Housing and Property Chamber
First-tier Tribunal for Scotland

Decision on homeowner's application:

Property Factors (Scotland) Act 2011 Section 19(1)(a)

Of

the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as "the Tribunal")

Case references : FTS/HPC/PF/18/2095

Re: Properties at –

125 Greenrigg Road, Cumbernauld, G67 2QB
203 Greenrigg Road, Cumbernauld, G67 2QB
("the Properties")

The Parties :

John Connor, 10 Gardenside Grove, Carmyle, Glasgow G67 2QD ("Applicant")

(represented by Working Legally Ltd, 2/2, 11 Western Avenue, Rutherglen, South Lanarkshire G73 1LQ)

Apex Property Factor Ltd, 46 Eastside, Kirkintilloch, East Dunbartonshire G66 1QH ("Respondents")

Tribunal Members:-

David Bartos - Chairperson, Legal member
Sara Hesp - Ordinary (Surveyor) member

DECISION

1. The Tribunal having no jurisdiction to deal with the Applicant's complaints of the Respondents' failure to comply with section 14(5) of the Property Factors (Scotland) Act 2011 or failure to carry out property factor's duties as defined in section 17(5) of that Act, dismisses the application.

Introduction

2. 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 is referred to as "the Code"; and the rules in schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules".

3. On 15 August 2018, an application was received by the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") from the Applicant's representative seeking a decision that the Respondents had failed to comply with the Property Factor Code of Conduct and other property factor's duties. The application alleged breaches of sections 1, 2.1, 2.2, 2.4, 2.5, 3.3, 4.9, 6.3, 6.4, and 7 of the Code. It also alleged that the Respondents had breached their duties:
   (1) In not carrying out grass cutting;
   (2) In not cleaning internal common hallways and stairs;
   (3) In not carrying out repairs to stairs, hallways and the roof.

Findings of Fact

4. Having considered all the evidence, the Tribunal found the following facts to be established:-
   (a) The first Property is a flat within the development of 75 flats numbered 1 to 135 Greenrigg Road, Cumbernauld ("the first development"). The 75 flats are in a row of 8 blocks (numbered

blocks 1 to 8). The first Property includes common parts of that development. The first development is from the 1980s.

(b) The second Property is a flat within the development of 68 dwellinghouses numbered 137 to 259 Greenrigg Road, Cumbernauld within a row of 7 blocks of flats also from the 1980s (numbered blocks 9 to 15) ("the second development"). The second Property includes common parts of the second development.

(c) The first development is situated on the south-east side of Greenrigg Road at the west of the second development.

(d) Both properties are owned by the Applicant.

(e) The Respondents became a registered property factor in terms of the Property Factors (Scotland) Act 2011 on 1 November 2012.

(f) The first Property within the first development is subject to a deed of conditions recorded in the General Register of Sasines on 2 July 1986 ("the 1986 Deed of Conditions"). The second Property within the second development is subject to a deed of conditions recorded in the General Register of Sasines on 25 June 1987 ("the 1987 Deed of Conditions").

(g) At the beginning of 2015 there were no factors in place for either development. Since August 2015 the Respondents have purported to act as factors for both developments. There has been no meeting of the homeowners in either development appointing the Respondents as factors for either development. There has been no vote of a majority of the homeowners in either development appointing the Respondents as factors. No factoring contracts or agreements have been entered into between the homeowners of either development and the Respondents.

(h) In about September 2016 the Respondents issued a "Property Factoring Statement of Service" to owners of both developments.

(i) In August and September 2017 the Respondents did not carry out cleaning works and maintenance of the common parts of the first

development including the verges of the access road and car park, the outside stairs and the internal stairwell of the block comprising numbers 21 to 35 Greenrigg Road.

(j) On or about 28 September 2017 the Respondents issued invoices to homeowners in both developments seeking payment for cleaning, landscaping and litter-picking services allegedly carried out in August 2017.

(k) By letter dated 4 July 2018 Working Legal wrote to the Respondents on behalf of certain owners of properties at numbers 7, 13, 27, 29, 83, 85c, 99, 101, 109, 125, 131, 151, 185, 203, 207 and 209d, Greenrigg Road in the developments complaining of breaches of sections 1, 2.1, 2.2, 2.4, 2.5, 3.3, 4.9, 6.3, 6.4 and 7 of the Code.

(l) By letter to Working Legal dated 27 July 2018 the Respondents rejected the claimed breaches of the Code.

(m) An application to the Tribunal on behalf of the Applicant and applications on behalf of various other owners in Greenrigg Road were lodged on 15 August 2018.

Procedure

5. The application to the Tribunal sought in the first place an order declaring that the Respondents were not as a matter of law factors for either development. It also sought a determination of failure to comply with the Code and also with other property factor's duties. On or about 27 September 2018 a Convener with delegated power of the President of the Tribunal referred the application to the present Tribunal for its determination. This was notified to the parties by letters from the Tribunal's casework officer dated 17 October 2018 which also invited the parties to make written representations to the Tribunal and to lodge supporting documents known as productions.

6. The Applicant's representatives lodged productions with the Tribunal on 6 September, 6 November, 20 December all 2018, and on 10 January 2019. The Respondents lodged productions with the Tribunal on 18 December 2018 and on 3 January 2019 but the latter of these were lodged late and not relied on by the Responents. The Applicant's representatives lodged written representations comprising (1) a skeleton argument; (2) a letter dated 29 November 2018 in response to the Tribunal's direction dated 20 November 2018; and (3) a letter dated 8 December 2018 in response to the Tribunal's direction dated 5 December 2018. The Respondents lodged written representations on 7 November 2018 and on 18 December 2018 (in a letter dated 14 December).

7. A hearing was fixed to take place at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT on 4 January 2019 at 10.00 a.m. The date and times were intimated to the Applicant and the Respondents by letters from the Tribunal's casework officer dated 22 November 2018.

8. The hearing took place on 4 January 2019 at 10 a.m. at the venue fixed for it. Mr James Collier of Working Legally appeared for the Applicant and certain other homeowners in both developments. Mr Neil Cowan appeared for the Respondents. The hearing was continued to the same venue and time on 11 February 2019 when it concluded.

Jurisdiction - Summary

9. One matter arose at the outset. It had the potential of excluding the jurisdiction (power) of the Tribunal to make the order sought in the application. In other words if the jurisdiction of the Tribunal was excluded it could not decide the breaches of Code and property factor's duties alleged and propose a property factor enforcement order.

Jurisdiction – Issue of Existence of Factoring Contract/Appointment

10. The key remedy sought in the application was an order declaring that the Respondents have not been appointed as property factor in either development. In other words it sought a binding declaration from the Tribunal that the Respondents were not the agents for the homeowners in both developments.

11. The jurisdiction (power) of the Tribunal is set out in sections 17(1) and 19(1) and (3) and 20 of the 2011 Act. Section 17(1) gives it power to decide, on the application by a homeowner, whether a property factor has failed (a) to carry out property factor's duties; or (b) to ensure compliance with the Code of Conduct. Section 19(1) gives it the power and section 19(3) the duty, to make a property factor enforcement order in the event that it finds any of those failures to have taken place. Section 20 specifies that such an order may require the factor to execute such action as the Tribunal considers necessary or to make payment which the Tribunal considers reasonable.

12. Property factors existed before the 2011 Act. As noted already a property factor is an agent of the owner or owners of property who manages the property on behalf of the owners. That relationship is one of contract in which the owners are the principals or clients of the factor who is their joint agent. Before the 2011 Act if there was no contract of agency with the homeowners there was no property factor. An example of this was in the case *Hanover (Scotland) Housing Association v. Reid* 2006 Scots Law Times 518 where it was found that there had been no valid appointment of the factor.

13. The aim of the 2011 Act was to provide a remedy to homeowners in respect of their property factors and to improve the service provided by

such factors. This was reflected in the Policy Memorandum supporting the Bill which became the Act, which stated in paragraph 16:

"This new form of alternative dispute resolution would enable a homeowner to apply in writing to the homeowner housing panel for a determination of whether *their* property factor had failed to comply with any term of the contract between the parties or with the statutory code of conduct." (Tribunal's emphasis).

That the Act was designed to deal with the relationship between homeowners and "their" accepted factors is emphasized further in paragraph 6 of the Policy Memorandum. In listing the mischiefs which the Act was to deal with, paragraph 6 refers to homeowners and "their" factors and nowhere mentions disputes over appointment of factors such as that in the *Reid* case.

14. The Code underlines the purposes of the Act in its provisions. Almost of all of these deal with the nature of an existing relationship between a factor and his clients. The principal provision of the Code is the requirement that the factor provides the homeowner with a written statement of services. Such services can only be provided as part of a contract between the factor and homeowners. Absent a valid appointment no services would be due and no written statement would be appropriate.

15. If there were no definitions of "homeowner" or "property factor" in the 2011 Act it would be plain that without a contract of agency between homeowner and factor there could be no "property factor's duty" owed by the factor to the homeowner which could be adjudicated on by the tribunal under section 17(1)(a). Equally given that the Code of Conduct is intended to govern the conduct of a factor towards their client the homewoner, there could be no duty to comply with the Code of Conduct on which the tribunal could adjudicate under section 17(1)(b).

16. Do the definitions in the Act extend the jurisdiction of the tribunal under section 17(1) ? "Homeowner" is defined in section 10(5) of the Act. For that to be satisfied an owner must :

(a) own land (or other immoveable property) the common parts of which are "managed" by a "property factor" or

(b) own residential property neighbouring the land managed by the factor which neighbouring (factored) land is available for the owner's use.

All of that is entirely consistent with the requirement of a contract of agency between factor and owner. Nothing in section 10(5) appears to extend the jurisdiction to situations where there has been no contract between an owner and a person claiming to be the owner's factor.

17. The expression "property factor" is itself defined in section 2(1). That definition while differing in its precise wording from section 10(5) essentially mirrors it. It too is consistent with the requirement for the existence of a contract between the owner and the person who falls within the definition in section 2(1). Again there is no suggestion that the Scottish Parliament intended the jurisdiction of the tribunal to cover situations where there was no contract between the parties to the dispute.

18. Leaving aside any case law it appeared plain that the jurisdiction in section 17(1) assumed the existence of a contract of agency between the applicant homeowner and the respondent factor at the time of the alleged failure. On the basis of that assumption the only question for a tribunal would be whether during the duration of a factor/homeowner contract there has been a breach of factor's duty or breach of the Code of Conduct.

19. It followed that the jurisdiction of the tribunal was not there to make a binding order on the issue of whether the contract of agency (factoring) does or does not exist. The jurisdiction to make such an order remained with the court. The words "property factor" in section 10(5) should be interpreted as meaning "property factor validly appointed on the owner's behalf" and in section 17(1) as "property factor validly appointed on the homeowner's behalf".

20. However there had been suggestions in previous cases that even in the absence of a contract of agency a tribunal had power to make an order against a person who was registered as a factor. The principal case was *FTS/HPC/PF/17/0023*. At Upper Tribunal the case name *McNaught v. Apex Property Factor Limited* was used. The case was unreported. It involved the current Respondents. It involved a nearby development.

21. In *McNaught* the applicant complained of breaches by the Respondents of sections 2.2, 2.5, 4.7, 4.8 and 4.9 of the Code. He did not complain of breach of property factor's duties. The breaches alleged were all based on the Respondents not having been appointed factors and despite their lack of appointment having sent invoices to the applicant demanding payment and disregarding the applicant's requests for confirmation of their authority to act as factors.

22. The First-tier Tribunal found that the Respondents did not have the authority of the homeowners or their residents' association to act as factors. Nevertheless the tribunal went on to find that there had been breaches of sections 2.2, 2.5, 4.8 and 4.9 of the Code and proposed an order requiring the Respondents to issue a credit note for the illicit invoices.

23. The Respondents sought permission to appeal to the Upper Tribunal on the basis that as the First-tier Tribunal had found that they were not factors the tribunal lacked jurisdiction to propose the order requiring the credit note.

24. The Upper Tribunal refused permission to appeal. In its refusal of permission the Upper Tribunal judge referred to the definition of "homeowner" in section 10(5) of the Act, stating, in paragraph [6] :

> "It is a necessary component of this definition that the homeowner's property be managed by a property factor. The provision contains no express requirement that the property factor who carries out that management should be validly appointed; to imply that condition would not be consistent with the legislative intention of setting minimum standards of practice for all registered property factors (section 14(1)). All that is required is that the property factor who is the subject of the complaint did in fact manage or maintain common property pertinent to the homeowner's property."

The mention of legislative intention appeared to be a reference back to paragraph [4] of the refusal where the Upper Tribunal judge stated that the obligation to comply with the Code applied to a property factor whether validly appointed or not because,

> "When the various breaches of the code identifed [sections 2.2, 2.5, 4.8 and 4.9] are considered it is apparent that no other interpretation would make sense. . . These duties are all aimed at setting minimum standards of practice for registered property factors generally (section 14(1))."

25. However the Upper Tribunal judge had not been given the information in the Policy Memorandum already noted. He was unaware of the assumption of the Scottish Parliament was that there would be a factor in place and that the tribunal (formerly committee) would decide disputes between such factors (validly appointed) and "their" clients, the homeowners.

26. In addition, the Upper Tribunal judge had not taken account of the provisions of the Code as a whole and the key duty in section 1 of the Code, namely to provide a written statement of services with details of the "arrangement in place" between homeowner and factor. It would be most odd if a registered factor who had not been validly appointed by homeowners should require to provide a statement of services. The supply of such a statement would be misleading for homeowners and potentially lead some of them thinking that the factor had been validly appointed when that was not the case. In turn it might lead to factors being forced onto homeowners against their will. None of that can have been the intention of the Scottish Parliament in the 2011 Act.

27. It would also be odd if some parts of the Code were applicable to validly appointed registered factors only and other parts of the Code (e.g. sections 2.2, 2.5, 4.8 and 4.9) to all registered factors whether validly appointed or not. There was no suggestion within the Code that it was to be applied in that manner.

28. In these circumstances it appeared to the Tribunal that the Upper Tribunal had erred in its refusal of permission to appeal in *McNaught*. No doubt this was due to full argument not having been put to the judge. The decision of the Upper Tribunal in *McNaught* was given on an application for permission to appeal and without full submissions. In these circumstances the Tribunal did not consider it bound by the rationale in *McNaught*.

29. The other case was *FTS/HPC/PF/17/0285/0286-0287* another case involving the Respondents and the first development in the current case. The property involved was 65 Greenrigg Road. In that case the applicants complained of breaches of sections 1A, 3.3, parts of section

4, 6.2 and 6.3 of the Code and breach of property factor's duties. It was decided on 8 February 2018.

30. In that case the first-tier tribunal found that the Respondents had not been appointed as factors in accordance with the Deed of Conditions which governed appointment. Nevertheless the tribunal went on to find that there had been various breaches of the Code and proposed a property factor enforcement order.

31. The issue of the lack of jurisdiction was not focussed in that case and the points raised in the current case were not argued. In these circumstances that case did not assist the current Tribunal.

32. Returning to the current case, Mr Collier submitted that despite the lack of appointment the Tribunal still had jurisdiction to make a determination of whether the Code had been complied with. In short he wished the Tribunal to declare that the Respondents were not property factors of the owners of either development but at the same time to determine that the Respondents had failed to comply with the Code and other property factor's duties.

33. The Tribunal found Mr Collier's submission inconsistent. On this branch of the submissions in the present case the Tribunal concluded that if it was established that the Respondents had not been validly appointed as factors for the Properties it had no jurisdiction to consider the breaches of the Code and property factor's duties alleged in the applications under section 17(1)(a) or (b) of the 2011 Act.

Factoring Contract/Appointment of Respondents for Properties

34. The Tribunal considered whether the Respondents had been validly appointed as factors for the Properties. It was accepted that there had

been no factor in place for either development at the beginning of 2015. It was also accepted that there had been no residents' association in operation for either development.

35. Both developments consisted of more than one tenement. In that situation the default rules for the appointment of a factor were as set out in section 28 of the Title Conditions (Scotland) Act 2003 (2003 Act, s.31A). Section 28(1) provided that subject to certain other sections (which did not apply in the present case) and, importantly, any provision made in community burdens, the owners of a majority of the units in a community could:

(a) appoint a person to be the "manager" of the community on such terms as they may specify;

(b) confer on such manager the right to exercise such of the owners' powers as they may specify (including maintenance powers);

(c) revoke or alter the manager's rights to exercise those powers; or

(d) dismiss the manager.

36. In the present case, however, there were provisions in community burdens which overrode the default rules. They were in (1) the Deed of Conditions recorded in the General Register of Sasines on 2 July 1986 (for the first development) and (2) the Deed of Conditions recorded in the General Register of Sasines on 25 June 1987 (for the second development).

37. The first development and community covered by the 1986 Deed of Conditions was the 75 dwellinghouses numbered 1 to 135 Greenrigg Road within 8 tenements (blocks 1 to 8). The 1986 Deed of Conditions provided :

"6. . . . (1) there will be appointed a Factor who will be responsible for supervising the common repairs to and maintenance of the Property, the Curtilage and the Common Parts and apportioning the cost thereof amongst the proprietors in accordance with this Clause."

"9.(1) On completion and sale of the last flatted Dwellinghouse the appointed Factor shall arrange the setting up of a Residents Association whereby the proprietor of each Dwellinghouse shall become a member of such an Association and the proprietor shall have only one vote in deciding matters of common interest to the entire block of flatted Dwellinghouses; such a Residents Association shall have no power in deciding the maintnenance and upkeep of the property without a majority consent from the proprietors of the seventy five Dwellinghouses known as numbers 1 – 135 Greenrigg Road, Cumbernauld.

9.(2) Subject as aftermentioned the Residents Association may convene a general meeting of residents at not less than seven days notice with a quorum no less than seven proprietors shall have power (i) to appoint a Factor . . ."

"9(4) The proprietors of any seven of the seventy five Dwellinghouses shall have the power to call a meeting of the Residents Association to be held at such reasonably convenient time and place as the conveners of the meeting may determine and which time and place of meeting at least seven days' notice in writing shall be given . . . to the other proprietors. . . DECLARING THAT . . . all resolutions of the Residents Association will be passed by a majority of the votes cast and the resolution so passed will be binding upon all proprietors whether assenting or not.".

The second development and community covered by the 1987 Deed of Conditions was the 68 dwellinghouses numbered 137 to 259 Greenrigg Road within 7 tenements (blocks 9 to 15). The 1987 Deed of Conditions had the same provisions quoted above but with majority consent being required from 68 rather than 75 dwellinghouses.

38. The question was whether the Respondents had been appointed in accordance with these provisions in either the 1986 or 1987 Deed of Conditions.

39. In respect of the second development the Tribunal had the evidence of Aidan Henderson, owner of 209D Greenrigg Road in the form of a written statement (production 1j). In it he stated that he had started receiving letters, invoices and statements from the Respondents in 2015. The first correspondence that he had received was a form where the Respondents asked for confirmation of their acceptance as factor. He had signed this under the impression that they had already been lawfully appointed by the Residents' Association. If he had known that this had not been the case, he would not have signed it. The written statement was not challenged by the Respondents. The Tribunal accepted it as accurate.

40. In respect of the first development the Tribunal heard evidence from Miss Leeann Semple, owner and occupier of 101 Greenrigg Road. She said that she had never attended any meeting with the Respondents. She had never seen any document calling a meeting prior to the Respondents claiming that they had been appointed. She said that she had not signed anything agreeing to the Respondents' appointment. She had not received any letter from the residents' association proposing the Respondents as factors. She had found out about the Respondents initially from a letter from North Lanarkshire Council. She had not received any letter of introduction from the Respondents or letter from the Respondents proposing their appointment. The first communication from the Respondents had been a bill, perhaps dealing with insurance.

41. Miss Semple spoke to there having been a meeting of residents of the first development and neighbouring developments of Greenrigg Road

and Millcroft. She confirmed the accuracy of the minutes of the meeting which had taken place at Carbrain Baptist Church (production 10). That had been about a year after the Respondents had initially claimed appointment although she could not be sure of the date. She had received a copy of the minutes from Angie Inch. She noted that she was one of the persons who had agreed to provide assistance on the way forward.

42. Under cross-examination she was presented with a mandate dated 24 August 2015 with her signature "confirming acceptance" of the Respondents as a factor. She accepted that the writing and signature was hers although she had no recollection of signing it. She said that she was unable to remember whether she had signed it before or after she had received the first bill from the Respondents. She had been going through a difficult time in 2015 with a 4 year old disabled child.

43. The Tribunal heard evidence from Shabir Ahmed, owner of 27 Greenrigg Road. He said that the first he was aware of the Respondents was in 2015 when he received a letter stating that a payment was overdue. He had never been invited to any meeting to appoint the Respondents. He had never received anything suggesting that the Respondents should be appointed as factors. He did not recall receiving any document asking him to confirm the Respondents as factors. Nor had he received any letter from other owners stating the the Respondents had been appointed factors. The first he was aware of the Respondents was their claim for an overdue bill of £ 10 to £ 15.

44. Mr Ahmed said that he had contacted the Respondents to find out what was happening. He had asked them for evidence of their appointment many times but had never received any evidence. His request had been made over the telephone and face to face with their Mr Cowan. Each

request had been refused apparently on grounds of data protection. He had received the same response by letter.

45. He confirmed that he had never attended any meeting where the Respondents had been confirmed as factors, nor was he aware of any such meeting having taken place.

46. There was no cross-examination of Mr Ahmed on the issue of appointment. The Tribunal accepted Mr Ahmed's evidence as credible and reliable.

47. The Tribunal found Miss Semple's evidence not reliable on some aspects. Although she appeared to be doing her best to recall the initial contacts with the Respondents, it was clear that her memory was hazy on exactly what she had received and what she had signed. While she said that she had not signed anything agreeing to the Respondents, under cross-examination she accepted that she had signed the confirmatory document. In addition her oral evidence to the tribunal did not fit with her written statement where she stated that she had received an introductory letter from the Respondents.

48. However the Tribunal was prepared to accept that Miss Semple had not seen any document calling a meeting prior to the Respondents claiming that they had been appointed, nor received any letter from the residents' association proposing the Respondents as factors. This corresponded with Mr Ahmed's evidence, the written statement of Maqsood Mustafa to the Tribunal (production 1a), and the e-mail from the Edward Muldoon (before his death) to his representative dated 31 July 2018 (production 1i)

49. For the Applicant, Mr Collier submitted that while the Residents' Associations were inactive, given that the owners of each of the 75 units or 68 units were by virtue of ownership members of their respective Association, there was nothing to prevent the owners of 7 units from the 75 or 7 units from the 68 calling a general meeting at which a factor could be appointed for the development in question. However this had not happened. Absent such appointment the Respondents had not been validly appointed as factors for either development. The signature of some mandates by some homeowners was insufficient to allow the Respondents to be appointed factors for the either of the two developments.

50. For the Respondents, Mr Cowan submitted that neither Residents' Association existed when they had begun to act as factors for the Properties. He submitted that the Respondents had been approached by several homeowners with a request to become factors. He was unable to provide any evidence of this, however. He then submitted that the Respondents had written to all owners in Greenrigg Road asking if they would consider appointing the Respondents as factors. The letter (production 5b) dated 3 August 2015 was the letter that they had sent. He submitted that the Respondents had been appointed "close by close". If a close had 8 properties its proportion of the whole community was over 10% and it was therefore entitled to appoint its own factor. He accepted that there had not been any general meeting of residents of the community of 75 properties or the community of 68 properties that had appointed the Respondents. He accepted that nothing in the deed of conditions allowed the Respondents to be appointed. Furthermore the Respondents were not relying on the procedures in the Tenements (Scotland) Act 2004 (the other basis of appointment given in the Property Factoring Statement of Services).

51. The Tribunal accepted Mr Collier's submission in relation to the validity of the Respondents' appointments. No residents' meeting had been either called or taken place at which the Respondents had been appointed for either development. Indeed this was accepted by the Respondents. The Respondents' approach to assessing whether they had been appointed or not was fundamentally flawed. Each of the owners in the 75 unit development had bought their properties on the basis that they were part of a 75 unit community that could appoint a factor on their behalf in accordance with the provisions in the 1986 Deed of Conditions clauses 6, 9(1), 9(2) and 9(4). There was no legal basis for the owners to appoint a factor "close by close" or "tenement by tenement". That was excluded by the Deed of Conditions which treated the 8 tenements in the development as one community of properties. The appointment procedure in the Deed of Conditions had not been followed. That being the case no factoring contract had been created between the Respondents and the homeowners of the community in the 8 blocks covering 1 to 135 Greenrigg Road, Cumbernauld. Exactly the same reasoning applied to the owners in the second 68 unit development in the 7 blocks or tenements covering 137 to 259 Greenrigg Road.

52. The Tribunal was surprised that the Respondents were claiming any basis for a valid appointment. A straightforward reading of either deed of conditions (which were publicly available) would have made it clear that (1) the community in question was 75 (or 68) units; (2) under clause 9(4) any 7 owners could call a meeting of the residents' association (even if it was inoperative); (3) under clause 9(2) a meeting with a quorum of 7 was required to appoint the factor. Even if the Respondents had believed (erroneously) that the Residents Associations could not be revived, then it was clear from the Deeds of Conditions that the community comprised 75 (or 68) units and under section 28 of the Title

Conditions (Scotland) Act 2003 their appointment as factors required a majority of the owners of units in the community in question, something which they have never claimed to have obtained. The Tribunal deprecated the Respondents' "parachuting" of themelves onto both developments as factors accompanied by the unwarranted sending of invoices to unsuspecting homeowners.

53. Given the Respondents' lack of appointment for either development and its consequent lack of jurisdiction to consider the applications the Tribunal did not require to consider the alleged breaches. Nevertheless, given the detailed submissions and evidence that had been put to it, the Tribunal considered each alleged breach.

Section 1 of the Code

54. Section 1.1a A (a) of the Code provides,

> "You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. . . You must provide the written statement to any new homeowners within four weeks of agreeing to provide services to them . . . The written statement should set out . . . a statement of the basis of any authority you have to act on behalf of all the homeowners in the group."

55. Mr Collier submitted that the Respondents' written statement had not set out any basis of authority at all. All it said was they had been appointed,

> "in accordance with the provisions of the 'Title Deeds' for the Development or The Tenements (Scotland) Act 2004 as appropriate."

Furthermore, it had not been given within 4 weeks of any agreement of the Respondents to act. He led Miss Semple and Mr Ahmed as witnesses. Mr Cowan submitted that the written statement had been given in August 2015. However he could produce no evidence in support of this. He did not put himself forward as a witness.

56. Miss Semple spoke to having received the undated written statement "Property Factoring Statement of Services" (enclosed with the Respondents' letter to Mr Collier dated 27 July 2018) ("the WSS") from the Respondents only after having received their "five thousand pound bill". She said that it had been after 1 September 2016 when according to her statement of account from the Respondents (production 13i) she had received two invoices totalling £ 4850. Under cross-examination she said that it was possible that she might have received the WSS in 2015 when she signed the mandate received from the Respondents as "so much was going on" at that time.

57. Mr Ahmed said that he was unable to say the exact date when he had received the WSS but that it was after he had met Mr Cowan and received the outstanding bill. He had asked Mr Cowan if anyone else had agreed to the Respondents to which Mr Cowan had replied "yes". On hearing this Mr Ahmed confirmed that he had paid £ 100 to the Respondents. He thought that he would probably have received the WSS around 21 October 2015 which is stated to be the date of payment in the Respondents Statement of Account of Mr Ahmed with them (production 13h). The meeting had been before that date. There was no cross-examination of Mr Ahmed.

58. The Tribunal accepted Mr Ahmed's evidence which was given without hesitation or qualification. While Miss Semple said that it was possible that she had received the WSS in 2015, her evidence is supported by that of Aidan Henderson, owner of a property in the second development who stated in writing (production 1j) that he had received the WSS on or about 1 September 2016. Given that it is accepted that the Respondents treated both developments as one, and Mr Ahmed's receipt of the WSS followed his individual meeting with the Respondents, on a balance of

probabilities the Tribunal accepted the evidence of Ms Semple and Mr Henderson as to the date when the WSS was sent to owners in both developments as a whole.

59. With regard to the date when the Respondents first provided services (even if unauthorised), the Tribunal took note of the dates of the Respondents' demands for payment to various homeowners. Thus Mr Ahmed's Statement of Account indicated the invoicing of him for £ 100 at the end of July 2015. The Respondents' list of work (production 5h) states that they cut grass and picked litter for the first time on 12 August 2015. Their "POLITE REMINDER" letter to Yvonne Rivera seeking payment of £ 100 is dated 24 August 2015 (production 7d) which is the same date as the mandate signed by Ms Semple.

60. The Tribunal found that the WSS failed to comply with section 1 of the Code in three respects. Firstly it had been provided no earlier than September 2016 which was more than 4 weeks after the Respondents had, on their own initiative, started to provide services. Secondly, it had failed to give a transparent statement of their actual authority to act for homeowners. To merely state that the appointment was in accordance with the provisions of unspecified title deeds was too vague. It was not transparent. How was the homeowner meant to know which title deed ? It was not for the homeowner to be searching for the deed to justify the factor's authority. It was for the factor to be clear about the basis of their authority and to justify it. This vagueness was compounded by the reference to the Tenements (Scotland) Act 2004 as an alternative means of appointment, again without any reference to the actual process under that Act, such as the date of appointment. A factor is reasonably expected to know the basis of appointment. If a factor is unable to give these details, the factor should question whether it should be acting at all for the properties in question or seek to put the matter

beyond doubt by following the proper process. Thirdly, there had been no authority to act at all for the reasons given in relation to lack of jurisdiction.

Section 2.1 of the Code

61. Section 2.1 of the Code provides that a factor must not provide information which is misleading or false.

62. Mr Collier submitted that the statements in the WSS (a) as to the authority to act; and (b) that invoices would be sent monthly were misleading or false. Mr Cowan denied that was so. The Tribunal found that the statement in the Written Statement of Services as to the authority to act was false and misleading. In their submissions to the Tribunal the Respondents accepted that their authority was not to be found in the 2004 Act. They claimed that their authority to act was under the deed of conditions while stating that they were appointed "close by close". If the Respondents had read either deed of conditions it would have been plain that appointment was not done on a "close by close" basis and that a general meeting of the residents of the 75 (or 68) unit community was required. On any view there was no justification for a "close by close" appointment if they were relying on either deed of conditions. The Tribunal found that the statement in the WSS as to invoices was a statement of future intent. It was not false and misleading in itself.

63. Mr Collier also submitted that the Respondents' invoices produced as numbers 14a, 14n, 14o, and 14p contained false statements. Invoices 14a and 14o related to the development at 1 to 135 Greenrigg Road. These invoices were :

- No. 38063 dated 3 September 2018 for "Management Fee – Aug 2018" for £ 10.15 plus VAT for proportion "1/1"

- No. 4932 dated 28 September 2017 for "Management Fee – Aug 2017" for £ 10.00 plus VAT for proportion "1/122"; for "Cleaning – Aug 2017" for proportion 1/122; for "Landscape/L pick – Aug 2017" for proportion 1/122

Invoice 14n related to the (second) development at 137 to 259 Greenrigg Road. It was No. 4948 dated 28 September 2017 for "Management Fee – Aug 2017" for £ 10.00 plus VAT for proportion "1/122"; for "Cleaning – Aug 2017"; for "Landscape/L pick – Aug 2017 1/122"

64. Mr Collier led Mr Ahmed as a witness to the alleged falsity of invoice No. 38063 which was addressed to Mr Mustafa, owner of No. 29 Greenrigg Road. Mr Ahmed said that as far as he was aware the Respondents had not carried out any work since 2015. For example while the Respondents had claimed to have removed rubbish, this had in fact been done by North Lanarkshire Council. He referred to various photographs which he had taken and had been produced by Mr Collier to the Tribunal.

65. Photographs 2a to 2e were of the communal car park opposite block 1 (numbers 1 to 20 Greenrigg Road). They showed a pile of discarded household items on the car parking space in the same place on 28 August, 29 August, 30 August and 3 and 8 September 2017. Mr Ahmed told the Tribunal that nothing had been done to remove this rubbish.

66. Photographs 2f to 2k were of the southern verge of the vehicle entry branch of Greenrigg Road. They showed discarded household items on the verge in the same place on 14 August to 8 September 2017.

67. Photographs 2l and 2m were of a plant bed near the garages facing the block with numbers 21 to 35 Greenrigg Road. They showed food container waste in the bed on 22 August and 28 August 2017.

68. Photographs 2x to 2bb were of the outside stairway leading to numbers 21 to 35 Greenrigg Road. They showed the same item of litter and soil and dust piled up on the concrete steps next to the side wall with weeds growing all on 11, 28 and 29 August and 3 and 10 September 2017.

69. Photographs 2aaa to 2ccc were of another outside stairway leading to numbers 21 to 35 Greenrigg Road. They showed the same soil and dust piled up on the concrete steps next to the side wall on 23, 28 and 29 August 2017.

70. Photographs 2xx and 2yy were of the outside stairway leading to walkway adjacent to numbers 21 to 35 Greenrigg Road. They showed the same black hair ball on the steps on 12 July and 13 August 2017.

71. Photographs 2cc to 2kk were of a landing on the internal stairwell above Mr Ahmed's flat which is 27 Greenrigg Road. They showed the same discarded elastic band with dust on 12, 20, 22, 28, 29 and 30 August and 2, 3 and 10 September 2017.

72. Photographs 2ll to 2qq were of the common internal stairwell of Mr Ahmed's block which is 21 to 35 Greenrigg Road. They showed the same discarded pieces of paper on 12, 28, 29 and 30 August and 3 and 10 September 2017.

73. Photographs 2ss to 2ww were of a landing the common internal stairwell of Mr Ahmed's block which is 21 to 35 Greenrigg Road. They showed

the same white marking on 12, 22, 28, and 29 August and 10 September 2017.

74. Mr Ahmed confirmed that the invoices in his Statement of Account for £ 51.08 in August and September 2017 included items for cleaning, landscaping and litter picking. Under cross-examination he reiterated that the invoices that he had received from the Respondents did not bear a resemblance to the reality regarding cleaning and litter picking. That evidence was further supported by the invoice at production 14o to EML Properties which contained items for cleaning and litter picking for August 2017. The Tribunal accepted Mr Ahmed's evidence as contained in his photographs with their annotations and also in relation to the invoices he had received. There was no evidence to the contrary. The Tribunal found that in the first development and Mr Ahmed's stairwell in particular the Respondents had not carried out these services in August and September 2017.

75. However the Tribunal was not presented with similar evidence for the non-performance of work for the second development charged in invoice No. 4948 dated 28 September 2017. The photographic evidence from Mr Henderson related to a later period beginning in October 2017. The situation at the second development in August and September may have looked different to that in the first development. Accordingly the Tribunal was unable to find that there were false and misleading statements in the invoice No. 4948.

76. The Tribunal found that the two invoices issued to homeowners in the first development by the Respondents dated 28 September 2017 did contain false or misleading statements in seeking to charge for cleaning and litter picking in August 2017 when this had not been done in the first development. Section 2.1 of the Code had not been complied with.

Section 2.2 of the Code

77. Section 2.2 of the Code provides,
"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).".

78. The Applicant's complaint was that he had felt threatened and intimidated by correspondence sent to him by the Respondents. This was :

- Letter to him (production 7c) requesting payment of £ 1118.46 stating :

  "The consequences of such [simple procedure action] may result in . . . Sequestration (Personal Bankruptcy). . . We will also notify the holder of your Standard Security of your indebtedness. If you are a private landlord we will advise the Landlord Registration Unit of your failure to pay your share of the cost of communal repairs."

- Letter to him (production 7f) requesting payment of £ 176.20 in respect of insurance stating :

  "If you do not comply with the terms of your title deeds which state that you must be insured under a Block Insurance Policy we will have to notify your co-owners of your non-compliance along with the possible implications relating to the protection of the building."

79. Mr Collier submitted that the correspondence set out above was threatening and intimidating to the Applicant who had received it. It went far beyond a reasonable indication of legal action. At the second hearing Mr Collier founded also on :

- Circular letter to all homeowners dated 25 October 2017 (production 5q) stating :

  ". . . there appears to be a malicious minority who have their own agenda, which is not for the benefit of the majority of the Owners. You may have received correspondence from "Greenrigg and Millcroft Resident's Association"; we would comment as follows: - . . . 3. All correspondence received by us is completely anonymous; if you are aware of the identity of any of the

participants we would appreciate this information, to enable us to instigate legal proceedings against them, to protect your position. 4. We have had a meeting with North Lanarkshire Council who indicated that the interference of this group could hinder any progress towards possible grant funding."

80. The Respondents' Mr Cowan submitted that there was nothing threatening or intimidating in the letters to the Applicant. Sequestration for a debt of £ 1118 was foreseeable. It was proper for the Respondents to notify the Landlord Registration authority. None of the communications were intended as threats.

81. Section 2.2 is concerned with communications by factors to homeowners. Was any of these communications in any way intimidating or threatening (apart from a reasonable indication of legal action) ? This had to be assessed objectively by reference to a homeowner reacting reasonably upon receipt of the communication but also taking account of the personal sensitivities of the homeowner if these were known to the factor at the time of communication.

82. The Tribunal took the view that the following aspects of the above correspondence were threatening and intimidating and did not constitute a reasonable indication of legal action:

(a) Threat of reporting to the Landlord Registration unit of the local authority;
(b) Threat of sequestration (bankruptcy) given that at the material time sequestration on the application of a creditor was competent only for a minimum of total debts of £ 3000;
(c) Threat of reporting to the standard security (mortgage) holder of a homeowner;

(d) Threat of reporting of non-payment to other homeowners – whilst under section 4.6 of the Code a factor must keep homeowners informed of any debt recovery problems of other homeowners that could have implications for them (subject to data protection legislation), it is quite unnecessary for the factor to use reporting of non-payment as a threat to encourage payment before the outcome of any court action;

(e) Description in a circular letter to all homeowners of a group homeowners seeking to revive the Residents' Association as a "malicious minority" and seeking information as to their identity to raise (unspecified) legal proceedings against them – this general threat designed to pressurize one group of homeowners by setting the others into conflict against them was clearly threatening and intimidatory to those seeking to revive the Association. The Tribunal found this letter quite outrageous and tended to show that the Respondents were not fit and proper to be property factors.

83. In all of these respects the Tribunal found that the Respondents had communicated in a way contrary to section 2.2 of the Code.

Section 2.4 of the Code

84. The Applicant complained that the Respondents had breached their duty under section 2.4 of the Code which provides, among other things,

> "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)"

85. Mr Collier submitted that the Respondents did not have such a procedure. They had not consulted prior to replacing the door entry at a cost per homeowner of £ 1197.81 plus VAT (productions 14h and 14i) or the repair to lights of £ 510.02 inclusive of VAT (production 14j). Nor had there been there any consultation with homeowners before obtaining the quotations all dated 25 October 2016, for works from "Real Building Contractors" with total costs of £17745 plus VAT for grey paving slabs, £ 1500 plus VAT for replacement of doors to bins stores and securing of all doors; and £ 13500 plus VAT for removal of waste chute doors (productions 9a, 9b, 9c). Mr Collier doubted whether the VAT in the "Real Building Contractors" quotations would be payable in any event given that the the VAT registration number at the foot of the quotations lacked the necessary number of digits (production print-out from European Commission website).

86. Ms Semple gave evidence that she had not been contacted by the Respondents in relation to these items of expenditure before they were incurred. Mr Ahmed gave evidence that there had been no consultation with or agreement by homeowners. He had received the three "Real Building Contractors" quotations without any covering letter. There was no cross-examination on this and the Tribunal accepted this evidence.

87. Mr Cowan submitted that repair work such as that charged for or quoted for was not in the Respondents' core services. Therefore they required funds for such works. The work in the "Real Building Contractors" quotations had not been carried out. Mr Cowan did not point to any prior consultation procedure by the Respondents or any written approval having been obtained from homeowners.

88. The first question was whether the Respondents had a procedure to consult with homeowners in the 75 or 68 unit communities. The removal of the waste chute doors was more than a repair. Thus it would have

been outwith the core services and required consultation. Yet a quotation had been obtained without any prior consultation. Furthermore the invoice to Ms Rivera dated 1 September 2016 (production 14i), taken with Mr Cowan's submission that the work had not been carried out suggested that no consultation procedure had been in place, whether or not activated by the Respondents. They had simply asked homeowners to pay in advance even of the obtaining of the formal quotation. There was therefore clear non-compliance with section 2.4 of the Code in that respect.

89. The second question was whether other items of work (for which there had been no consultation or seeking of written approval from homeowners) involved work beyond the core service. Contrary to what Mr Cowan submitted, arranging common repairs was stated as a core service in the Respondents' WSS. In contrast, "improvements and adaptations" were not within the core services.

90. The Tribunal accepted Mr Cowan's submission that the work in the three quotations had not been carried out. Mr Collier did not claim that the work had been carried out. So far as the door entry and light repair work was concerned, it had not been established whether it was an "adaptation or improvement" rather than a repair. In those circumstances it had not been established that written approval was required before the work was carried out. The Tribunal found no non-compliance with section 2.4 in that respect.

Section 3.3 of the Code

91. Section 3.3 of the Property Factor Code of Conduct provides,
"You must provide . . . 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. You may impose a reasonable charge for copying subject to notifying the homeowner of this charge in advance."

Mr Collier submitted that no breakdown of charges had been provided at all since the alleged appointment in 2015. The irregular issue of invoices did not amount to compliance with section 3.3. A homeowner had no overview of what the factor was doing and charging for over a fixed period of time. As an example the invoice to Mr Mustafa dated 3 September 2018 (production 14a) did not mention any cleaning even though cleaning works of the common areas such as stairwells was part of the core services. The invoice to EML dated 1 September 2016 (production 14h) was the first invoice issued by the Respondents despite them having begun acting in August 2015. Furthermore it did not mention when the works charged for had taken place. Some of the charges on that invoice had in fact been withdrawn by the Respondents.

92. Mr Cowan submitted that the delay in issue had been caused by the Respondents' principal Mrs Bakhshaee-Davidson having suffered a serious spinal injury together with computer software problem. He submitted that the invoices sufficed to comply with section 3.3.

93. The Tribunal found that the invoices issued to homeowners failed to contain a detailed financial breakdown of charges. It was quite unclear how the figures in the invoices were reached. The fraction of overall cost being charged to a homeowner was unclear. The dates of the work charged for were not stated. The location of the works within a total of 8 blocks was not stated. The Respondents left homeowners in the dark as to an overview of all charges over a certain period. Transparency was lacking. In these circumstances the Tribunal found non-compliance with section 3.3.

Section 4.9 of the Code

94. Section 4.9 of the Code provides,

> "When contacting debtors, you or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position."

95. Mr Collier submitted that this had been breached for the same reasons as section 2.2. Mr Cowan opposed this submission on the same basis as for section 2.2. The Tribunal found that it had not been established that the homeowners who had been threatened were debtors of the Respondents. For that reason section 4.9 did not apply.

Section 6.3 of the Code

96. Section 6.3 provides,

> "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."

97. Mr Collier founded on requests made by the Applicant in his letters to the Respondents dated 4 November and 15 December both 2016 and an undated letter (productions 6a to 6c). The letter of 4 November complained about the Respondents not providing independent quotations from several companies for the works. This was repeated in the December letter and the undated letter, which may have been between the two dated letters. The undated letter stated that the Respondents had not replied and the December letter stated that the had visited the Respondents at their office but still not received the information. Mr Collier also submitted that Mr Ahmed had made a request for the reasons for appointment of contractors. However he accepted that he had no direct evidence of this.

98. Mr Cowan submitted that the "vast majority of work" including landscaping was done by the Respondents' "In-House staff". He had no submission to make in relation to the Applicant's requests.

99. The Tribunal found that in substance the Applicant had been seeking to find out how the Respondents had appointed contractors. They had not responded and this amounted to non-compliance with section 6.3 of the Code.

Section 6.4 of the Code

100. Section 6.4 of the Code provides,

> "If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works."

Mr Collier accepted that he had no evidence in support of this. In these circumstances the Tribunal found that there had been no non-compliance.

Section 7.1 of the Code

101. Section 7.1 of the Code provides,

> "You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."

102. Mr Collier founded on the requests made by the Applicant in his letters to the Respondents dated 4 November and 15 December both 2016 and an undated letter (productions 6a to 6c). He characterised these letters as complaints. Under the Property Factoring Statement of Services these should have been responded to within 21 days in the first instance

and then when the Applicant was unhappy within a further 21 days from the Respondents' manager. There had been no response at all.

103. Mr Cowan submitted that the Respondents had always adhered to the 21 day period but he was unable to produce any evidence in relation to the Applicant's complaints.

104. The Tribunal found that the Applicant had set out his complaints in his copy letters. There had been no response to them by the Respondents. There had been non-compliance with section 7.1 of the Code.

Property Factor's Duties

105. Mr Collier submitted that the Respondents had failed to carry out :
(a) Grass cutting,
(b) Cleaning of internal hallways and stairs;
(c) General repairs to stairs, hallways and roof.
He relied on the evidence of Mr Ahmed presented in relation to the first development at 1 to 135 Greenrigg Road. That had amounted to a failure to carry out the core services in the WSS which included "cyclical maintenance to communal areas of the Development" and "preserving the amenity of common or shared areas . . by means of instructing regular gardening, cleaning works, repair and maintenance of common areas". Mr Collier submitted that this evidence applied to the second development also.

106. Mr Cowan submitted that the Respondents' operatives went onto both developments every two weeks. The Tribunal found that the non-performance of cleaning and maintenance in the first development in August and September 2017 would also have established a breach of property factor's duties had the Respondents been appointed as factors.

107. The Tribunal did not have sufficient evidence of non-performance of cleaning and maintenance for the outside aspects of the second development in August and September 2017. It did however have the evidence of Mr Henderson's written statement (production 1j) that "work was not being carried out" supported with photographs from October 2017 and April 2018 (productions sent by Mr Henderson to Respondents by e-mail dated 9 April 2018 and copied by Mr Collier to Respondents with letter dated 4 July 2017). These indicated a level of tree leaves and litter accumulated to such an extent that it appeared unlikely that it would have accumulated in under two weeks. In the circumstances, if the Respondents had been appointed as factors for the second development the Tribunal would have found that they had failed to carry out their property factor's duty to clean and maintain the outer common parts of the second development. There was no evidence relating to the internal common areas of the second development.

Expenses

108. At the end of the hearing Mr Collier requested the Tribunal to make an award of expenses in respect of the cost of him requiring to attend at the second day of the hearing. He submitted that this had been caused by the unreasonable behaviour of the Respondents at the first day when they requested time to make an oral response in connection with the alleged breaches of sections 3.3, 4.9, 6.3, 6.4 and 7.1 of the Code. He estimated the wasted cost at the rate of £ 7.83 per hour to cover the hearing on the second day (2 ¼ hours) plus the duration of travel from the Tribunals Centre to Rutherglen which was 50 minutes.

109. The Tribunal did not find that the request by the Respondents to make an oral response to the alleged breaches of the sections of Code was

unreasonable behaviour. Whilst at the end of the first day Mr Collier had indicated that he did not wish to add to his written submissions on those sections of the Code that did not mean that it was unreasonable behaviour for the Respondents to wish to add or even consider adding oral representations to their written submissions on those sections at a continued hearing. The Tribunal refused the request for an order for payment of expenses.

Opportunity for Review, Representations and Rights of Appeal

110. The Applicant or Respondents may seek a review of and make representations to the First-tier Tribunal on this decision. Any request for a review or the making of such representations must be made in writing to the Tribunal by no later than 14 days after the day when this decision was sent to the parties. It must state why a review is necessary.

111. The opportunity to make representations and to seek a review is not an opportunity to present fresh evidence, such as additional documents. Bearing in mind that the parties have already had an oral hearing, should the parties wish a further oral hearing they should include with their request for a review and written representations a request for such a hearing giving specific reasons as to why written representations would be inadequate.

112. **In the meantime and in any event, the Applicant or the Respondents may seek permission to appeal on a point of law against this decision to the Upper Tribunal by means of an application to the First-tier Tribunal made within 30 days beginning with the date when this decision was sent to the party seeking permission.**

113. **All rights of appeal are under section 46 of the Tribunals (Scotland) Act 2014 and the Scottish Tribunals (Time Limits) Regulations 2016. The seeking of a review and the making of representations does not suspend or otherwise affect this time limit.**

D Bartos

Signed . .Legal Member and Chairperson

.....8 April 2019.....Date