliminary Matters

The Homeowner stated that he had lodged another application with the Tribunal in connection with the Property. Mr Anderson said that he was aware of this and thought that the applications were to be conjoined. It was explained that the only matter which the Tribunal could determine was that which was before the members at the Hearing which was in relation to the application numbered FTS/HPC/PF/19/1233.

Matters of Agreement

Parties confirmed that the Property is an upper flat in a detached block of four. There are two rear projections which are two storeys in height and which have flat roofs. Each flat roof has a gutter. The title provisions state that each proprietor of the four flats has a responsibility to pay a one quarter share of the cost of repairs to the common parts of the tenement.

An invoice in respect of replacement of a gutter and dated 12th December 2018 was issued to the Homeowner for the sum of £181.39 and was paid by him. WDC owns property in the block of four dwellinghouses.

Written Representations by the Property Factor in relation to Application PF/19/1233

Written representations were received from the Property Factor. The representations state that the invoice for £181.39 related to a share of the cost of the erection of scaffolding and subsequent replacement of guttering and was not in respect of repairs to a flat roof.

The representations provided a timeline of correspondence between the Homeowner and the Property Factor and copies of the correspondence were lodged.

It was stated that the repair was necessary and that, as a result of the repair, an inspection of the pitched roof was undertaken when it was discovered that replacement of the covering and associated items was necessary. The representations contained a timeline of the actions taken in respect of the works undertaken and state that the Property Factor considers that the Homeowner does not understand the replacement of the storm damaged guttering.

Evidence

Mr Hopkirk said that he wrote to WDC on 19th December 2018 (PF production 5) because he had visited the property on 18th December 2018 and noticed that there was scaffolding erected around the block of four flats. He said that he had previously had an invoice for work and that this was for repairs to the flat roof. Mr Hopkirk was referred to Production 4 and the terms of the invoice.

Mr Hopkirk said that when he wrote to WDC on 19th December 2018 he was seeking clarification of matters. The Property Factor responded by a letter dated 4th January 2019 in which it is stated that the repair in question was for the rear gutter following upon storm damage and was separate from the later work for replacement of the roof. The letter gave details of the work done and the materials used for the repair.

Mr Hopkirk said that he looked at the gutter which was stated to have been replaced and that he considered that the length of gutter was old and, in his view, was not a replacement.

Mr Young said that there had been a report from another proprietor in the building that a part of the gutter had "fallen off" as a result of storm damage and that this had precipitated the repair.

Mr Young said that proprietors had been advised of the need for the work and Mr Hopkirk said that he could not remember receiving the letters but that he must have done because he paid the invoice.

Mr Young said that, in the course of replacing the section of gutter, it was determined that extensive work to replace the roof was required and this was subsequently effected.He said that the work to replace the gutter was not replicated when the roof was replaced. He said that, because a section of gutter had been replaced, this was not replaced when the later work was done. He said that one possible explanation for Mr Hopkirk not realising that the gutter had been replaced is that it was a different colour. He said that the "storm damage" replacement gutter was grey UPVC and the gutters which were replaced along with the pitched roof were black UPVC.

Mr Young referred the tribunal to PF production 10 which is a report by Gary Miller, an employee of the Council which stated " On visual inspection the roof covering (Marley Mods) are delaminating, porous, and chipped/cracked at various locations....The tiles are now at the end of their life cycle...."

Mr Young said that the grey gutter may have been dirty but that it was not painted. Mr Hopkirk said that the gutter had flaking paint on it.

It was clear to members of the tribunal that there were issues of fact relating to whether or not a gutter had been replaced. The Homeowner stated that it had not been replaced and Mr Young referred the tribunal to a letter to the Homeowner dated 4th January 2019 which detailed the work done to the Property, including replacement of UPVC guttering and which detailed the materials used.

In the interests of justice, the members of the tribunal considered that an inspection under Rule 44 of the Rules would be of assistance. They considered that such an inspection would only require the involvement of the Ordinary Member who, as a chartered surveyor, has special expertise. The tribunal, having only heard part of the evidence, considered that it would be appropriate to adjourn consideration of the application to another Hearing. The date for the Inspection was fixed for 10th October 2019 and parties agreed that each would waive any notice period for representations to be made on the inspection report. The date for the next Hearing was fixed for 21st October 2019.

Hearing 21st October in relation to applications PF/19/1233 and PF/19/1571

A Hearing was held in the Glasgow Tribunal Centre.

The Homeowner was present and the Property Factor was represented by Mr Christopher Anderson, solicitor. Mr Young, an employee of WDC was present.

Preliminary Matters

It was noted that an Inspection had been carried out by the Ordinary Member and that his report dated 10th October 2019 had been circulated to the parties.

It was noted that the Property Factor had made written representations but that neither party had made specific representations on the Inspection Report.

Written Representations of the Property Factor in relation to Application PF/19/1571

It is stated that Section 2 of the Written Statement of Services was irrelevant because that referred to improvement works and it was submitted that the works complained of were not improvement works but necessary repairs to a roof that has reached the end of its life cycle. The representations state that a necessary repair is work which has to be undertaken to protect the fabric or structure of the building.

The representations state that WDC attempted to engage with the Homeowner in connection with the repair because four letters were hand delivered to the Property. The representations stated that, should the Homeowner not be receiving mail personally addressed to him, then that is a matter he should take up with whoever is occupying 7 York Street.
The representations acknowledge what is described as the administrative error in the Property Factor not communicating with the Homeowner at his correspondence address. The representations direct the tribunal to Section 6(b) and 9(b) of Burden Writ 2 of Title DMB66957. These sections are referred to later in this Decision.

The representations state that the Property Factor has not failed to acknowledge the Homeowner's concerns regarding the provision of surveys etc. It is stated that it is not considered that there is any relevant challenge to the Property Factor's right to carry out roof renewal works.

The Inspection Report

The Ordinary Member went through the terms of his report:

The Property is in the northern half of a block of four cottage flats and the gutter which is subject to one of the issues before the tribunal is to a rear projection at the southern half of the block.

The report states that the fascias, soffits and barge boards are of timber which has received a paint finish and that a gutter is supported on four brackets fixed to the fascia board. At either end a stop end has been provided and the gutter discharges to a downpipe which in turn seems to be connected to an underground drain.

The report states that the gutter appears to be new whilst the outlet has traces of paint or a similar substance on the surface. It states that the brackets seem to have some paint on their surfaces in areas. The report states that the downpipe between the outlet at gutter level and about 1m above ground level appears to have been renewed.

The Ordinary Member stated that, in his opinion, the fascia boards and soffits appear to be original. He said that the fascia board appears to be constructed of plywood which has been painted.

Mr Young said that a section of guttering had been renewed and that a downpipe had also been replaced and that the operatives who had carried out the repair had not given the necessary feedback administratively for this to be charged for so that meant that this part of the work had been done and proprietors had not been charged for it.

Mr Young said that he had not spoken to the WDC operatives who had carried out the work. He said that it was possible that the fascia had been removed and that the old fascia had perhaps been refitted. He also said that it was possible that the transitional outlet had been reutilised.

Mr Hopkirk said that he did not think that the gutter had been replaced and that paint on the brackets and elsewhere supported this.

The tribunal considered the alleged breaches of the Code in relation to application PF/19/1233

2.1 You must not provide information which is misleading or false.

Mr Hopkirk said that he had been provided with information which was not correct and that he was charged for work which had not been done. He said that the total account

was for more than £700 which he considered excessive from experience with work which he has had done to his own house. He also said that he had questions about the quality of the work which has been carried out and he would have thought that replacement of rainwater goods should have matched those already on the Property.

The tribunal noted the terms of PF production 4 and Mr Young said that the invoice which was issued matched that. He said that the information contained in both coincide.

3. While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

Mr Hopkirk said that, in his view, there was no clarity or transparency in WDC's accounting. He said that he feels that someone in the Council just sends out accounts without regard. He said that this does not build financial trust. Mr Hopkirk referred to the letter of 4th January 2019 and the invoice dated 12th December 2018. He said that he considered that he had been charged for work which had not been done.

Mr Young said that there is a clear distinction in WDC of its two roles- that of property factor and owner. Mr Young said that any discrepancies in accounting would have been accidental and that, if any errors are or were made, there would be appropriate refunds. Mr Young said that the bulk of the costs involved in the particular work to the Property for the gutter replacement would have comprised scaffolding costs. He said that if it is determined that the gutter brackets had not been replaced then appropriate adjustments can be made. Mr Young said that it was significant that it had been determined by WDC operatives that a downpipe required to be replaced and that this was done at no cost to proprietors. Mr Young conceded that it was possible that the operatives had not fed back that all the materials which it had been thought would have been required, had not been needed.

7.2 When your in- house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Tribunal.

Mr Hopkirk said that he got the impression that the Property Factor was not interested in dealing with the complaint and that he did not consider that it had complied with this section of the Code.

Mr Anderson referred the Tribunal to the WDC letter of 16th April 2019 (PF production 9) which was signed by Mr Jim McAloon, Strategic Lead Regeneration. Mr Young said that Mr McAloon is a member of senior management in WDC. Mr Anderson said that this is what he would describe as a "final decision letter" and that it included the appropriate information detailing what the homeowner could do if not happy with the terms of the decision contained in the letter- an application to the Tribunal.

Mr Hopkirk said that the letter did not indicate who Mr McAloon is and that there was nothing contained in it which would indicate that it complied with this section of the Code.

The tribunal considered the alleged breaches of the Code in relation to application PF/19/1571

2.1 You must not provide information which is misleading or false.

Mr Hopkirk said that WDC had failed to give him information with regard to why it was considered that the roof needed to be replaced. He said that he received no letters from the Property Factor in connection with this matter. He said that WDC had his home address and that it had used this when communicating with him about the gutter repair.

Mr Hopkirk said that he had asked for information from WDC so that he could pass it to insurers and that this had not been provided. Mr Hopkirk acknowledged that a claim in relation to the roof may or may not have been something which the insurers would have considered but he said that he had been denied access to the possibility of investigating if this would have been possible because information had not been provided.

Mr Hopkirk said that he did not know the qualifications of Gary Miller, a WDC employee, who had provided the report on the condition of the roof and he did not know why the roof was replaced. He said that he did not have the opportunity of providing any input to consideration of the roof repair. He said that he considered that, as an owner of a property in the block of flats, he should not have been disregarded.

Mr Young said that communications had been sent to the Homeowner and he referred to three letters which had been sent to the Homeowner at the Property. He accepted that WDC had the Homeowner's home address to where letters to him should have been sent and he accepted that the Homeowner would only have received the information after the roof had been replaced. He said that WDC had two different systems for repairs and that a process to check both databases had not been carried out and that, had it been, it would have been recognised that the letters should have been sent to the Homeowner at his home address.

Mr Hopkirk said that, if he had received the letters advising him of the proposed work, he may have got someone to give him an independent view as to the necessity of the works

Mr Hopkirk said that he considered that the terms in the Title are unfair terms in terms of the Consumer Rights Act and that he is a consumer in terms of the Act.

Mr Young said that the Property Factor had not supplied information which was misleading or false. He acknowledged that the information had been sent to the Homeowner at the wrong address. He said that Gary Miller was someone well

experienced in matters of property maintenance and that it was entirely reasonable for him to carry out such an inspection and to report.

2.3 You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out- of- hours emergencies including how to contact out - of–hours contractors.

Mr Hopkirk said that the letter from Mr McAloon dated 16th April 2019 contained no contact details for him.

Mr Anderson accepted that there were no contact details on this letter and he said that, given Mr McAloon's position in WDC, his details are not routinely handed out. He said that Mr McAloon was a busy person with a large department who cannot be expected to liaise directly with members of the public. He said that this was a final decision letter which directed the Homeowner to the Tribunal

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

Mr Hopkirk said that he wasn't consulted with regard to the works which were carried out. He said that, because he was not advised of the proposed works, there was no possibility of any discussion.

The tribunal was referred to the Written Statement of Services:

"....properties in the Clydebank area.....we have full power to instruct any works that we think are necessary or desirable for the repair, maintenance or renewal of the common parts."

It states that the property factor will "engage with owners where necessary improvement works to the block are identified to obtain consent to proceed."

There is a part of the Written Statement of Services which is entitled " Sold Property Management Service: Factoring Service." This states *inter alia:*

"We will advise you in writing of the proposed repair, your share of the estimated costs...."

"Each time we carry out a common repair we notify you in advance to allow some time for discussion....."

The tribunal was referred to sections from Burden 2 on the Title Sheet for DMB66957:

6(b) Subject to the following the Factor shall have full power and authority to instruct and have executed from time to time such works as he is his judgement shall consider necessary or desirable for the repair, maintenance or renewal of the Common Parts or any part thereof, provided always that in the event of the Superiors no longer being proprietors of any dwellinghouses within the said block, then, in that event in the case of a major work (being a work the cost of which is estimated by the Factor to exceed Five Hundred Pounds or such greater amount as may be determined from time to time by the superiors by a meeting of the proprietors of all dwellinghouses within the said Block) the Factor shall, before instructing the same, report the matter to such proprietors in terms of Clause 10 hereof and such work shall be undertaken only if it is authorised as hereinafter provided by a majority of such proprietors. The decision of a majority of such proprietors shall be binding on all of the proprietors. Without prejudice to the foregoing where the Superiors remain proprietors of any of the dwellinghouses within the said Block the foregoing restrictions on the power of the Factor in relation to a major work shall not apply. Notwithstanding the foregoing provisions in relation to a major work the Factor shall be entitled forthwith to instruct and have executed such work as he considers necessary for the interim protection or safety of the Block or any part thereof or of any person, pending the decision of the said proprietors.

Burden number 9 states that WDC shall be the Factor for as long as it owns any property in the Block.

Mr Young stated that the works done were not improvements but essential repairs.

Mr Hopkirk said that he was not consulted with regard to the works which were carried out. He said that, because he was not advised of the proposed works, there was no possibility of any discussion as was referred to in the Written Statement of Services.

He said that he thought the Council should have been put on notice when he had not responded to their correspondence. Mr Young said that it was not unusual for people not to respond to letters and that the title conditions allowed WDC to proceed with the work.

Mr Anderson referred to the title conditions which the tribunal had been referred to and stated that WDC did not require authority to carry out the works.

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

Mr Hopkirk said that he did not think that he received annual statements from the Property Factor. Mr Young said that annual statements were sent and that it is sent out at the same time as the request for the insurance premium. He explained that there is a block insurance policy in place.

Mr Hopkirk said that he had made what he considered to be a reasonable request for information and had asked for documentation to support the report of Gary Miller. He said that, in his view, most people would expect a detailed survey before such works were contemplated.

Mr Young said that WDC had responded to Mr Hopkirk's request by supplying a copy of Mr Miller's report. He said that Mr Miller was a capital planning officer who was a trade operative of more than twenty years' experience. He said that the report of Mr Miller gave details of what he found when he had examined the roof.

Mr Hopkirk said that no information had been forthcoming when he had asked for it.

Submissions

Mr Hopkirk said that the terms of the title deeds constituted an unfair term in accordance with the Consumer Rights Act 2015. He said that he considered that he was a consumer in terms of the Act

Mr Hopkirk asked the tribunal to find that the Property Factor had not complied with the Code and had failed to carry out the property factor's duties.

Mr Anderson said that he had not had notice to argue the issue raised about the Consumer Rights Act 2015 but he did not consider that the Act was relevant to the applications before the tribunal.

Mr Anderson said that, in relation to the application PF/19/1233, appropriate and necessary works were done to the guttering and that the tribunal had heard that the main cost would be scaffolding. He asked the tribunal to accept that WDC had communicated in an appropriate manner with the Homeowner in relation to this matter. He said that the Property Factor had given information when requested and had not provided any information which was false or misleading.

Mr Anderson asked the tribunal to find that the Property Factor had complied with the Code and had carried out the property factor's duties.

Mr Anderson said that, in relation to the second application, the Property Factor accepted that it had not communicated with the Homeowner at the correct correspondence address. He said that this error did not mean that the Homeowner should not be charged for the work which was carried out and that it would be wholly disproportionate to suggest that this should be the case.

Mr Hopkirk said that the Property Factor had his correct home address and should have used it to communicate with him.

Mr Anderson said that that, in terms of the title conditions, the Property Factor had full power to carry out the works which it had. He said that approval of the Homeowner was not required.

Mr Hopkirk said that the particular section of the title was unfair and he believed that it breached the terms of the Consumer Rights Act 2015.

Mr Anderson accepted that, in terms of the Written Statement of Services, the Property Factor was obliged to consult with homeowners before embarking on such repairs and he said that such consultation was attempted although he accepted that it was flawed.

Mr Hopkirk said that he had been denied the opportunity of being involved in discussions about the roof replacement.

Mr Anderson said that he considered that any information which the Homeowner had requested had been supplied to him and Mr Hopkirk disagreed with this and said that he had not been able to approach the insurers to ascertain whether or not they would entertain a claim.

Mr Anderson that no invoice for the roof replacement had been raised and that it had been deferred pending conclusion of the case before the tribunal. He said that, in fairness to other proprietors, no invoices had been sent to them either.

Findings in Fact

1. **The Homeowner is an owner of the Property which is situated in a building which is factored by the Property Factor.**

2. **The Property Factor carried out repairs to a gutter of the said building for which it charged the Homeowner for his share of the repair.**

3. **The invoice for the gutter repair was incorrect because not all the materials charged for were utilised in the repair.**

4. **The Property Factor was obliged in terms of the Code and the Written Statement of Services to consult the Homeowner in relation to replacement of the roof of the said building.**

5. **The Property Factor had the necessary contact details for the Homeowner and did not consult him with regard to the roof replacement.**

6. **The Property Factor has breached the Code.**

Reasons

The tribunal considered the issue of the Consumer Rights Act 2015. Neither party made any detailed submissions on the applicability of the Act on the Applications before it.

Put at its most basic, Mr Hopkirk's argument seems to be that the terms of the title of the Property and others in the block were unfair and favoured West Dunbartonshire Council which, in terms of the Act is a supplier.

The tribunal is considering the applications strictly in terms of the Property Factors (Scotland) Act 2011 and the actions of West Dunbartonshire Council in its role as property factor and not as a co - owner in the block of properties in which the Property is situated or indeed any other role other than as property factor. The tribunal considered that it is not for it to determine whether or not a title condition is fair or otherwise and that there are other remedies which might be open to the Homeowner. The Homeowner did not advance an argument that the Written Statement of Services was unfair but the Tribunal noted that, in its terms relating to implied authority to carry out works, it mirrored the terms of the Title. The tribunal considered that its powers were restricted to considering the applications in terms of the 2011 Act and the Code and found that it did not require to consider further the terms of the Consumer Rights Act 2015.

Application FTS/HPC/PF/19/1233

2.1 You must not provide information which is misleading or false.

The Inspection Report was useful to the tribunal and it determined that, in respect to the work to the gutter, that not all of the work charged for had been done. It considered that it was reasonable to make such a finding based on the inspection of the Ordinary Member and the evidence of the Homeowner. It found that some of the fittings and the fascia board had not been replaced. It also noted Mr Young's evidence that a downpipe had been replaced and not been charged for. This demonstrated that the WDC operatives who carried out the works had not communicated to WDC the extra work which had been done and that it was entirely reasonable to assume that the operatives had not communicated when materials proposed for the work had not been used.

The tribunal found that, in this respect, false information had been given to the Homeowner.

The tribunal determined that the Property Factor had breached this section of the Code and that it was reasonable for compensation of £75 to be paid to the Homeowner. This reflected inconvenience to the Homeowner.

2.3 You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out- of- hours emergencies including how to contact out - of– hours contractors.

No evidence with regard to this was led by Mr Hopkirk other than that which he did in relation to Application PF/19/1571 and which is dealt with later in this Decision.

The tribunal found no breach of the Code.

3. While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

The Tribunal accepted that the Homeowner had been charged for work which had not been done in relation to the gutter replacement. It accepted that the gutter had been repaired but that not all materials charged for in the relevant invoice had been utilised in the repair. The Property Factor has stated that, if it discovered errors had been made in such works, it would refund homeowners but the tribunal was not convinced that the Property Factor had robust processes in place to ensure that it could identify situations where that did occur.

It considered that an award of compensation of £100 reflects the fact that the invoice was incorrect, that materials were charged for which were not used and that the Homeowner had been put to inconvenience.

7.2 When your in- house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Tribunal.

The tribunal considered that the letter written by Mr McAloon on 16th April 2019 was appropriate in its terms and provided the Homeowner with all necessary information. It was the final letter in the complaints process and properly directed the Homeowner to the Tribunal.

Application PF/19/1571

2.1 You must not provide information which is misleading or false.

Mr Hopkirk's position was that, in not providing a reason why the roof needed to be replaced, the Property Factor had breached this section of the Code. The tribunal found no evidence to support this. It had written to the Homeowner (although he did not receive the letters) and, when pressed for further information, had provided a copy of Mr Miller's report.

2.3 You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out- of- hours emergencies including how to contact out - of– hours contractors.

Mr Hopkirk's position was that Mr McAloon's letter was deficient in not providing contact details. The tribunal considered that it was clear that the Homeowner had contact details for the Property Factor and it considered it entirely reasonable that Mr McAloon's letter did not have his contact details. He is a senior member of staff and his role in dealing with Mr Hopkirk's complaint was as a final arbiter. The letter signposted the Homeowner to the next stage for him- an application to the Tribunal.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

The parties' positions were clear. WDC stated that the title provisions allowed the work to the roof to progress without authority from the Homeowner. Whilst this may be the case for WDC as a Council which was an owner of a property in the same block as the Property its relationship with the Homeowner is that of property factor and it has to comply with the Code and the Written Statement of Services. It did not consult with the Homeowner and the tribunal did not consider that the fact that the title provisions allowed the work to progress was relevant. The tribunal accepted Mr Hopkirk's submission that he was denied the opportunity of having an involvement in the decision -making process albeit that WDC may have ultimately had authority to proceed no matter what views Mr Hopkirk might have. The fact that WDC did not write to the Homeowner at the correct address was a failure in its procedure and process which had implications for Mr Hopkirk.

The tribunal found that the Property Factor had breached this section of the Code. It accepted Mr Anderson's position that it would be disproportionate to find that Mr Hopkirk should not pay for the roof replacement.

It considered that it would be appropriate for the Property Factor to pay the sum of £500 to the Homeowner in respect of compensation. The tribunal considered that this amount reflected the inconvenience which the Homeowner had suffered and the loss of opportunity to have discussion with the Property Factor in connection with the work.

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

Mr Hopkirk failed to provide any convincing evidence on this section. He said that he thought that he did not receive annual statements from the Property Factor but did not challenge Mr Young's position that these were sent out with the requests for payment of the insurance premia.

Mr Hopkirk stated that he was not provided with information with regard to the roof replacement. This was a reasonable request and the Tribunal considered that it had been fulfilled by the Property Factor providing a copy of the report of Mr Miller.

Summary

The tribunal proposes that a property factor enforcement order be made requiring the Property Factor to pay the total sum of £675 to the Homeowner as compensation for its breaches of the Code.

Property Factor's Duties

The tribunal considered that the Property Factor had complied with the property factor's duties. It clearly manages the common parts of the building in which the Property is situated and the Tribunal could find no failings other than the breaches of the Code which it had found.

Appeals

A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Martin J. McAllister, Legal Member
of the First-tier Tribunal for Scotland

6th November 2019