

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**FTS/HPC/PF/21/2385**

**Flat 3, 182 Slateford Road, Edinburgh ("the property")**

**Parties:**

**Sally Lawson 134 Tryst Park, Edinburgh ("The Homeowner")**

**Melville Property Ltd, 7 West Georgie Park, Edinburgh ("the Property Factor")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Mary Lyden (Ordinary Member)**

### **DECISION**

**The Tribunal determined that the Property Factor has failed to comply with Sections 2.5, 3.3, 4.4, 4.6 and 7.2 of the Property Factor Code of Conduct as required by Section 14(5) of the Act and has failed to carry out its property factor duties.**

**The decision of the Tribunal is unanimous**

### **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"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "the Rules"

The Factor became a Registered Property Factor on 4 July 2017 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

### **Background**

1. The Homeowner and six other Homeowners in the same development lodged applications with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The applications state that the

Property Factor has failed to comply with the Property Factors Code of Conduct (“the Code”). The applications also state that the Property Factor had failed to carry out its property factor duties. Documents were lodged in support of the applications including copies of letters to the Property Factor from the Homeowners notifying it of the complaints, some email correspondence and a copy of the Property Factors written statement of services (“WSS”). All seven of the applications state that the Property Factor has failed to comply with Sections 3.3, 4.4, 4.6 and 7.2 of the Code. The application by Mrs Lawson also states that the Property Factor has breached sections 2.1 and 2.5 of the Code. All seven applications also state that there has been a failure to carry out property factor duties.

2. A Legal Member of the Tribunal with delegated powers of the President referred the applications to the Tribunal. The parties were notified that a CMD would take place on 22 March 2022 at 10am by telephone conference call in relation to all the applications. Mr Murray (as representative of all the Homeowners) submitted further documents. The Property Factor did not lodge written representations or contact the Tribunal prior to the CMD.
3. The CMD took place by telephone conference call on 22 March 2022. The Homeowners were represented by Mr Murray. Mrs Lennie and Mr Moffat also participated. The Property Factor was represented by Mr Berry.

### **Summary of Discussion at CMD**

4. Mr Murray advised the Tribunal that although he is the nominated representative for all the Applicants, Mrs Lennie and Mr Moffat would also participate in the CMD. Mr Berry advised the Tribunal that he is retired and no longer runs the company. He said that the application should have been sent to Mr Kennedy who runs the business on a day-to-day basis. However, as he is still a director, he said that he could represent the Property Factor during the CMD. He also confirmed that the Property Factor owns the other 19 properties in the development. They were built by the Property Factor to sell but they were then unable to do so. It was not his intention that the company would become the factor for the property, and this is the only development which they factor. They decided that they would no longer provide some services because there were substantial common charges arrears. He said that Mrs Lennie purchased her property several years ago and has never paid. He had to resort to court action to recover the sums due and the legal costs were substantial.
5. The Tribunal proceeded to discuss various matters with the parties. During the discussion Mr Berry insisted on raising matters which were not under discussion, interrupting the discussion and refused to follow a direction from the Chair to stop speaking. He continued to do this notwithstanding a warning from the Chair that he might be excluded from the proceedings. He then disconnected from the call and re-joined the call a short time later.

6. The participating Applicants advised the Tribunal that the Property Factor did not notify the Homeowners about outstanding common charges owed by two of their number or give prior notice that they were considering withdrawing the provision of certain services because of this. The first notification was a letter dated 29 July 2021, addressed to “the owner”. A copy of Mr Murray’s letter had been lodged prior to the CMD. It states that there had been problems obtaining payment from 25% of the flat owners and the Property Factor had decided that it was no longer “viable” to continue with maintenance and repair in relation to Block A (the 8 flats). It was suggested that the Homeowners could take over the cleaning, maintenance and repairs themselves and advised that there would be an appropriate reduction in the factoring charges from 1 August. The Tribunal was advised that the Homeowners have never received proper invoices or accounts despite requests for these to be provided.
7. Mr Murray advised the Tribunal that the Homeowners have attempted to obtain another property factor for their block for the services no longer being provided but have been unsuccessful. They cannot appoint a factor for the whole development because the Property Factor owns 19 properties and therefore controls the majority vote. They are unwilling to agree to a new factor being appointed.
8. The Tribunal noted that, given the number of potential participants, the hearing should take place by video conference or in person. It was noted that not all the Applicants have facilities to access video conferencing and that an “in person” hearing should be arranged in Edinburgh, if possible. The Tribunal also noted Mr Berry’s request that a copy of the application be sent to Mr Kennedy so that he could attend the hearing in place of Mr Berry. The Tribunal also advised Mr Berry that he would be required to submit evidence of the ownership of the other 19 properties.
9. The Tribunal issued a direction for the production of further documents. Both parties lodged documents in response to the direction. The parties were notified that a hearing would take place at George House, 126 George Street, Edinburgh on 29 June 2022 at 10am. The notification letter and a copy of the application were sent to the Property Factor, addressed to Mr Kennedy, as had been requested by Mr Berry.
10. The hearing took place at George House on 29 June 2022 at 10am. The Homeowners were represented by Mr Murray, Mr Moffat and Mrs Lennie. The Property Factor did not attend and was not represented.

## **The Application**

11. The Homeowner’s complaints can be summarised as follows: -
  - (a) Sections 2.1 and 2.5. The Property Factor did not notify the Homeowner of the withdrawal of services or responded to emails sent on 2 August and 13

September 2021.

- (b) Section 3.3. Details of accounts have not been shared to allow homeowners to understand costs between Block A and the common areas.
- (c) Section 4.4. and 4.6. No details provided on debt and non payments not managed effectively.
- (d) Section 7.2. No options proposed or discussion with owners to resolve
- (e) Property Factor Duties – No communication to home address or by email of intention to withdraw services, no accounts or breakdown provided to justify the proposed apportionment of costs, no options proposed prior to withdrawal, no information provided about the non payment by 2 owners

## **The Hearing**

### **Preliminary Matters**

12. The Tribunal noted that the Homeowners had lodged copies of their title deeds, and annual accounts of statements for 2017/18, 2018/19 and 2020/21. In the submissions which accompanied these accounts Mr Murray states that Flats 1 and 5 received the 2017/18 account, Flats 1, 3, 5, 6 and 8 received the accounts for 2018/19 and 2020/21. Flats 2 and 4 received only 2020/21. He also advised that the letter of 29 July 2021 which states that the Property Factor was withdrawing the services provided exclusively to the flats was issued to all the Homeowners except for 1, 3 and 4. Mrs Lennie also submitted a better copy of her notification letters to the Property Factor. The Tribunal noted that these do not refer to sections 2.1 and 2.5 of the Code. Mrs Lennie was advised that the Tribunal would be unable to consider these complaints in the absence of evidence that the Property Factor had been notified about them before the application was lodged.
13. The Tribunal also noted that the Property Factor submitted a letter from their solicitor confirming ownership of the 19 townhouses. They did not submit copies of any correspondence or documents sent to the Homeowners but did submit 7 invoices from “Property Maintenance” which appear to relate to cleaning the bin store and “office”, an invoice from Flashpark for the annual rental of warning signs at the car park of the development and 7 handwritten invoices for gardening at the Slateford estate. Some of these contain 2 charges, one for the estate and the other for Alan Berry.

### **The Homeowner’s evidence and submissions**

14. Mrs Lennie told the Tribunal that she purchased the property in 2008. Following her purchase, Aikman Annan solicitors arranged block insurance as

a short-term arrangement but were also scheduled to provide a factoring service to the development. She contacted them and a representative came to her house. She was told that they had put arrangements in place, but that Mr Berry (and Kirkton) had refused to agree to the factoring arrangements when notified of the costs. Mrs Lennie said that she tried to arrange a meeting with the other Block A owners but there was little interest. She then received a letter from Mr Berry. This stated that, as the developer was on site, they would be best placed to provide a factoring service. They provided details of this and details of the monthly cost. Mrs Lennie was unhappy with the arrangement and did not pay. The arrangement continued although the 2011 Act came into force in 2012 and Mr Berry did not register. In 2017, the name of the factor changed to Melville Property, and they registered. However, the required payment arrangement did not change. From the date of purchase, until July 2021, Mrs Lennie was asked to pay £42 per month.

15. Mr Moffat advised the Tribunal that he purchased his property from Russell Kennedy and had been a tenant for 2 years before the purchase. A year or so after the purchase, he became concerned about the factoring charge and what was being provided. He made repeated requests for details of the services provided and when this was not forthcoming, reduced the monthly payment because he did not think he was getting value for money. He thought that the reduction in the monthly payment would result in the required information being provided.
16. Mrs Lennie advised the Tribunal that the letter from Kirkton Factors (the predecessor of the current Property Factor but involving the same people) stated that the following services would be provided;- Maintenance of common areas; Tidying up of rubbish; cutting and treating grass as required during the summer months; Clearing of leaves and debris in the autumn; Car park – tidying up and sweeping path and road every 2 weeks in summer and spray with weedkiller, tidying up in the autumn and in winter, treating with sand and salt; Bin store – clean sweep and disinfect every 1 to 2 weeks or as required; Maintenance of external lighting; Flats – dust woodwork, vacuum carpets, sweep and mop woodwork and tiled floor every 2 weeks; Clean inside and outside of entrance and wash entrance door and frame weekly; Windows cleaned inside and out every 4 weeks. The letter stated that the cost of these services was based on a quote obtained from a Property Factor who had now ceased trading. Mrs Lennie's share would be £504 per annum, £42 per month. Mr Murray advised the Tribunal that he had received a similar letter and thought that the proposal had sounded acceptable.
17. Mrs Lennie said that she did not pay the factoring charges. From the beginning she wanted evidence that there was a bank account into which the payments made by the 8 flat owners and the 19 townhouse owners were deposited. She wanted evidence that the townhouse shares were also being made. However, despite numerous requests, this was never provided. She was also concerned that the charge did not include insurance although Aikman Annan had included it for a similar cost. In response to questions from the Tribunal, Mrs Lennie said that the charge has never increased. Mr Murray advised that he recalls an increase being applied at one point. The charge

was reduced from 1 August 2021, when the Property Factor stopped providing the services which only apply to the flats. Mr Moffat said that his initial charge was £35. He only pays part of this because he has not been provided with information requested on numerous occasions. He has been threatened with court action, but this has not materialised. Mrs Lennie said that she had never paid. In January 2020 she was served with court proceedings for outstanding arrears. However, the claim only related to the arrears incurred since the Property Factor registered in 2017. Prior to that he had been operating illegally. As he only claimed for the sums due since 2017, the action was successful, and she had to pay the arrears. Since then, she has paid every month.

18. In response to questions from the Tribunal, Mrs Lennie said that the services outlined in the letter previously referred to have never been provided. The Property Factor employs a handyman whose main responsibility is the maintenance and repair of the town houses which are rented out to students. Occasionally, when she sees him and asks, he will Hoover the inside of the block of flats but the cleaning, the windows and other listed services are not provided. The electricity bill for the lighting in the close was paid although the lights don't work properly. For the most part, no external contractors are involved, except for the Roof Anchor inspections. Mr Moffat advised the Tribunal that very few repairs have been needed. There was damage to the gutters and a problem with the front door. The quote obtained by the Property Factor was ridiculous, so he arranged for someone else to do the work.
19. The Homeowners told the Tribunal that they have never received monthly or quarterly invoices from the Property Factor. The only accounts received were the three documents lodged in advance of the hearing, an annual statement for 2017/18, 2018/19 and 2020/21. As outlined in the written submissions, these were not all sent to all proprietors. Mrs Lennie only received the last one. The statements contain some information about services provided. However, there is no breakdown of costs attributable to each service in the 2017 and 2018 accounts. The 2020/21 is slightly more detailed but still incomplete. It includes the sums recovered following the court action against Mrs Lennie and lists the legal expenses associated with same. There have been no residents' meetings although Mrs Lennie said that she had once tried to arrange one. The letter of 29 July 2021 was sent to most residents. It refers to discussions about the residents taking over the flat services themselves. The three Homeowners said that they were unaware of any discussions with the Property Factor about this possibility. In response to questions from the Tribunal, Mrs Lennie said that she had been due to pay £42 per month. This was reduced to £33 from 1 August 2021 but she only pays £20 as she has not been provided with an explanation for the very small reduction made when the services exclusive to the flats were withdrawn. Mr Moffat said that he was originally due to pay £35 which was reduced to £28.45 but he also only pays £20. Mrs Lennie advised the Tribunal that the relative charges for each flat before and after 1 August are as follows; - Flats 1 and 3 - £38, reduced by £6.55; Flats 2 and 4 - £42, reduced by £8.46; Flat 5 - £45 reduced by £9.14; Flat 6 - £49, reduced by £10.36; Flats 7 and 8 - £60, reduced by £13.25 and

£13.41.

20. The Tribunal asked the Homeowners about the copy invoices submitted by the Property Factor. They stated that they were unable to explain the reference to the “office” in the “Property Maintenance” invoice although Mr Murray said that he thought that one of the townhouses had been used by the Property Factor as an office. They confirmed that the bin store does get cleaned but not regularly and it has not been cleaned recently. They have asked for signing sheets to be provided, for the contractor or handyman to sign when they attend, but these were not materialised. When asked about the “Property Services” invoices Mrs Lennie said that she has never seen a van with a logo or any evidence of their attendance. The bin store is only cleaned by the Property Factor’s handyman. There is a Flashpark sign in the car park. There have been various gardeners over the years and Mrs Lennie said she could not confirm if the invoices lodged are accurate. She said that the gardening work is not carried out as regularly as these invoices suggest. The Homeowners were unable to explain the reference in the invoices to a separate charge for “Alan Berry” Mrs Lennie said that the garden area at the townhouses is well tended but that the hedges and grass at the flats are badly overgrown and neglected.
21. Mr Moffat told the Tribunal that he asked for proper invoices to be provided and even gave the property factor a copy of an invoice he had from a factor for another property as an example. In response, he was told that if he wanted anything issued it would cost him £30 per sheet. Mr Murray told the Tribunal that the letter of 29 July 2021 was the first time he and the other Homeowners had been made aware that there were arrears. Since the services were withdrawn there have been concerns, particularly about the electricity bill for the stairwell in the block. Mr Moffat contacted the supplier but was unable to get much information as he was not on their system as the bill payer. Mrs Lennie said that another resident in the block paid the outstanding bill. However, it is thought that the only electric meter is in the block of flats and that this also covers the external lighting at the townhouses. They don’t know how to resolve that issue.
22. Mr Murray advised the Tribunal that the Homeowners feel that there is a conflict of interest between the Property Factor as owner of the townhouses and as factor for the development. The Property Factor is not willing to agree to a new factor being appointed and, as they own most properties, they are able to prevent a replacement being appointed. Mr Berry suggested that the flat owners appoint a factor just to provide services to the 8 flats, but they have investigated this option and no factoring companies are prepared to take this on. In response to questions about the complaint’s procedure, *the Tribunal were referred to Mrs Lennie’s emailed complaint to Mr Berry which was sent following receipt of the letter of 29 July 2021. Similar emails were sent* No response was received. Mr Murray also sent the complaint email, on behalf of all 8 homeowners. Mr Berry only responded to Mr Murray. He confirmed that he had received the complaints from the other flat owners but was not prepared to re-consider the decision to withdraw services as a result of the arrears.

## **Findings in Fact**

23. The Property Factor did not notify the Homeowner that they were withdrawing services exclusive to the flats.
24. The Property Factor did not respond to enquires/complaints made by the Homeowner on 2 August 2021 and 13 September 2021.
25. The Property Factor has not provided the Homeowner with a detailed financial statement each year since 2017.
26. The Property Factor did not notify the Homeowner that service delivery would be affected by her failure to pay factoring charges.
27. The Property Factor did not notify the Homeowner that some homeowners had arrears of common charges.
28. The Property Factor did not spread the shortfall caused by non-payment among the other homeowners in the development.
29. The Property Factor did not provide the Homeowner with a full response to her complaint about the withdrawal of services.
30. The Property Factor has failed to provide some services outlined in the written statement of services. These include window cleaning and cleaning the entrances, halls, landings, stairs, and stairwells in the block of flats.
31. The Property factor has failed to carry out some services as frequently as outlined in the WSS. These include cleaning and disinfecting the bin store and gardening work at the block of flats.
32. Since 1 August 2021 the Property Factor has failed to provide all factoring services exclusive to the flats, including payment of the electricity account for internal lights.

## **Reasons for Decision**

33. The Property Factor did not attend the hearing and provided a limited response to the Tribunal's direction. At the CMD, Mr Berry told the Tribunal that they had not wanted to become the Property Factor for the development and do not factor any other properties. It appears that the sole reason for continuing to do so is a reluctance to pay factoring charges to a third party for the town houses which they still own. However, it is evident that this decision has been to the detriment of the flat owners at the development who are

unable to appoint a different factor although they are dissatisfied with the service being provided.

## **Code complaints**

- 34. Section 2.1. You must not provide information which is misleading or false. Section 2.5. You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.**
35. Mrs Lawson's complaint appears to be about the failure by the Property Factor to communicate with her, rather than the content of communications. The Tribunal is therefore not satisfied that there has been a breach of Section 2.1. However, the Tribunal is satisfied that the Property Factor did not respond to an email sent on 2 August 2022 or a letter sent on 13 September 2021. The only response received was to Mr Murray's email which he sent separately on behalf of all the flat owners. The Tribunal determines that the Property factor has failed to comply with Section 2.5
- 36. Section 3.3. You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise, a detailed financial breakdown of the 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 and copying. You may impose a reasonable charge for copying subject to notifying the homeowner of this charge in advance.**
37. The Tribunal is satisfied that the accounts lodged by the Homeowners do not establish that the Property Factor has provided "a detailed financial breakdown" at least once a year. The Homeowners are not issued with monthly or quarterly invoices, which is unusual. Mrs Lawson did not receive the accounts for 2017/18. However, even if she had received them, these only give a list of services and the total sum due for the year. There is no breakdown of this figure, and it is not possible to compare the Homeowner's annual charge with the services listed. The account for 2018/19 is similarly deficient. The statement for 2020/21 is more detailed. It does show what proportion of the annual charge related to services provided exclusively to the flats. The only two such services listed are cleaning the stairwell and communal stair lighting. However, there is no breakdown of the services provided to the whole development, such as a gardening. Only a total figure is provided.

38. The Tribunal determines that the Property Factor has failed to comply with Section 3.3 of the Code.
39. **Section 4.4. You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowners does not fulfil their obligations**
40. **Section 4.6. You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of the data protection legislation).**
41. The Tribunal is satisfied that the Homeowner was not advised that service delivery would be affected because of her arrears and those incurred by another homeowner. Furthermore, she was not notified that there were debt recovery problems involving another Homeowner. Prior to 29 July 2021, no information was sent to the Homeowners alerting them to the existence of arrears or advising that this could result in the withdrawal of certain services. This letter was not sent to the Homeowner. The Tribunal also notes that the 2020/21 account shows that Mrs Lennie's arrears had been paid and that the only arrears owing on 31 July 2021 was the sum of £180. The decision to withdraw services appears to have been determined at a point where the outstanding debt had been greatly reduced.
42. **Section 7.2. When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing 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.**
43. The Property Factor's WSS does not clearly articulate what the complaints procedure involves. In the sections on communication arrangements and complaints against contractors, the Property Factor states that the complaint must be made in writing, that it will be dealt with quickly and that the Homeowner can apply to the Tribunal if they remain dissatisfied. It appears therefore to be a one stage process with no specific timescales. Mrs Lawson sent two complaints to Mr Berry about the withdrawal of services. In addition, Mr Murray sent the same complaint on behalf of all 8 homeowners. The only reply issued was to the latter and this did not fully address the issues raised in the complaint or advise Mr Murray of the next stage in the process. The Tribunal is satisfied that the Property Factor did not apply or exhaust their own complaints procedure and did not provide the Homeowner with details of how to apply to the Tribunal.

### **Property Factor Duties**

44. The WSS for the development states that a routine inspection of the development will be carried out by the client relationship manager at least once every six weeks. (Section 2.4). The Homeowners gave evidence that

they do not have a client relationship manager. Mrs Lennie, the only owner occupier who gave evidence, told the Tribunal that there are no regular inspections. The WSS also lists the following core services;-payment of the costs of the communal external and internal lighting, access gates and secure entry system; gardening and landscaping; tidying and sweeping car park areas every 2 weeks, spraying with weedkiller when required and treating paths and roads in the winter; arranging for a contractor to clean the internal common areas at the flats every 2 weeks; arranging for a contractor to maintain the external lighting; cleaning the inside and outside of the windows in the block of flats every 4 weeks; and, clearing, sweeping and disinfecting the bin store every 1 to 2 weeks.

45. The accounts issued to some of the homeowners make no reference to windows. Mrs Lennie gave evidence that the only services provided at the flats are the occasional vacuuming of the common areas and payment of the electricity bills. The Tribunal notes that in the 2020/21 account, the only one to provide any kind of breakdown, the sum specified for cleaning the common stairwell is £330 for the whole year. This is a very modest sum which is unlikely to cover the cost of a contractor cleaning the internal parts of the block, including windows, as frequently as the WSS suggests. Furthermore, no details of the identity of the contractor are provided or any information about how frequently they are due to attend. Prior to the withdrawal of services on 1 August 2021, the Homeowners confirmed that the electricity bills for the stairwell were paid, although the lighting is currently not working properly. Some of the external lights at the development have not worked for several years.
46. The Homeowners also gave evidence regarding the bin store and gardening. Mrs Lennie said that the bin store is cleaned occasionally, by the Property Factor's own handyman. The Tribunal notes that invoices which purport to be from a third-party contractor were lodged by the Property Factor. There are no names on the invoices or any indication if "Property Maintenance" is a trading name or a limited company. There is no reference to VAT. It is also of concern that the invoices appear to refer to an "office" as well as the bin store. The Tribunal found the Homeowners to be credible and reliable and are satisfied that bin store cleaning is carried out sporadically and not as frequently as the invoices suggest, by the handyman directly employed by the Property Factor. The Homeowners were unable to confirm if the handwritten invoices from Graeme Ferguson, gardener, are genuine as there have been several gardeners over the years. However, they confirmed that a gardener does attend, although he spends most of his time tending the gardens at the townhouses and the garden area at the flats is overgrown and neglected. The Tribunal also noted that most of the invoices contain two separate charges, one for the Slateford estate and the other which is only identified as being for "Alan Berry". As the Homeowners have never been given a breakdown of their annual or monthly charge, it is not possible to compare the sums in the invoices with their factoring charges. Furthermore, the invoices submitted do not relate to all the services which are due to be provided

47. The Tribunal is therefore satisfied that Property Factor provides some, but not all, of the services listed in the WSS for the whole development. Prior to 1 August 2021, they also provided some services at the flats. Since 1 August 2021, they have failed to carry out all services which are exclusive to the flats. The Property Factor has therefore failed to provide all the services detailed in section 2 and 3 of the WSS.
48. Part 4 of the WSS requires the Property Factor to set up a bank account for the development, issue annual accounts and spread any shortfall among the other proprietors if any of the homeowners fail to pay. Mrs Lennie made repeated requests for evidence of a bank account which was never provided, the annual accounts were incomplete and only issued to some of the homeowners and the arrears were not spread among the other homeowners. The Property factor has therefore failed to provide the services in section 4.
49. The Tribunal notes that the Property factor's decision to suspend payments of the communal electricity at the flats has proved particularly problematic. Mr Moffat contacted the supplier and was unable to obtain much information because he is not named on the account. However, he was told that the last bill has been paid. The Property Factor appears to have taken no steps to notify the supplier that the bills are now to be sent to the flat owners themselves. The situation is further complicated by the fact that there may only be one account for the whole development, which includes the external lighting which the Property Factor is still prepared to deal with. The Property Factor's actions have also made it impossible for the Homeowners to secure alternative factoring services for the flats. The title deeds make provision for a factor for the whole development. It is not possible to separate the two parts. The Property Factor's insistence on remaining as factor, while not providing several factoring services, conflicts with the obligations imposed by the Deed of Conditions and their own WSS.
50. The Tribunal is satisfied that the Property Factor has failed to carry out its property factor duties.

## **Decision**

51. The Tribunal determines that the Property Factor has failed to comply with Sections 2.5, 3.3, 4.4, 4.6 and 7.2 of the Code and has failed to carry out its property factor duties.

## **Proposed Property Factor Enforcement Order**

The Tribunal proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

## **Appeals**

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

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Josephine Bonnar, Legal Member and Chair  
7 July 2022