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

Property Factors (Scotland) Act 2011 ("the Act"), section 17(1)

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, as amended ("the 2017 Regulations")

Chamber Ref: FTS/HPC/PF/20/1535

2/3 2 Greenlaw Court, Yoker, Glasgow, G14 0PQ, Title number GLA188424 ("the Property")

The Parties: -

Mr Graeme Calderwood, residing at the Property ("the Homeowner")

Newton Property Management Ltd, 87 Port Dundas Road, Glasgow, G4 0HF ("the Factor")

Tribunal Chamber Members

Maurice O'Carroll (Legal Member)
Sara Hesp (Ordinary Member)

Decision of the Chamber

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor has failed to comply with the factor duties contained within sections 3 (preamble), 4.9 and 7.2 of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act").

Procedural background

1. By application dated 6 July 2020, the Homeowner applied to the Tribunal for a determination as to whether the Factor had failed to comply with various duties as set out in sections 2, 3, 4, 6 and 7 of the Code as imposed by section 14(5) of the Act.

2. By letter dated 18 August 2020, the Homeowner notified the Factor of his complaint in terms of sections 2.1, 2.2, 3.3, 6.6, 6.9, 7.1 and 7.5 of the Code as required by section 17(3) of the Act. By email dated 7 October 2020 and sent on the same date, the Homeowner informed the Factor of other sections of the Code which he alleged they had breached. They were sections 4.1, 4.8, 4.9 and 7.2.

3. By decision dated 3 December 2020, a Legal Member acting on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.

4. On 4 January 2021, the Homeowner intimated formal submissions to the Tribunal consisting of 18 pages detailing the relevant sections of the Code and appendices containing productions lettered from A-M. The Factor provided written submissions dated 8 January 2021 comprising 4 pages of response and 6 attachments.

5. Initially both parties indicated that they did not wish to take part in the telephone conference call arranged in order to hear evidence in relation to the application. However, 2 days prior to the scheduled hearing, the Factor intimated that it would, after all, attend the hearing. The Homeowner had not made arrangements to attend the hearing on the basis of what had been stated previously by the Factor. Accordingly, the Tribunal offered him the option of postponing the hearing to a date when both parties could attend. That offer was declined by the Homeowner.

6. A hearing of the Tribunal was held at 10 am on 4 February 2021 by means of a telephone conference call. For the reasons stated above, the Homeowner was not present or represented on the call. The Factor was represented by Mr Martin Henderson, Executive Director and by Lynsey Hutchinson, Property Manager. Evidence for the Factor was predominantly provided by Mr Henderson.

7. In light of the disparity in the level of submissions provided by the parties and the absence of the Homeowner, the Tribunal decided to progress the hearing by means of a hearing in private between the Tribunal members during the morning of the hearing.

8. Thereafter, the Tribunal invited the Factor to attend the hearing at 2pm in order to answer questions which it considered arose from the Homeowner's submissions but which had not been addressed by the Factor's original written submissions. The Factor indicated that they were content with that form of procedure when it was canvassed with them at the start of the hearing since it would avoid duplication of effort and concentrate on matters which were either unclear or in dispute.

Tribunal findings

The Tribunal made the following general findings in fact pursuant to rule 26(4) of the 2017 Regulations in relation to the factual background to the dispute:

9. The Property is a flat within a block which is one of four blocks in a housing development completed in 2006 ("the Development"). These are numbered 2, 4 and 6 with a further block numbered 8, standing apart from the rest. Each block is of four storeys comprising a ground floor and three floors above. The flats are accessed from a common stairwell (referred to in evidence as a "close"). There is also a common car parking area serving the Development.

10. The Development comprises two blocks of 11 flats one of 8 and one of 12 flats. Accordingly, common charges are variously divided into shares of 1/8, 1/11, 1/30 and 1/42 as applicable.

11. The Property which the Homeowner purchased in June 2017 is in block 2, one of the blocks comprising 11 flats. The Factor was the original factor responsible for management of the Development since its completion in 2006. It is named in the Deed of Conditions applicable to the Property, registered on 15 May 2006.

12. The Factor produced a Written Statement of Services ("WSS") which it said that it had sent to the Homeowner about the time he took entry to the Property in 2017, although this is contested by the Homeowner. The Tribunal finds that the WSS was sent to the Homeowner under cover of an introductory letter dated 2 May 2017, a copy of which was provided to the Tribunal. It considers that this letter was accurate because it also contained instructions regarding payment of quarterly factoring charges, by means of a direct debit mandate, which the Homeowner did indeed set as suggested in that letter.

13. The Tribunal was provided with the latest version of the WSS following a Direction from the Tribunal prior to the hearing, although reference was made by the Factor to an earlier version dating from 2018 which was produced to the Tribunal shortly after the hearing. Reference will be made to the latest version, unless otherwise stated.

Tribunal findings in relation to the Code of Conduct

The Tribunal makes the following specific findings in fact in relation to the breaches of the Code of Practice by the Factor based upon the findings in fact above and on the documents supplied to it.

Section 2.1

14. This section of the Code states that factors must not provide information which is misleading or false.

15. In his written submissions, the Homeowner contends that the Factor provided misleading and false information under three separate headings: Lighting, non-communal charges and visits made by the Factor to the Property.

16. In relation to the communal lighting charges, the Homeowner stated that the communal electricity charges are almost double what they should be. This is stated because the lights are on for longer than they need to be and a number of general repairs were charged which total £1,382.17 over a period of 36 months which appears excessive.

17. Mr Henderson for the Factor responded that the Property is surrounded by an embankment on one side and trees on another. Therefore, the lights require to be on for a longer amount of time than one would normally expect. The charges were for necessary repairs.

18. The Tribunal was of the view that the charges did appear high, but was not prepared to conclude that the information regarding them was false or misleading. To hold that would be to imply that the charges had been fabricated with no basis for them. On the evidence, it was not prepared to make such a finding.

19. In relation to repairs for water leaks occurring in private flats within the Development, the Factor agreed that if leaks were internal to a private property, then the cost of repair ought to fall on the proprietor of that property. When questioned why such repairs appeared in quarterly billing for communal charges, Mr Henderson explained that the call-out charge was communal since there was always the possibility that leaks could affect the "communal stack" and therefore were a communal repair. However, only the call out charge was ever applied to all residents with the actual repair bill being borne by the individual proprietors affected by such a leak.

20. The Tribunal found that the level of charges levied for call outs bore out that submission. It doubted, however, whether it was correct for any amount of the charge for a leak repair to be borne communally when the origin of the call out was a leak within an individual property for which the individual proprietor was responsible. However, this did not go far enough to suggest that the charges themselves were misleading or false.

21. In relation to guttering repairs, the Homeowner contended that these might have effectively been generated by the contractor while carrying out another repair on the down pipes as they would not have been visible from ground level. Again, the contention was that the repairs had in effect been manufactured and were not true costs arising.

22. The Tribunal was unable to accept this contention. In its own experience, blocked guttering can be seen from ground level. On the evidence, it was unable to hold that work had been carried out to the guttering without any basis for it.

23. Miss Hutchinson accepted that she had provided an undertaking to provide before and after photographs of another more recent repair to the guttering at the Homeowner's request and that this had not been done. She had not forgotten this, but explained that works could not be completed in December as planned. She therefore renewed the undertaking to comply with the Homeowner's request when those works were completed.

24. The Tribunal therefore finds that the Factor did not breach section 2.1 of the Code.

Section 2.2

25. This section provides that factors must not communicate with homeowners in any way which is abusive or intimidating or which threatens them (apart from a reasonable indication that they may take legal action.)

26. In his letter dated 29 April 2020 to the Homeowner, Mr Henderson expresses concern about the tone and emotive language used by the Homeowner in his emails to staff employed by the Factor. Unfortunately, he himself goes on to describe the allegations made by the Homeowner as "quite frankly an impertinence". He threatened to seek legal advice for defamation and described the Homeowner's challenges to common charges as being "malicious."

27. In a later email to the Homeowner dated 13 May 2020 in which many of the issues noted above in relation to section 2.1 were addressed, Mr Henderson also referred to the Homeowner's allegations of harassment in relation to unpaid factor fees as being "preposterous."

28. The Tribunal does not condone any abusive language in communications between factors and homeowners. If homeowners are abusive, then certain actions may be taken to deal with that ranging from a mild rebuke to (in an extreme case), requiring all correspondence to be conducted through a third party such as a solicitor. Factors, however, require to comply with the Code and are rightly held to a high standard in their dealings with client homeowners who pay for their services.

29. The Tribunal notes in particular that the email of 29 April 2020 was not constructive, did not deal with any specific issue raised by the Homeowner and was effectively used as means for the Executive Director of the Factor to upbraid the Homeowner.

30. The Tribunal considered that while the correspondence from the Factor did not quite go far enough to breach the prohibition contained with section 2.2, it missed an important opportunity to provide reassurance to the Homeowner and instead aggravated his complaints unnecessarily, effectively adding fuel to the fire rather than seeking to emolliate the situation which had arisen as should have been done.

31. In relation to the requirement for the Homeowner to pay a fee of £5 plus VAT to obtain copies of invoices, the Tribunal notes that this is permitted by the Code and the charge is specifically covered by the WSS. As such, the Tribunal could not conclude that the charges were used as an attempt at intimidation by the Factor knowing of the Homeowner's financial difficulties.

32. Overall and on balance, the Tribunal finds that the Factor did not breach section 2.2 of the Code.

Section 3 - preamble

33. The preamble to section 3 of the Code stresses the consideration that transparency is important in the full range of factor services. Homeowners should know what it is they are paying for and how the charges were calculated As such, there requires to be clarity and transparency in all accounting procedures. The Tribunal considered that it was appropriate to consider this

section in light of the concerns raised by the Homeowner, the questioning from the Tribunal and the evidence actually heard at the hearing.

34. The Tribunal has noted above in relation to its discussion of section 2.1 of the Code that the charges for lighting and lighting-related repairs appear to it excessive. It also noted that it appeared to it to be incorrect that call-out charges for a plumber should be borne communally when they applied to an individual private property. Whilst not misleading statements, the Tribunal considered that they were at least questionable and that such questionability would be remedied by greater transparency in the Factor's dealings with homeowners.

35. In the case of the gutter cleaning works, the Tribunal raised the issue of the quotes provided by the Factor by letter dated 24 November 2020. Two contractors are mentioned. Both apparently produced quotes of £1,224. That appeared to be unusual to the Tribunal in the figure was not a round figure and yet was used in both cases. No satisfactory explanation for both contractors apparently quoting the same number was provided to the Tribunal. The best that could be said that the identical sum in the two quotes was purely coincidental. The Homeowner had already raised the same query, also without a satisfactory response. The Tribunal considered that this raised issues of transparency in dealing. The Factor stated that they would investigate to see if there had been a typographical error, but this was rather too late in the day to investigate an obvious issue which had already been brought to its attention (email from Homeowner 29 November 2020).

36. In his submissions, the Homeowner also raised the issues of cleaning and garden maintenance which he claims are excessive compared with the service actually provided. The Factor response was that it was open to residents within the Development to complain if they considered that the services were not provided to the necessary standard. What constitutes the necessary standard is determined by the relevant contractor specifications. The Ground Maintenance Specification and Cleaning Specification were produced in evidence to the Tribunal by the Factor for the purposes of the hearing.

37. The Tribunal noted that these specifications were generic in nature and not tailored to or specific to the Development. More importantly, on questioning, it appeared that the specifications were not provided to homeowners for their information. The Factor indicated that it relied on homeowners to complain if the necessary works were not completed as required. In the absence of the specifications, the Tribunal considered that they would have no basis upon which to form any such complaint, except where shortcomings in service were very obvious. It is therefore perhaps unsurprising that no complaints other than the Homeowner's had been received by the Factor. The Tribunal considered that this feature of service went to the issue of transparency in dealings with homeowners.

38. Another issue which arose in the course of questioning by the Tribunal was the issue of the so-called "underwriting fee." This arose under section 6.3 but again, the Tribunal considered that this matter went to the issue of

transparency. The fee is in fact an additional factor fee in respect of "notifiable contracts" under paragraph (o) of the WSS. That paragraph is stated to apply to larger works schemes, but in fact applies to any repairs which the Factor considers it appropriate to notify homeowners in advance and to seek payment up front.

39. What thus constitutes "notifiable works" appears to be entirely at the discretion of the Factor. If an individual homeowner fails to pay their share of costs up front, then the additional charge of 10% is applied, whatever the cost of the repair. There is no reference to the term "underwriting fee" in the WSS.

40. In the earlier, 2018 version of the WSS provided to the Tribunal, paragraph (xiv) under section C provides that larger or extraordinary works will incur what was a "larger works management fee" of 10% of the net apportioned cost unless paid in advance of the contractor being instructed to commence works. There is still no reference to the term "underwriting fee." The principle and applicability of the additional charge is the same in either version of the WSS.

41. In addition, paragraph (g) at page 2 of the WSS states that "if we think it is in your interests", we will get estimates from several tradesmen for the same job. This appears vague and again leaves matters entirely at the discretion of the Factor with no particular threshold of cost, before that exercise will be undertaken. At paragraph (a) at page 3 of the WSS, it is stated that "if we expect this work to cost more than the amount allowed under the deed of conditions, we will only go ahead with it once a majority of owners has agreed the estimate for the work. Upon questioning by the Tribunal, the Factor readily agreed that there is no such amount specified in the Deed of Conditions. The Tribunal had already checked the Deed of Conditions and found this to be the case so the concession was correctly made. The provisions therefore lack transparency and in relation to the reference to the Deed of Conditions, an important document regulating the rights and obligations of homeowners, are inaccurate.

42. Under a second, separate paragraph (o), provisions for a float are made. The Factor indicated in evidence that this is used for ongoing factor costs which are incurred until such time as quarterly factor fees are collected. This is not made clear in the WSS. The Homeowner was therefore understandably unclear as to how the float funds were applied and reasonably asked why smaller repairs, such as gutter cleaning, were not covered by the float. The Tribunal considered that greater transparency in the terms of the WSS would have avoided this particular misunderstanding.

43. There was an additional complaint under this heading in relation to charges for grit bins. It was stated that the Council provides these for free and therefore the Factor should not be levying a charge for homeowners in relation to these. The Tribunal does not accept this complaint. It understands that the Council provides grit bins in relation to public roads and pavements, and not for private properties such as those within the Development. Likewise, although raised under section 3.3, the Tribunal accepts that the Council will not carry out uplifts

of bulky items at the request of the Factor, since the Factor is a private, commercial company.

44. In relation to slab power washing, replanting works and the signs on the bin store walls, the Tribunal was not in a position to find either that these charges lacked transparency or were excessive. In relation to the bin store cleaning charges (also raised under section 3.3), the Tribunal noted that they were at their highest in the periods leading up to or following the Christmas festive period and could not therefore be said to be excessive. The Tribunal has already commented on the quarterly communal electricity charges above.

45. Overall, the Tribunal finds that the Factor had breached the general requirements of principle as set out in the preamble to section 3 of the Code. As part of the Property Factor Enforcement Order ("PFEO") to follow, the Factor will be required to amend its WSS in order to achieve greater transparency in its dealings with homeowners.

Section 3.3

46. This section requires the Factor to supply the Homeowner with a detailed financial breakdown of charges made and the activities and works they are charged for. Factors may impose a reasonable charge for photocopying supporting documentation and invoices.

47. The Tribunal was of the view that the quarterly invoices provided by the Factor as part of its overall property management service satisfied the requirement of section 3.3 of the Code. The issue of charges for photocopying supporting documentation and invoices has been addressed above.

48. The specific charging issues raised under this heading in the Homeowner's complaint have been addressed above in relation to transparency of charging under the preamble to section 3 of the Code.

49. Accordingly, the Factor did not breach the terms of section 3.3 of the Code.

Section 4.1

50. This section provides that factors must have a clear written procedure for debt recovery which outlines a series of steps which they will follow unless there is reason not to. The procedure must be clearly and consistently applied.

51. The Tribunal was provided with the Factor's debt recovery procedure which does indeed set out a series of steps which the Factor will follow in the case of debt recovery. There are 8 steps in total from invoice to reminder notices, before moving onto Sheriff Officer, Solicitor or Debt Recovery Agent, Notice of Potential Liability, Court Proceedings and recovery from other owners within the Development as a final step.

52. The Tribunal notes that the Homeowner has had a debit balance on his factoring charges account since August 2017. The complaint raised in fact

relates to the disagreement regarding communication discussed in relation to section 2.2 of the Code discussed above. The Homeowner was contacted by the debt recovery department of the Factor's organisation and a payment plan to address his arrears was put forward. The Homeowner's position is that the payment plan is effectively academic since he cannot pay the factoring charges. Due to alleged abusive conduct on the part of the Homeowner, Miss Hutchinson and other members of staff refused to deal with him, leading to the correspondence dated 29 April and 13 May 2020 discussed above.

53. The upshot is that the debt recovery procedures have not been followed through by the Factor. It is understood that a NOPL has been registered against the property and third party debt collection agencies have been instructed to pursue the Homeowner's arrears but, as yet, no proceedings have been raised in the Sheriff Court for recovery.

54. Accordingly, the debt recovery procedures used by the Factor have not been enforced to their fullest extent. This has been to the benefit of the Homeowner. The reason for not following them through is in no doubt in part to the ongoing disagreements raised by the Homeowner in relation to factoring services received by him and the present application. The Tribunal considers that to be a good reason for not follow through the procedures to their fullest extent.

55. The Tribunal therefore found that the Factor did not follow its Debt Recovery Procedures in full but had good reason not to. The Factor did not therefore breach section 4.1 of the Code.

Section 4.2

56. This section states (as amended to take account of the change of the Homeowner Housing Panel to a First-tier Tribunal) that if a case relating to a disputed debt is accepted for investigation by the First-tier Tribunal, the Factor must not apply any interest or late payment charges in respect of the disputed items while the Tribunal is considering the case.

57. The Homeowner might reasonably consider that the moratorium on charges and interest applied from the date of his application to the Tribunal on 6 July 2020. However, at that stage, the Tribunal cannot be certain that the application is valid. The terms of the section refer to that the Tribunal has accepted the complaint for investigation. This did not occur until 3 December 2020 when an in-house Convenor acting on behalf of the President of the Tribunal issued a Notice of Acceptance in terms of rule 9 of the 2017 Rules (see paragraph 3 above).

58. The Tribunal had sight of the quarterly invoice from 17 November 2020 which included a late payment fee and a fee in respect of a Sheriff's Officer letter. On questioning by the Tribunal, Mr Henderson confirmed that a hold had been placed on any charges or interest being applied to the Homeowners account from 3 December 2020. The Tribunal accepted that evidence in the absence of any later quarterly invoice showing that any such charges had been levied.

59. The Tribunal therefore finds that the Factor did not breach section 4.3 of the Code.

Section 4.8

60. This section stipulates that factors must not take legal action against a homeowner without taking reasonable steps to resolve the matter, and without giving notice of their intention.

61. As noted above, the debt management procedure intimated to the Homeowner lists the possibility of a NOPL being registered against a property to secure an unpaid invoice. The Homeowner can therefore be taken to be aware of the possibility of that course of action in the event of a persistent non-payment of factoring invoices.

62. Further, the letter dated 25 June 2020 from the Factor's Debt Recovery Department to the Homeowner specifically noted that there was a risk of them placing an NOPL on the Property and the consequences of that course of action. The NOPL charge was levied on the Homeowner's account on 30 September 2020. Accordingly, the Homeowner was provided with advance notice of that possible measure being taken in the event that his invoices remained unpaid.

63. The Tribunal therefore finds that the Factor did not breach section 4.8 of the Code.

Section 4.9

64. This section stipulates that when contacting debtors, Factors, or parties acting on their behalf must not act in an intimidating manner or threaten them – apart from a reasonable indication that you may take legal action.

65. The letter dated 25 June 2020 from the Factor's Debt Recovery Department was sent in respect of an outstanding balance of £387.35. Apart from the threat of registering an NOPL noted above, it also included the following warning in block capital letters: "Subject to conclusion of our debt recovery procedures, we may also require to advise other owners in your development of these arrears."

66. The Tribunal found that to be a threat and an attempt at intimidation which is not sanctioned by Section 4.9 of the Code (legal action). The phrase used is more serious than that: The Factor holds personal information in respect of the Homeowner. It is therefore a data handler in terms of GDPR. It has no right to divulge such personal information to other homeowners in the Development without the Homeowner's permission. It is an incorrect statement of authority for the Factor to suggest that it had any such right, still less to threaten it in order to provoke payment of an outstanding invoice, which is also prohibited by this section of the Code. Further still, it directly contravenes the statement made a paragraph (e) at page 6 of the WSS relating to the Data Protection Act 1998 and information held. The paragraph states: "We will not share your

personal information with anyone else without your written permission, unless we have to do so by law or under our contract with you."

67. The Factor does not have the Homeowner's written permission to discuss details of his debt with other homeowners within the block. The Factor is not obliged by law or contract to share that information. The threat is therefore one to breach the terms of the WSS which is the contract between the Factor and the Homeowner, quite apart from its intimidatory effect and potential to breach the GDPR. This threat was not isolated and appears to be standard wording: a similar threat is contained in a letter dated 2 October 2020 to the Homeowner, although if anything, the threat is stronger because it refers to "your arrears" rather than "these arrears" used earlier.

68. Even if the Tribunal is incorrect about the effect of GDPR, the threat to inform neighbours of the Homeowner's indebtedness is not one which is countenanced by this section of the Code which extends only to a reasonable threat of legal action.

69. The Tribunal therefore considered this to be a serious and repeated breach of section 4.9 of the Code.

Section 6.3

70. This section of the Code requires factors to be able to show how and why they employed contractors, including cases where it decided not to carry out a competitive tendering exercise.

71. The complaint under this section relates to communal redecoration works to the stairwell and hallways. The Tribunal was provided with a letter dated 31 January 2018 which set out the redecoration scheme proposed, an explanation of the scope of works and provided details of three separate quotes which it has obtained.

72. The fact that the contractor employed by the Factor was not VAT registered does not necessarily imply that it was not reputable or that it lacked the necessary specialisation to carry out internal redecoration works. There was no evidence that the contractor was a family member or friend of any one within the Factor's organisation. This allegation was completely without foundation.

73. Accordingly, the Tribunal finds that the Factor did not breach section 6.3 of the Code.

Section 6.6

74. Documentation relating to any tendering process should be made available for inspection by homeowners on request, free of charge. If copies are requested, a reasonable charge may be made for these.

75. The Tribunal was not informed of the dates when requests to inspect the relevant documentation were made by the Homeowner. If they were made

during a period of restricted access or lockdown due to Covid-19 then the Tribunal considers it reasonable that the request should be complied with by means of copies only. In any event, invoices would not be provided to homeowners as a matter of course, only a summary of the charges in relation to them as part of their quarterly invoices.

76. Where copies were provided, both the Code and the WSS provide for a reasonable charge to be levied in respect of that service, which is what was done by the Factor. The Tribunal could see no evidence that such charges were imposed by the Factor as a means of intimidating, causing stress to, or belittling the Homeowner as alleged.

77. The Tribunal found that the Factor had not breached section 6.6 of the Code.

Section 6.9

78. This section provides that Factors must pursue contractors or suppliers to remedy defects in any inadequate workmanship.

79. The Homeowner cited a number of what appeared to be identical charges for work in the communal parts of the Development. On the face of them, it did appear that the invoices were for repeat work, instead of a single invoice which should be have been followed up by remedial work at no extra charge.

80. However, on detailed questioning of the Factor by the Tribunal, it was satisfied that the invoices were indeed for additional repair works on each occasion and not for the same repairs which had been repeated and charged for again. On 4 February, after the hearing had finished, the Factor provided further invoices and job instructions in relation to the door repair, door entry system and lighting repairs which demonstrated that the charges were for different works.

81. Accordingly, the Tribunal found that the Factor had not breached section 6.9 of the Code.

Section 7.1

82. This section of the Code provides that factors must have a clear written complaints resolution procedure in place which sets out a series of steps which they will follow, accompanied by reasonable timescales set out in the WSS.

83. The fifth attachment to the Factor's submissions contains its written complaints procedure. This was sent to the Homeowner on 28 April 2020 under cover of an email from Miss Hutchinson. The Homeowner did not provide any details as to whether the Factor had failed to comply with its own timescales for response.

84. It appeared to the Tribunal that the Homeowner's complaints had been addressed, albeit not to the Homeowner's satisfaction.

85. Accordingly, the Tribunal finds that the Factor did not breach section 7.1 of the Code.

Section 7.2

86. Section 7.2 of the Code provides that when the in-house complaints procedure has been exhausted without resolving the complaint, the final decision in relation to it should be confirmed by senior management before the homeowner is informed in writing. The letter should also provide details as to how the homeowner may apply to the Tribunal.

87. The Tribunal notes that it is mentioned in the Factor's formal complaints procedure referred to above.

88. A letter dated 13 May 2020 from Mr Henderson to the Homeowner addresses a total of 8 issues of complaint raised by the Homeowner. A detailed response was sent by the Homeowner on 1 June 2020 in which he concluded that he would, among other avenues, be sending an application to the First-tier Tribunal.

89. Mr Henderson is a member of senior management within the Factor's organisation. It would have been appropriate for him to have taken the opportunity to state in his letter of 13 May 2020 that the Factor's complaints procedure had been exhausted and to direct the Homeowner to this Tribunal. In the absence of that, the Homeowner's response of 1 June 2020 did not serve to further the Code section's aim of bringing complaints to a formal close. In fact, it made matters worse. That correspondence and result could have been avoided if this section had been complied with.

90. The Tribunal therefore finds that the Factor breached section 7.2 of the Code.

Section 7.5

91. In terms of this section, the Factor requires to comply with any requests from the First-tier Tribunal.

92. The Tribunal is not aware of any failures on the part of the Factor in this regard. No specific instances were cited by the Homeowner in support of a complaint under this section.

93. Accordingly, the Tribunal finds that the Factor did not breach section 7.5 of the Code.

Decision

94. The Tribunal finds that the Factor has breached its duty to comply with the Code in respect that it failed to adhere to the terms of sections 3 (preamble), 4.9 and 7.2 of the Code, all as required by section 14(5) of the 2011 Act.

95. Although the number of sections found to have been breached is low relative to the number of sections cited by the Homeowner in his application, the Tribunal

finds that the breaches in terms of sections 3 (preamble) and 4.9 to be particularly serious and important in relation to the relationship that ought to exist between the Homeowner and the Factor. This is reflected in the level of compensation proposed in this case in the PFEO to follow.

96. A proposed Property Factor Enforcement Notice ("PFEO") accompanies this decision. Comments may be made by either party **in respect of the proposed Property Factor Enforcement Notice only,** not this decision, within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Appeals

97. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission within 30 days of the date the decision was sent to

M O'Carroll
Chairman

Date: 22 February 2021