Housing and Property Chamber
First-tier Tribunal for Scotland

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

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

Chamber Ref: FTS/HPC/PF/21/1362

Flat 1/1 76 Albert Avenue, Glasgow, G42 8RD ("the Property")

Parties:

Mr Mohammed Alam, Flat 1/1 76 Albert Avenue, Glasgow, G42 8RD ("the Homeowner")

Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park, Hamilton, ML3 0QA ("the Property Factor")

Tribunal Members:

Mrs Josephine Bonnar (Legal Member)
Mr Mike Links (Ordinary Member)

DECISION

The Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Sections 4.1, 4.5, 5.2 and 5.3 of the Code of Conduct for Property Factors.

The decision is unanimous.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as "The Regulations".

In this decision the Applicant is referred to as the Homeowner. The Homeowner's son, Mr Alam junior, who attended the hearing as a witness is referred to as Mr Alam, Mr Harry Alam or Mr Alam junior.

The Property Factor became a Registered Property Factor on 07/12/2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. The Homeowner lodged an application with the Tribunal. The application comprises documents lodged between 7 June and 19 July 2021 and states that the Property Factor has breached several Sections of Section 1, most of Sections 2,3,4,5 and 6 and Sections 7.1 and 7.2. of the 2012 Property Factors Code of Conduct ("the Code"). The application also states that the Property Factor has failed to carry out its property factor duties. Documents were lodged in support of the application including letters to the Property Factor notifying them of the complaints, copy emails and Royal Mail track and trace reports. On 5 August 2021, a Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. Parties were notified that a hearing would take place on 7 October 2021. On 6 September 2021 the Tribunal issued a direction to the parties requiring them to lodge further information and documents. The parties were also notified that the hearing had been converted to a Case Management Discussion ("CMD").

2. In response to the direction the Property Factor lodged written submissions and some documents. The Homeowner sent six emails, each with several documents attached, on 29 September 2021. On the same date, a further submission was lodged by the Homeowner. However, due to issues with the size and format of the documents, the Tribunal was unable to open all the attachments.

3. The CMD took place by telephone conference call on 7 October 2021 at 10am. The Homeowner was represented by his son, who has the same name but is known as Harry Alam. The Property Factor was represented by Mr Miller.

Summary of Discussion

4. The Tribunal noted that the application form submitted by the Homeowner did not contain any details of a representative and that the Tribunal had not been notified that Mr Harry Alam would be participating in the CMD on behalf of the Homeowner. Mr Harry Alam stated that he had his father's permission to represent him and would submit evidence of this in writing. The Tribunal advised that in the absence of this written mandate, they could not progress the application to a hearing on the substantive issues but would deal with some

preliminary matters.

5. In response to questions from the Tribunal, Mr Alam advised that he had not received a copy of the Property Factor's submissions. Mr Miller advised that he had received the bundle of documents which comprised six emails and attachments from the Homeowner but nothing since that date. The Tribunal noted that the Homeowner had submitted a further large bundle of documents but that some of the attachments could not be opened and the Homeowner had been notified that these would require to be re-submitted. Following discussion, the Tribunal advised the Homeowner that all submissions and documents already lodged would require to be re-submitted in hard copy, paginated and with each document listed in a numbered inventory. The Property Factor was also advised that any further documents would require to be lodged in a similar format, but that the short submission already submitted did not require to be re-submitted.

6. The Tribunal noted that the parties were previously involved in court proceedings relating to non-payment of factoring invoices and had lodged documentation in connection with same. They were advised that the Tribunal's remit was to consider the Code and property factor duties and not to consider whether the decision of the Sheriff in those proceedings was correct.

7. In response to questions from the Tribunal, Mr Miller advised that he had received notification of the Homeowner's complaints about the Code and property factor duties. He said that he was aware of the complaints which were not supported by the other homeowners in the block.

8. The Tribunal advised Mr Alam that although the application contained numerous separate complaints, many of these were vague and lacking specification. He was advised that better specification was required to give the Property Factor proper notice of the complaints and that a direction may be issued by the Tribunal requiring him to provide further details of the complaints.

9. Following the CMD, the Tribunal advised parties that the application would proceed to a hearing and issued a direction for the production of additional documents and information.

Further procedure

10. The parties were notified that a hearing would take place on 19 January 2022. Both lodged further documents. However, the Homeowner's substantial bundle of documents was lodged late. The Tribunal determined that the hearing should be postponed due to the late lodging of documents. The parties were notified that a hearing would take place by telephone conference call on 10 March 2022.

The Hearing on 10 March 2022

11. The Tribunal dealt with several preliminary matters and proceeded to hear some evidence from the parties. Following a short adjournment, the Tribunal advised the parties that it had decided to adjourn the hearing to another date so that the hearing could take place in person or by WEBEX, if the parties were able to facilitate this. Mr Miller confirmed that he could participate by WEBEX. Mr Alam said that he might be unable to do so, as his internet connection is poor, and that he would prefer an "in person" hearing if this could be arranged.

Further procedure.

12. The parties were advised that a hearing would take place on 2 August 2022 at Glasgow Tribunal Centre. Neither party attended the hearing. The Property Factor's office advised the Tribunal that a letter had been delivered to the Tribunal Centre stating that Mr Miller was on holiday. This letter had not been received. Mr Alam had forgotten the date of the hearing. A further hearing was arranged for 8 November 2022. Mr Miller attended. Mr Alam junior attended, and the Homeowner was represented by Ms Mohammed, solicitor. She advised the Tribunal that she had only recently been instructed. She requested an adjournment to allow her time to prepare and indicated that she could lodge a joint bundle of documents. Mr Miller did not object and the Tribunal granted the adjournment. The parties were notified that a hearing would take place on 1 March 2023. The hearing took place on this date at Glasgow Tribunal Centre. The Tribunal heard evidence and adjourned the hearing to 25 May 2023. The hearing concluded on that date and the parties were instructed to lodge written submissions.

The Hearing on 1 March 2023

13. Mr Miller attended the hearing accompanied by Mr Turnbull, a supporter. Mr Harry Alam attended, and the Homeowner was represented by Ms Mohammed. Solicitor.

14. Ms Mohammed brought three copies of a joint bundle of documents to the hearing. She confirmed that only one document was new. All others had been submitted by the parties prior to the previous hearing. Mr Miller confirmed that he had no objection to the new document. The hearing was adjourned for a short period to allow the clerk to make some additional copies of the bundle.

15. The Tribunal noted that Mr Harry Alam was now attending the hearing as a witness and not a representative. The Tribunal was advised that the Homeowner would not attend or give evidence.

Mr Harry Alam's evidence

16. Mr Alam told the Tribunal that he is the son of the Homeowner and has his father's authority to speak on his behalf. He has lived at the property since 1999 and he deals with the Property Factor on behalf of his parents. He stated that they first became aware of the Property Factor in 2017 when they received a letter from a debt collector. He was referred to document 22 (page 69) entitled "Minutes for initial meeting and moving forward", signed by 7 people. He said that he did not see this document until 2018, during the Simple Procedure Court case ("SP case"). The Homeowner had not been approached about the meeting. He also had not seen document 24 (p 71), the minutes of a residents meeting on 25 August 2010, or document 25 (p74), notice/agenda for a further residents meeting, until 2018. He did not know there was a factor until a neighbour asked for his email address to add him to the group. He became aware of the factor when they got the letter from the debt collector and when Heather Jack from the top floor asked for his email address at his place of business/shop on Pollokshaws Road. He can't remember which happened first. He became part of the email chain/group in 2017, possibly September 2017. The first email he received welcomed him to the group. The subsequent emails related to a leak in the close which had been an issue for a while although it was erratic. Lots of the emails he received went into junk, so he didn't see them immediately.

17. Mr Alam referred to document 60, page 139, an email he sent to the other residents and the Property Factor headed " Water leak at 76 Albert Avenue". Prior to this there had been no communication from the Property Factor about the leak. His parents arranged for private repairs because they were led to believe that the leak was from their property. There was also a "cowboy" repair to the roof arranged by the Factor. But the leak was related to a communal waste pipe. In response to questions from the Tribunal, Mr Alam said that there are 8 flats in the block, 2 on each landing. The leak was underneath their flat, onto the floor on the ground floor. It was a slow leak, but plaster had fallen from the ceiling. It had been ongoing for 2 years. He did not contact the Property Factor to report the leak. The Property Factor did not contact him. Mr Alam referred to document 58, a letter from the Property Factor dated 17 October 2017, about a plumber coming. It was sent because he had not responded to an email about access. He had been on holiday and had not checked his emails. He responded to the letter on 20 October 2017 (p136). Prior to this correspondence in September/October 2017 his father had received no correspondence or WSS from the Property Factor. When the correspondence was received from HBJ Gately, he contacted them for information. This was about the same time as the emails about the leak. They did not respond. The SP case started after that. Mr Alam phoned Mr Miller who said that he was too busy to speak to him. This was the only time he tried to speak to Mr Miller who was hostile to him. Thereafter the only communication was with the solicitor. He referred to document 61, p161, an email to the solicitor. He then referred to page 79 onwards, a series of invoices. The first is dated 15 November 2010. The first time he saw this was in 2017. In response to questions about the court case, he said that the Sheriff decided in favour of the Property Factor because

they provided evidence that one of the invoices had been paid in 2013 by credit card.

18. In response to questions about communication and consultation, Mr Alam said that there was no communication between 2010 and 2017. The Property Factor did not know about them. This might have been because there were already 8 people on the email chain, one of the residents was on twice. All communication from the Factor has been hostile. In response to questions from the Tribunal he conceded that his email of 29 September 2017 might also be regarded as hostile, but he was frustrated. The Property Factor was pushing people to call Environmental Health. His family didn't think that the leak was theirs. Also, there was no communication from the Property Factor. They went straight to debt collectors. When the Property Factor was asked to investigate the leak, they arranged for a water ingress test. This appeared to show that the water was coming from their flat. As a result, his father had a new bathroom fitted. The leak was not resolved. So, they asked a plumber to check the communal pipes. Scaffolding was erected and repairs were carried out to communal pipes. In response to questions from the Tribunal Mr Alam said that he did not contact the Property Factor about the communal pipe. He said that the Property Factor should have dealt with the matter. They were hostile and just kept telling people to call Environmental Health.

19. Mr Alam told the Tribunal that between 2010 and 2017 he lived at the property with his parents and brother. No correspondence was received from the Factor. He handled all official correspondence and would have been aware. Since 2018 he has received invoices by email. These have mostly not been paid as there are disputed issues. He referred to p75, the written statement of services (WSS). He first saw this in 2018. He said that some of the document is not clear. The level of delegated authority allows the Property Factor to carry out repairs without consultation up to £800. However, after the court case the other 7 homeowners were issued with a bill for £2000 and were not happy. There was also a data protection issue. They ought to have been consulted before the court action was taken. P167 is a group email which shows that the homeowners had challenged the bill.

20. Mr Alam was referred to p75, the debt recovery section of the WSS. He stated that he did not receive any reminder notices. They got nothing until the letter from HBJ Gately. Since the court action he has received invoices and correspondence by email, but the emails are convoluted and hard to follow. There are long email chains. He referred to p106 and 107, invoice dated 14 April 2016 and covering letter. The first time he saw the invoice the letter was not attached, and it was therefore hard to follow. The invoice on its own is not clear. Later invoices, such as p122, don't have the covering letter and are not clear. He asked for clarification but did not get an answer.

21. Mr Alam referred to p171 onwards, emails about insurance. He sent an email on 23 November 2019 asking for information about insurance claims and the complaints procedure. He did not get a response. He was not provided with the information he requested. In the email on page 171 he states that he had asked for the Complaints procedure and department and had been referred to the

Factor's "notes", but these only told him to contact the Tribunal. He asked for an email address for the complaint, but he did not receive a response to this email. P184 is an email from Christine. She sent a bundle of invoices. They were hard to follow. He wanted a summary of all sums claimed, a breakdown. Other Property Factors provide this. He asked for it, but it was not provided. It was eventually provided 6 months later (page 192), in April 2021. The Property Factor has never provided him with details of the insurance provider and what is covered by the insurance. Also, they change it every year and the amounts are always changing. His parents have always arranged their own insurance as a result. P178, an email from Christine refers to a copy of the building's insurance being attached. But there was no attachment. In response to a question from the Tribunal, Mr Alam said that he eventually received the policy details and information about claims. But he does not know the amount of coverage/the sum insured. It's not in the annual letter. He has not contacted the insurance company for information. The Property Factor ought to have provided him with the insurance schedule. The Property Factor is aware that the Homeowner has arranged his own insurance and has done nothing to resolve it.

22. In relation to his complaints about repairs and maintenance, Mr Alam said that the Property Factor did not provide them with a factoring service in relation to the leak. All homeowners should be treated equally but he has been discriminated against because of non-payment of invoices. In 2021 there was a meeting of residents. The Property Factor was not there. They discussed a number of matters including some outstanding repairs. The Property Factor should provide information in advance and then follow up with progress reports. There is no communication about what is going on. There is no consistency about repairs. The gutters were cleared in 2010. It was not done again until 2017. A major roof repair was required in 2021 which could have been avoided if there was better ongoing maintenance. When asked whether he had raised any concerns with the Property Factor, Mr Alam said that the top flats were dealing with the roof repair. In response to a question about whether the Property Factor provides routine inspections as part of their service or if they only provide a reactive service – carrying out work when repair issues are reported – Mr Alam said he was not sure. However, he said that the information provided about repairs carried out is inadequate and the Property Factor could have provided a better service. Mr Alam also stated that the Property Factor has proceeded with work without getting a majority vote. He referred to page 253 of his direction response bundle, stating that only three residents had replied to an email about getting a preservation survey but that the work was then instructed. When asked whether he had checked with other owners about their response, Mr Alam said that was not his responsibility. He also rejected the suggestion that some of the residents had replied without copying in the others, stating that the group email chain is always used.

23. Mr Alam concluded by stating that the Property Factor should have paid more attention when he first started and realised that not all homeowners were being contacted. They had failed in their duty of care. The use of the group/chain emails is also not suitable. These often end up in junk. When asked he stated that he has not specifically requested correspondence by post. However, the

Property Factor did not ask him about using email. The debt recovery process is not followed. All residents should be treated equally. The Property Factor is only focussed on money. In response to questions about how he though common repairs were carried out between 2010 and 2017, Mr Alam said that his family were out every day at work and university so were not really aware of what was going on in the block. The only repair he remembers is an issue with the front door. They were not asked to contribute but didn't think anything of that. When asked about the payment receipt for £400, M Alam said that his parents' position is that this payment was fictitious, and he cannot explain it.

24. In response to questions from Mr Miller, Mr Alam said that he would have been aware of any correspondence from the Property Factor, if any had been received. The members of his family have a system. Bills and other correspondence are discussed, and they are always paid. It was put to him that the factoring invoices are issued by post. He denied this, saying he only gets them by email. He said that it doesn't matter if the other residents are happy with the service which is provided. His family has not received the same service and the property Factor has alienated them from the other residents.

Hearing on 25 May 2023

Mr Miller's evidence

25. Mr Miller told the Tribunal that he was invited by David Millard (another homeowner) to attend a meeting of the homeowners to discuss becoming the property factor. David Millard is a letting agent and knew Miller Property Management Ltd from another development that they factor. Initially, Mr Miller was asked for some advice. Redpath Bruce, the previous factor had terminated the contract. He does not know the reason for this. Mr Miller explained that they would need to check the title deeds and follow the correct legal process. He was then invited to attend a meeting to discuss providing a factoring service to the block. At the meeting, he was appointed as Property Factor by majority vote. Following the appointment, he hand delivered a letter to each of the owner occupiers in the block. The letter was sent by post to the landlords. He had been told by the other homeowners that Mr Alam had refused to be involved in the meetings to appoint a factor. Mr Millard suggested that the letter should be hand delivered to the shop which Mr Alam owned as well as putting it through the letterbox at the property. No one had answered the door at the property. When he went to the shop, he spoke to a man who identified himself as Mr Alam junior. Mr Miller is not sure if it was Mr Harry Alam as it was 13 years ago. The man told Mr Alam that they were not interested and would not pay. There was no further conversation and he left.

26. Mr Miller told the Tribunal that invoices are usually issued by post and sometimes hand delivered. The group email was set up by the homeowners themselves, not Miller Property. One of his staff members, Christine Allison is part of the group, but he is not. He does not know when it was set up. Repairs issues are sometimes reported by email but sometimes by phone. The water leak had been an issue for a couple of years before 2017. Plaster board had

fallen from the ceiling onto the stair. From the location, it appeared to be coming from Flat 1/1. Miller Property had been trying for a couple of years to get Mr Alam to do something about it. Mr Alam senior refused to accept responsibility for it. So, they had to go down the route of verifying that the leak was not coming from the other flats. They did a dye test in all the other properties. As they got a negative result from the other 7, it had to be from 1/1. As Mr Alam refused to take action, he suggested that the homeowners report the matter to Environmental Health as they might be able to issue an enforcement order. It's the only way to deal with that. He has given the same advice before. When asked whether he had ever seen the Sparkworx letter/report lodged by Mr Mohammed at the start of the previous day of the hearing, he said that he has no recollection of ever seeing this before that date. He confirmed that he was aware that Mr Alam had put in a new bathroom at the property but thinks he only became aware of this during the SP case, from his solicitor.

27. Mr Miller was asked about Mr Alam's statement that he had phoned Miller Property, but that Mr Miller had refused to speak to him, saying he was too busy. Mr Miller said that this did not happen. When asked whether he had ever spoken to Mr Alam, or any other member of the household, he said that he had spoken to Mrs Alam on one occasion, when she called to pay the bill in 2013. He then said that he had not taken the call but had been present when she had called in and spoken to a member of staff. He cannot recall who took the call. However, he heard the staff member call the caller Mrs Alam and he took notice as he was aware of the unpaid accounts. This was the only occasion that any accounts were paid. The 2013 invoice would have been issued with a reminder for the previous invoices. The sum paid of £413 was the sum owed for the previous invoices. This left a balance of £360 which was the sum due in terms of the 2013 invoice which had just been issued. Currently, the sum of over £4000 is owed as no money has been paid since they paid the sum due in the SP court order. Further court action will be required but cannot commence until the Tribunal process is concluded. The other owners are in the same position as Mr Alam has not paid a share of some work that they arranged which is not part of the property factor service. Mr Miller was asked whether it is possible that the sum paid of £413 had been applied to Mr Alam's account in error and had actually been paid by another homeowner. He denied this, stating that the payment was by credit card and the security process followed by the company involves checking the address and postcode of the credit card holder. It would not have been approved if it had not been paid by the holder of the card. After the payment had been approved, the Property Factor retained the merchants copy of the payment slip and the customer copy was sent to Mrs Alam.

28. Mr Miller told the Tribunal that invoices are issued annually and always accompanied by a statement. The first one was in November 2010. The invoice was for £100 to cover the period up to 31 March 2011. The statements are not addressed to the individual properties as they are all the same. The invoices are addressed to the homeowner and the properties. In response to a question from the Tribunal, Mr Miller said that he was aware of the Alams from the start. The other owners told him about them and that they were owner occupiers. When asked whether he had consulted the other 7 owners before starting the court action, he said that he had made them aware of the plan and it was the

only way to recover the money. Mr Miller told the Tribunal that the service he agreed with the homeowners is that he arranges repairs when they are notified to him. He does not carry out inspections. He does not have meetings with the owners. Consultation is by post. All 8 owners get these letters. If a majority agree, he issues invoices for the work. This has sometimes meant the other 7 paying the missing share. They may have had some reimbursement for these after the court action, he is not sure. When asked about the debt collection procedure, Mr Miller said that a reminder for unpaid invoices is issued with the annual statement and invoice. Prior to court action a notice is also sent. Mr Alam was issued with the reminders and the Notice. Due to the costs involved, the court action is only taken when it's worthwhile. When asked about Mr Alam's request for information about the common insurance, Mr Miller said that he had asked for details of previous claims. However, Miller Property has a limited involvement in the insurance. They arrange it. They don't deal with the claims. They only collect the excess from the homeowners. Mr Alam was provided with details of the insurance cover. He seemed to think there were underhand dealings in relation to the insurance. However, the insurer sends the payment to the contractor who did the work and Miller Property just collects the excess. At the start of the factoring contract the 7 owners who had attended the meeting agreed to a common insurance policy. As factor, he must act in accordance with the wishes of the majority. As is usual, Miller Property receive commission from the insurance company. As they only arrange the policy and don't deal with claims their commission is 6 or 6.5%. They only act as a "post box". Sometimes a loss adjuster might contact them for the address or telephone number of an owner, if the owner is a landlord.

29. Mr Miller told the Tribunal that he would never proceed with work without a majority confirming their agreement. This consent is sometimes confirmed by email but sometimes they just call. The owners would never allow him to do otherwise. No one has ever challenged the instruction of work. He said that Miller Property have done everything in accordance with their remit.

30. In response to questions from Ms Mohammed, Mr Miller said he did not go and offer his services to the block, he was invited. He said that he has a knowledge of the land certificate but is not "well versed". He told the owners they had to check the title deeds for the process in relation to meetings. He accepted that he had to ensure compliance once he was appointed. He wasn't at the first meeting. The 7 signatures were there. It was put to him that he did not check to make sure that 7 days' notice had been given to all owners. He said that he checked, and a majority had been present at the meeting. He had spoken to Mr Millard and told him that they needed to follow the procedure. He confirmed that he had not submitted a copy of the notice that was given, that it was missing. When asked whether the first communication with the homeowners the invoice/statement from November 2010 was, he said that he had given the minutes of the meeting to Mr Millard who had put them on Cairn Letting headed paper and these were given to all the homeowners. It was put to him that the statement from November 2010 was not accompanied by an invoice, he denied this. It was put to him that, as the statement is generic, there is no way to prove it was received by the Homeowner. Mr Miller said that the statement was page 2, the invoice has the name and address and is page 1. (Later in his evidence

he found the invoice in the papers submitted by Mr Alam with the application). He was referred to pages 81 and 82 of the joint bundle. He said that page 82, the last page of the November 2010 statement, gives the homeowners 5 ways to pay their bill. Page 81 is for the homeowner to complete with their emergency contact information. It was put to him that he did not take steps to ensure this information was provided by the homeowners. Mr Miller said there was nothing he could do if they did not provide it and the same request would be attached to the next invoice. This first invoice was hand delivered and put through the letterbox. It was suggested that he had simply relied on the other homeowners to get Mr Alam's details instead of contacting him direct. He denied this and denied that he had negligently failed to communicate with the Homeowner.

31. Ms Mohammed referred Mr Miller to page 87, invoice dated 6 July 2011. It is addressed to Mr Alam at 738 Pollockshaws Road. He said that because there had been no response when he went to the property with the previous one, he sent this invoice to the shop. He was asked why there was no invoice in 2012. He said that the first invoice was in November 2010 for the period up to 31 March 2011. It was based on an estimated budget. The invoice and statement in July 2011 covered the actual costs for the previous period and a budget for the period to 31 March 2012. As the actual expenditure for the previous period had been small, the homeowners were due a refund which was credited to their account. As a result, the next invoice was May 2013. When asked whether he only sent the 2011 and 2013 invoices to the shop, he said they may have also been sent to the flat, but he is not sure. He chose the shop in case the other homeowners had been wrong when they told him that the whole Alam family lived at the property. The business was definitely owned by Mr Alam senior. From 2014 onwards, the invoices were sent to the flat because Mrs Alam had paid in 2013. A member of staff took the call, he couldn't remember who it was. He was present and heard the staff member say "Mrs Alam". The credit card payment was approved, and it was definitely Mrs Alam. Ms Mohammed pointed out that the postcode on the 2014 invoice was incorrect. Mr Miller denied that he had failed to send reminders, other than the letter of 25 October 2013. He said that he had not been asked to provide the other reminders. He was referred to the debt recovery policy and denied that he had not followed it. However, he said that he does not charge the £15 reminder fee as a gesture of goodwill. He said that he had not phoned Mr Alam as he had never been provided with a phone number. Mrs Alam did not give this when she phoned in to make the payment. He denied that the group email chain is the main form of communication with the homeowners. Some use email and others get letters. However, no one is missed out. Invoices are issued by post. They might also be issued by email. However, if they were only issued by email the invoice would not have the address. It would say "by email only". He said that their communication with Mr Alam by email only started in 2017 when Mr Harry Alam came on the scene. Before that it was always by letter. It was put to him that he had not communicated with Mr Alam about the leak until 2017 and that there was no evidence that the letter of 25 October 2013 (p128) had been sent. He said that he disagreed. He was referred to emails from Mr Alam in October 2017 to which no response had been sent (p136). Mr Alam asked for the complaints procedure but was only given the WSS which does not provide details of the person and email address to who the complaint is to be sent. When asked about

emails between some of the homeowners about the legal costs, Mr Miller said that he could not have told them how much the legal costs would be in advance. However, they were aware of the court action.

Final Submissions

32. Following the hearing on 25 May 2023, the case was adjourned for written submissions to be lodged. The Tribunal asked whether all the complaints specified in the application were still insisted upon. Ms Mohammed advised the Tribunal that the final written submissions would focus the issues to be determined. The Homeowner lodged a written submission which clarified which sections of the Code had been breached. The submission did not refer to property factor duties. The Property Factor lodged a response to the Homeowner's submission. On the instructions of The Tribunal, the caseworker contacted Ms Mohammed on two occasions to ask whether the property factor duties complaints were withdrawn. Ms Mohammed did not provide a response or provide additional submissions regarding property factor duties. The Tribunal concluded that the application now relates only to the specified sections of the Code.

Summary of the Homeowner's submission

33. Paragraph 1 of Section 1 of the Code. The Property Factor did not provide the WSS to the Homeowner within a year of registration, there is no evidence that it was provided/sent and there was no communication with the Homeowner until 2017. In addition, the WSS is not clear and transparent. The debt recovery procedure has no restrictions or structure, and the complaints procedure provides little information on the process. Delegated authority is not followed.

34. Sections 2.1, 2.2, 2.3 of the Code. No evidence of communication with the Homeowner until the communal leak occurred. Information and contact details not provided until the debt recovery process started. The Homeowner was asked by another resident for his email address. This was the principal method of communication. The invoices for the court action were prepared retrospectively and are hard to follow as they include estimates. Some are also wrongly addressed. There are no contractor or insurance invoices/reports. Insurance information was not provided as the Factor gets commission. There is no out of hours service although it is mentioned in the WSS. The residents were told to contact building standards about the leak instead of the issue being properly addressed. The Homeowner was ignored because of non-payment and was left to deal with the repair himself, instead of through the common insurance. The Homeowner was not provided with a proper service.

35. Section 2.4 of the Code. There is no evidence of consultation regarding works. All communication appears to have been via the chain email. No evidence of tendering. There is evidence that work was carried out without a majority vote. There is an unusually high number of insurance claims due to the Property Factor making claims instead of arranging a cheaper repair. There is a lack of clarity in relation to the implication that the other homeowners had to pay the

Homeowner's share. Invoices are only issued annually and do not show the balance carried forward. They do not evidence the claim that the other homeowners paid his share of repairs. If they had done so – why was the simple procedure case required? The residents were aggrieved by the legal bill for this. The reason given for not telling them was "confidentiality". No funds were repaid to the other homeowners after the sum due was paid.

36. Section 2.5 of the Code. Evidence established that the Homeowner repeatedly requested contact details for the Complaints procedure. The Property Factor did not reply or apply the procedure. The inappropriate use of email chain correspondence led to enquires being ignored. The Property Factor also failed to follow up when there was no response to an email. This was due to emails ending up in junk or spam.

37. Section 3.3 of the Code. There is no evidence that the invoices prior to 2017 were sent to the Homeowner. No information about completed repairs/completion reports and insurance claims. No supporting invoices provided. No information about what is covered by the insurance. Enquiries regarding this were ignored. The rat infestation report was not provided. The Council should have been contacted if there were rats.

38. Section 3.4 of the Code. No evidence that the other homeowners paid the missing shares or received a refund for these.

39. Paragraph 2 of Section 4 of the Code. No evidence of communication before 2017. Invoices were not received, not properly addressed, no reminders were sent, no debt recovery until 2017, invoices were only sent by email and the Property Factor did not have an email address for the Homeowner until 2017.

40. Section 4.1. The Property Factor did not apply their procedure. No prior warning that a NOPL would be issued. Confusing effect of email chains.

41. Section 4.5. No debt recovery until 2017. Failed to intimate the debt and no evidence that costs were absorbed by other residents.

42. Section 4.6. No evidence of communication re the debt or reminders. The other homeowners were not told in advance about the legal action or about the legal costs.

43. Section 4.7 and 4.8. No reasonable steps were taken, and the Homeowner was not given the opportunity to resolve the debt issue or given a full breakdown.

44. Section 4.9. The Property Factor ignored the homeowner, refused to deal with communications and instead communicated with the other homeowners and set them against the Homeowner. The homeowners were surprised to receive the legal bill.

45. Section 5.2. no evidence that the information was provided. A name and policy number were eventually provided in 2017. No details regarding coverage.

46. Section 5.3. no evidence that this information was provided. The Homeowner believes that the Property Factor has received increased commissions due to the large number of claims. Some claims were unnecessary.

47. Section 5.4. No evidence of this procedure although many claims were made. Most residents were unaware of claims being pursued.

48. Section 5.5 and 5.6. No information about pending or completed claims or reasons for the choice of insurance provider.

49. Section 5.7. No evidence of tendering or information provided to homeowners regarding same. The level of delegated authority is excessive.

50. Section 5.8. This information was not provided.

51. Section 6.1. No reports provided regarding repair work. For example, no information provided in relation to the pest control work. The Homeowner had to chase up reports. The annual statements are vague and lack transparency. Two repairs were outstanding for between 12 and 24 months with no information.

52. Section 6.3. No information on tendering.

53. Section 6.4. Organisation of repairs is left to the homeowner and contractor.

54. Section 6.5. No information about contractor public liability insurance.

55. Section 6.6. Information not provided. Only the sum is specified in the invoice.

56. Section 6.7 and 6.8. Information not provided about commissions received or tendering. Local contractors ought to have been used instead of contractors local to the Property Factor's office.

57. Section 7.1 and 7.2. The WSS does not provide clear steps. The procedure outlined was not followed. Complaints were not escalated. The Homeowner asked for contact details to escalate the complaint, and these were not provided. Only the address of the FTT was provided.

Summary of the Property Factor's submissions.

58. The application is a delaying tactic in relation to unpaid insurance costs, factoring charges, and common repair costs since 2018. The representative (Mr Alam junior) has not raised any issues in relation to the invoices between 2018 and 2023. He has ignored the fact that charges from 2010 were paid and failed to provide a denial from the Homeowner's wife that she made the payment. He has also failed to state that all his accusations were already tested at the court hearing in 2018 and dismissed by the Sheriff. No evidence was led from the Homeowner. The other homeowners have confirmed that the Homeowner was fully aware of the charges from 2010 onwards.

59. Section 1. The accusations are false, and the information was provided timeously to homeowners. A copy was delivered to the flat and the shop to ensure it was received. The information is neither vague nor confusing.

60. Section 2. The Factor and the other 7 owners have provided evidence that they are all happy with the interaction and reporting structures.

61. Section 3. All other 7 owners are happy with the existing arrangements.

62. Section 4. These claims were dismissed in the previous court case. The Factor has acted correctly.

63. Section 5. All other 7 owners are happy with the insurance arrangements and all relevant information has been provided.

64. Section 6. All other 7 owners are happy with the reporting structure for repairs and the Factor does not carry out work unless it is reported.

65. Section 7. This is denied. The Homeowner has made no contact, so the accusations are false.

66. The “invented stories” are designed to devalue the findings of the Sheriff in the court case. The Factor has acted in accordance with the title conditions. The Homeowner has failed to pay his share of the maintenance costs. The Homeowner attempted to mislead the Tribunal by claiming at the outset of the process to be the Homeowner. The failure to pay the charges since 2018 has caused delays to work being carried out.

The Tribunal make the following findings in fact-:

67. The Homeowner is the heritable proprietor of the property at Flat 1/1 Albert Avenue Glasgow.

68. The Property Factor is the property factor for the property and was appointed by majority vote in 2010.

69. Following the appointment Mr Harry Miller attended a meeting of homeowners to discuss the services which would be provided. The Homeowner did not attend.

70. The Property Factor became a registered property factor on 1 November 2012.

71. The Property Factor has a written statement of services (WSS). The WSS is clear and transparent.

72. Following the appointment in 2010, Mr Harry Miller delivered a letter to the property to advise the Homeowner of the appointment and the services which would be provided. A copy of the letter was delivered to the Homeowner’s shop

where it was given to an individual who identified himself as the Homeowner's son.

73. The Homeowner resides at the property with his wife, and two adult sons.

74. Between 2010 and 2017 invoices were issued to the Homeowner by the Property Factor by post. The Homeowner's wife paid the sum of £413.31 on 22 May 2013 by credit card over the telephone. This was the sum due in terms of the 2010 and 2011 invoices. No other invoices were paid.

75. In 2017 the Property Factor raised a simple procedure action at Glasgow Sheriff Court in relation to the unpaid invoices. The Sheriff found in favour of the Property Factor and granted decree for payment for the sum of £3392.65 together with the sum of £315.40 of judicial expenses.

76. Following the court action, the Homeowner paid the sum specified in the court order to the Property Factor.

77. The Property Factor has issued invoices to the Homeowner between 2018 and 2023 by email. The Homeowner has failed to pay any of these invoices.

78. In 2017, another homeowner in the block asked the Homeowner's son Mr Harry Alam, for his email address so that she could add him to the group email correspondence between the homeowners and the Property Factor. Mr Alam junior provided his address.

79. On 29 September 2017 Mr Alam junior sent an email to the other homeowners and to the Property Factor regarding a leak at the property.

80. Prior to September 2017 the only contact made by the Homeowner or his family to the Property Factor was the telephone call and payment on 22 May 2013.

81. The leak at the property started in 2014 or 2015. The Homeowner did not report the leak to the Property Factor.

82. The Property Factor had been aware of the leak since 2014 or 2015. As the Homeowner had failed to respond to correspondence from the Property Factor, Mr Miller advised the other homeowners to report the leak to the Local Authority to see if they could intervene and force the Homeowner to address the issue.

83. As the Homeowner had failed to respond to correspondence about the leak, the Property Factor instructed a contractor to investigate the source of the leak. A dye test was carried out at the other 7 properties in the block. This established that that the leak was not coming from the other 7 properties and that the source of the leak must be the property.

84. The Homeowner arranged for a new bathroom to be installed at the property in May 2018. As the leak did not resolve, he arranged for the contractor to carry out investigations and further remedial work. The contractor advised the Homeowner that the defect related to a communal pipe. The Homeowner did

not notify the Property Factor of the outcome of the investigation by the contractor.

85. The other homeowners in the block were shocked when they received a bill for their share of the legal expenses of the court action. The Property Factor had not notified them of the cost in advance as he did not know what the final cost would be.

86. Between 8 May and 29 November 2019 Mr Alam junior sent a number of emails to the Property Factor regarding the buildings insurance. The Property Factor responded to these enquiries and provided a copy of the insurance certificate, the policy number and some information about previous claims which had been made. The Property Factor refused to provide full details of the claims.

87. On 1 December 2020 the Property Factor provided the Homeowner with further information regarding the insurance in response to a further enquiry from the Homeowner on 29 November 2020.

88. On 18 October 2019, Mr Alam junior asked for details of the Complaints procedure and department. He was referred to the relevant section of the WSS. He did not submit a formal complaint.

89. On 29 November 2020, Mr Alam junior asked the Property Factor to provide an itemised statement of all charges. On 1 December 2020, the Property Factor provided a response which explained the invoices and referred to the information contained within the invoices. A list of invoices and charges was provided in May 2021.

90. The Property Factor does not provide routine inspections as part of their service. They only deal with repairs and maintenance issues when these are reported to them by homeowners.

91. The Property Factor arranges common insurance as part of the service they provide. They do not deal with claims but collect the excess from the homeowners. The insurance company pays the contractor who carries out the work. The Property Factor provides the insurance company with contact details for homeowners when this is required. They receive commission of 6.5%. A higher rate of commission would be paid if the Property Factor processed claims.

92. The Property Factor issues an annual statement with each invoice issued to the homeowners.

93. The 2011 and 2013 invoices were sent or delivered to the Homeowner's shop because the property Factor was not sure who was living in the property. Invoices from 2014 onwards were sent or delivered to the property because the payment made in 2013 indicated that the property was occupied by the Homeowner.

94. The Homeowner has not notified the Property Factor that he would prefer to receive correspondence by post instead of email.

95. The Property Factor has not provided the Homeowner with information which is misleading or false.

96. The Property Factor has not issued the Homeowner with communications which are threatening or intimidating.

97. The Property Factor did not mislead the other homeowners about the cause or source of the leak in 2017.

98. The Property Factor provided the Homeowner with their contact details.

99. The Homeowner has not asked the Property Factor for completion reports or contractor invoices in relation to any work carried out at the property.

100. Mr Harry Alam asked the Property Factor to provide information about the insurance policy coverage and claims which had been made. He was provided with a copy of the insurance certificate and some information about claims.

101. The Homeowner did not request details of insurance commission paid to the Property Factor or details of the policy excess.

102. The Homeowner did not request a copy of a pest control report which had been obtained.

103. The Property Factor has a written debt recovery process in the WSS which includes information about late payment fees. The procedure does not explain what will happen in relation to disputed debts.

104. The Property Factor did not apply late payment fees or issue reminders to the Homeowner in accordance with the debt recovery process.

105. The Homeowner was notified by the Property Factor and their agent that legal action was going to be taken in relation to unpaid invoices prior to the simple procedure case in 2017.

106. The WSS states that the Property Factor has no financial interests in any contractors appointed to do work and do not receive commission from contractors.

107. The Property Factor has only routinely disclosed the commission paid by insurance providers since 2020.

108. The Homeowner did not ask the Property Factor why any of the insurance providers or contractors were appointed or for tendering information in relation to the appointment of contractors.

Reasons for Decision

109. The Tribunal proceeded to consider the application, the documents lodged in support of the application, the evidence led at the hearing and the submissions lodged by both parties. As indicated in Paragraph 32, the final submissions lodged by the Homeowner only deal with the Code complaints. The Homeowner was offered the opportunity to provide additional submissions in relation to property factor duties and did not do so. The Tribunal has therefore assumed that the Homeowner does not insist on these complaints.

110. The oral evidence led at the hearing was limited. The Tribunal did not hear from the Homeowner or his wife. The only evidence was from the Homeowner's son. No explanation was offered for the failure by the Homeowner to attend the hearing. Similarly, the Property Factor only led evidence from Mr Miller, although it was clear that other staff members may have been able to provide more accurate information in relation to some matters. Furthermore, although Mr Miller made numerous references to the views of the other homeowners, none of them gave evidence regarding the issues raised.

111. The Tribunal did not find Mr Alam junior to be credible or reliable. Many of his claims appeared to be based on speculation, unsupported by any evidence. His complaints often lacked specification. There were times when he was unable to recall material facts. For example, he was unable to say whether he became aware of the existence of the Factor as a result of the debt recovery letters or the request from another resident for an email address. Since a large part of his application is based on the alleged failure by the Property Factor to communicate with the Homeowner prior to 2017 and the claim that they did not know that a factor had been appointed, his uncertainty on this issue was significant. Furthermore, when he was asked about the arrangements for common repairs during the period 2010 to 2017, he stated that his family were busy and out most of the time so didn't give the matter any thought. This was at odds with his statement that the family are organised in relation to household bills. In addition, Mr Alam also stated that he was aware of at least one common repair to the door of the tenement. He could not explain why the Homeowner had not contributed to this or been asked to do so. The Tribunal also noted that Mr Alam claimed that invoices between 2010 and 2017 were not paid because they were not received. This does not explain why invoices issued since 2018 have also remained unpaid. Overall, Mr Alam's evidence that he and his family were completely unaware of the existence of a Factor for a period of 7 years was simply not plausible. For the Tribunal to believe this, they would also have had to conclude that the other homeowners in the block had (deliberately or negligently) failed to notify the Homeowner of the meetings which were arranged to discuss the appointment. Mr Miller did not convene the two meetings which led to the appointment. Although there was no oral evidence regarding the first, Mr Miller spoke about the second meeting and there was documentary evidence in relation to both.

112. For the most part the Tribunal found Mr Miller to credible but not always reliable. His recollection of events was sometimes poor, although this is perhaps understandable given the passage of time. This might have been less of an issue if he had provided a fuller response to the Tribunal's directions. He was specifically instructed to provide a copy of all correspondence issued to the Homeowner by post or email. It appears that he did not do this since the bundle of documents lodged was not substantial and he referred in his evidence to correspondence which had not been lodged. However, his evidence appeared to be generally truthful and supported by the documents before the Tribunal.

113. In his submissions, Mr Miller refers to the simple procedure action and the fact that the Homeowner (via his son, Mr Alam junior) put forward a defence which is identical to the argument advanced in connection with some aspects of this application. It is stated that the Property Factor did not issue invoices or any other correspondence to the Homeowner between 2010 and 2017. It is not in dispute that the Sheriff found in favour of the Property Factor, following an evidential hearing. The Sheriff relied on the fact that the Property Factor had provided evidence that one of the invoices had been paid. Mr Miller's point is a valid one. The question of whether the invoices were issued has already been determined. For the Sheriff to find in the Property Factor's favour, they must have been satisfied that the sums were due, and that the Homeowner had failed to pay. They must also have concluded that demands for payment (the invoices) had been issued. The decision made by the Sheriff was not the subject of an appeal. The Tribunal is of the view that, as this issue has already been the subject of a judicial determination, it cannot be re-visited. The Homeowner had the opportunity to put forward this argument and was unsuccessful. However, this only applies to the invoices which were the subject of the court action, not the other correspondence or communications which the Homeowner says were not received.

114. Although the Tribunal does not require to decide whether the invoices were issued or otherwise, they are satisfied that they would have reached the same conclusion as the Sheriff for a number of reasons:-

(a) The claim that the Property Factor fabricated the invoices for the purpose of the simple procedure action is unsupported by any evidence.

(b) The invoices are all addressed differently. If they were all prepared at the same time, it is likely that they would be more consistent.

(c) Mr Miller provided a plausible and reasonable explanation for the first invoices being sent or delivered to the shop and the later invoices being sent to the property.

(d) There is clear documentary evidence of a payment being made. The Homeowner could have led evidence to contradict this – credit card statements or oral evidence from Mrs Alam. The only evidence came from Mr Alam who could only tell the Tribunal that his mother denies making the payment. On the other hand, Mr Miller gave clear evidence regarding the phone call being

received and the payment made.

(e) There was no evidence that invoices were only issued by email prior to 2017, or subsequently.

(f) A Property Factor cannot operate a successful business if it is not paid. Whatever else is sent out, invoices will be the priority. In a very large development, an error might be made regarding the number of properties. A block of 8 flats with 2 on each floor is unlikely to cause confusion. Furthermore, the Tribunal heard evidence from Mr Miller that he was told by the other homeowners that Mr Alam would refuse to engage with him, and this is why he delivered the initial letter to both the house and the shop.

The Code complaints

Paragraph 1 of Section 1 – 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…….to existing homeowners within one year of initial registration as a property factor. However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within 4 weeks of the request).

115. A property factor is not obliged to comply with the Code until they are registered. MPM Ltd became a registered property factor on 1 November 2012 so the obligation to provide a WSS did not exist until this date. The evidence on this issue was far from clear. Mr Alam stated that there had been no communication of any description, so presumably no WSS, although he did not specifically mention it. Mr Miller was unclear about what he issued to the homeowners following his appointment. He mentioned a letter. This appears to be the letter dated 15 November 2010. The WSS which has been lodged is undated but does refer to the 2011 Act, so it seems likely that it was prepared/issued after the date of registration. Although Mr Miller did not provide evidence of the WSS being issued, he was not specifically asked about this when he gave his evidence. Furthermore, Mr Alam did not provide any documentary or oral evidence that he had made a request for the WSS. Ultimately, the onus is on the Homeowner to establish a failure to comply with the Code. In the absence of clear evidence on the issue, the Tribunal is not persuaded that the Homeowner has established a breach of this section of the Code.

116. The Homeowner argues that the WSS is not clear or transparent. Two examples are given – the debt recovery procedure and the complaints process. The Tribunal notes that the debt recovery process is outlined on page 5. There are 8 numbered paragraphs, and it appears to cover the process from the issuing of invoices and reminders to court action and NOPLs. The Tribunal is satisfied that the procedure outlined is clear and transparent. The Complaints procedure appears to be a straightforward, 2 stage process. It is not clear why

the Homeowner considered it to be otherwise. The only evidence on the issue was that he had asked for an email address for the complaint although, as he made the request by email, he already had one. The submissions lodged are very general and do not make specific reference to any aspect of either procedure.

117. The Tribunal is therefore satisfied that the Homeowner has not established a breach of paragraph 1 of Section 1 of the Code.

Section 2.1 – You must not provide information which is misleading or false.
Section 2.2 – You must not communicate with homeowners in any way which is abusive or intimidating or which threatens them (apart from reasonable indication that you may take legal action).
Section 2.3 – You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out of hours emergencies including how to contact out of hours contractors.

118. Mr Alam gave extensive evidence about the alleged failure by the Property Factor to communicate with the Homeowner prior to 2017. However, there was little oral evidence regarding misleading or false communications or any which were abusive or intimidating. It is claimed that the Property Factor turned the other homeowners against Mr Alam. However, there was no evidence that this was the case It is also far more likely that any animosity which exists is directly attributable to non-payment of invoices, causing inconvenience and additional expense to the other residents. It was also suggested that the Property Factor misled the other residents about the cause of the leak. Again, this is wholly unsupported by the evidence. Both sides are agreed that the leak had been ongoing since 2014 or 2015. The Property Factor was aware of it and had taken steps to investigate. Mr Miller was unable to resolve the matter because it appeared that the source of the leak was Flat 1/1, and the Homeowner would not cooperate. A contractor was instructed and carried out tests to rule out any other source. At the hearing, Mr Alam produced a report from a contractor which stated that the internal work at Flat 1/1 (replacement bathroom) had not resolved the leak and that they had to repair a communal pipe. However, he confirmed that he did not notify the Property Factor that this issue had been identified either before or after the work was carried out. He appeared to believe that Mr Miller ought to have been aware of it, without being told. Furthermore, the contractors report was not made available to Mr Miller until the hearing. The Tribunal is satisfied that the Homeowner did not cooperate with the investigations into the leak and that the Property Factor took reasonable steps to deal with the matter. No breach of 2.1 or 2.2 is established.

119. As previously indicated, the Tribunal is satisfied that the invoices lodged were issued to the Homeowner. These include the address and telephone number of MPS. In the submission, the Homeowner states that the WSS provides for an out of hours service, but that this did not exist. The Tribunal notes that the WSS specifically states, on page 6, that there is no out of hours

service. No breach of section 2.3 is established.

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

120. The only specific evidence led by the Homeowner relative to this section was the claim that work was instructed when only 3 homeowners replied to the email requesting approval. Mr Alam said that, as there were only three responses, a majority had not been obtained. His only evidence of this was a copy of the Property Factor's email and three responses. Mr Miller told the Tribunal that the homeowners often made contact in other ways – particularly by telephone. The Tribunal also noted that there may have been other emails which were only sent to the Property Factor and not copied to members of the group. Mr Miller also told the Tribunal that although he could not comment on the work which was the subject of the email, repairs are never instructed without majority agreement unless delegated authority applies.

121. There are other claims in the submissions regarding this section. Firstly, it is stated that unnecessary insurance claims are made. It is not clear how this relates to section 2.4 and there was no evidence to support the claim. The level of delegated authority is also challenged as being excessive. However, that is a matter for the Property Factor to agree with the homeowners. Presumably, the other 7 are content with the arrangement and it is specified in the WSS. If the Homeowner is unhappy, he can call a meeting and discuss it with the other residents. The submissions go on to challenge Mr Miller's evidence that the other homeowners had to pay Mr Alam's share of works. While the Tribunal agrees that the evidence led on this was far from clear, it does not seem to be relevant to section 2.4, which is about consultation. The submissions also refer to the simple procedure debt action. During the hearing, Mr Miller was asked whether the other residents were consulted before this action was taken. He said that they were. The only documentary evidence produced was a series of emails between the homeowners regarding the legal costs. The Tribunal notes the following:-

(a) The WSS makes provision for court action for unpaid invoices. This is a standard provision without which property factors could not effectively manage common property . Furthermore, it is usual for there to be a provision for the costs to be passed on to homeowners. Ultimately, it is the homeowners who are responsible for maintaining the property. The factor is only their agent and is not liable for a share of the costs.

(b) The title deeds do not make any provision for debt recovery.

(c) The other homeowners may have been aggrieved about the legal costs. However, they are not party to this application and their complaints are not

relevant.

(d) Section 2.4 is about consultation in relation to common repairs. It does not require a property factor to consult about debt recovery. This is understandable. A property factor who is owed money must be entitled to take appropriate action to recover those sums without first seeking the approval of the homeowners.

Section 2.5 – You must respond to enquires and complaints received by letter or email within prompt timescales. Overall your ail should be to deal with enquires 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.

122. Mr Alam's evidence and final submission both refer to requests about the Complaints procedure. He refers to a series of emails. In their response, the Property Factor referred him to the relevant section of the WSS. In his evidence, Mr Alam said that he wanted the email address for the person to whom the complaint was to be sent. He was only provided with the address of the Housing and Property Chamber. The Tribunal is not persuaded that the Property Factor has failed to comply with this section in relation to the enquiry about the complaints process. The Homeowner had (at the time of making the enquiry) the postal address of the Property Factor and the email address of a member of staff. He therefore had the necessary information to submit a written complaint, either by post or email. He did not do so.

123. Mr Alam also told the Tribunal that emails received from the Property Factor often end up in junk or spam. He also said that he does not check his emails on a regular basis. He confirmed that he did not notify the Property Factor of this or request that correspondence be issued in a different way. The Tribunal noted that Mr Miller was vague on the usual communication arrangements. It appeared that he did not know how things were organised by his staff. However, by agreeing to be added to the group email, Mr Alam may have given the impression that he was happy with this method of communication, and he chose not to notify the Property Factor that he would prefer something else. The Tribunal also noted that Mr Alam expects the Property Factor to send reminders to him when he has failed to respond to an email. This does not appear to be relevant to section 2.5. Furthermore, the evidence established that there was a pattern of the Homeowner failing to respond to invoices and letters, so the absence of a response would not be unusual. In any event, the Property Factor is not responsible for Mr Alam's computer settings or his failure to check his email.

124. Although not mentioned in the final submission, the Tribunal notes that there was evidence from Mr Alam about a failure by the Property Factor to provide information in response to enquiries about the common insurance. The Tribunal notes that there were a number of emails in 2019 about insurance. The Property Factor responded to most of these either on the same day or within a few days. Most of the information requested was provided or an explanation given for the failure to do so. There were one or two emails for which no response appears to have been provided. However, the requests in these

emails appear to be duplicates of earlier requests. No breach of section 2.5 is established.

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

125. There are two aspects to this complaint. The first – that the invoices were not issued – has already been addressed (paragraph 113). It is not disputed that invoices have been received since 2018. The second issue is the content of the annual invoices/statements and what was provided in response to enquiries. The submission states that the following were not provided – completion reports, information about insurance claims, contractor invoices, coverage of the insurance policy.

126. The Tribunal considered the invoices and associated covering letters issued to the Homeowner and is satisfied that these fulfil the requirement to provide an annual detailed financial breakdown. Mr Miller explained how the invoicing worked and the documents were consistent with his explanation. Furthermore, Mr Alam did not specify which aspects of these invoices were unclear.

127. Section 3.3 does not require a property factor provide copies of contractor invoices and other documents routinely, only on request. For the most part, the submissions from the Homeowner on this issue were vague and lacking in specification. As previously mentioned, there was evidence led at the hearing about requests for information/documents in relation to insurance and the Tribunal was referred to a series of emails. Most of the information appears to have been provided, except for full details of all insurance claims. The Homeowner did not provide any evidence that he is entitled to full details of all insurance claims and the Property Factor provided a reason for their failure to do so.

128. The rat infestation issue referred to in the submissions was not referred to at any point during Mr Alam's evidence and Mr Miller was not asked about it when he gave his evidence. The Tribunal is therefore unable to reach any conclusion about this complaint. However, the submissions indicate that the report was instructed using delegated authority and although it is claimed that none of the residents were given a copy of the report, there was no evidence about this nor is it claimed that the Homeowner requested a copy of it.

129. No breach of Section 3.3 is established.

Section 4 Paragraph 2 – It is a requirement of Section 1 (Written statement of services) that you inform homeowners of any late payment charges and that you have a debt recovery procedure which is available on request.

130. In the submissions the Homeowner again refers to the alleged failure to issue invoices prior to 2017 and then states that no reminders were issued. He relies on the failure by the Property Factor to provide evidence that these were sent. The invoices complaint has already been addressed. The Tribunal notes that, although a direction was issued which required the Property Factor to provide copies of all correspondence issued to the Homeowner, they only provided a copy of one reminder from 2013. However, Mr Miller told the Tribunal that a reminder is always issued with the next annual invoice and that it was in response to a reminder about the 2010 and 2011 invoices, that a payment was made by Mrs Alam in 2013. In any event, this part of Section 4 is about notifying homeowners about late payment charges and having a debt recovery process – not about whether these were applied. The WSS includes a debt recovery process which mentions late payment fees (Page 3). The Tribunal noted that the only invoice which appears to include such a fee is 16 May 2020 (page 121 on the joint bundle). No breach of this section is established.

Section 4.1 – You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently, and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.

131. In the submissions, the Homeowner refers again to the alleged failure to issue invoices and states that the procedure does not indicate that the last stage in the process is the registration of an NOPL. There is reference to p269 of the bundle although the last page in the bundle is 196. Page 269 of the Homeowner's previous submission is an email from the Property Factor dated 16 December 2020, sent to all homeowners, including Mr Alam. It states that solicitors are to be instructed in relation to arrears and a NOPL may be registered. It is not clear what relevance this email has to Section 4.1. However, the Tribunal notes that the Property Factor does not appear to have "clearly, consistently and reasonably" applied their debt recovery procedure. Part 2 of the procedure states that a reminder will be issued after 28 days, and a late payment fee applied. The Property Factor did not provide copies of any reminders (except for one in 2013) and Mr Miller stated that reminders were issued with the next annual invoice (ie 12 months after the invoice, not 28 days). He also said that late payment fees are generally not applied. It is also evident that legal action was not instructed as quickly as the WSS suggests, although a valid reason for that was provided. The Tribunal also notes that there is nothing in the WSS about disputed debts. There is a clear reference to the possibility of a NOPL and although the Homeowner claims that he had no knowledge of the invoices and debt prior to 2017, he conceded that he did receive the later invoices referred to in the email of 16 December 2020.

132. The Tribunal is satisfied that there has been a minor breach of section 4.1, although the impact on the Homeowner is unlikely to have been significant.

Section 4.5 – you must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely reminders to inform individual homeowners of any amounts outstanding.

133. According to the submission, the complaint under this section is that the debt recovery process did not start until 2017 and that no evidence was provided that the other homeowners had to contribute to the unpaid invoices. Although the Tribunal accepts that there was no documentary evidence produced to support the latter, other than in relation to the legal costs, this is not relevant to section 4.5. However, the Tribunal is satisfied that the Property Factor has failed to provide evidence of reminders being issued to the Homeowner, although he had been directed to provide a copy of all correspondence. In the absence of these, the Tribunal is satisfied that the Property Factor has failed to comply with this section of the Code.

Section 4.6 – You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them.

134. As previously indicated, it is for the Homeowner to establish the breach of the Code. Mr Alam told the Tribunal that the other homeowners were unaware that court action was being taken or what it would cost. The Tribunal was referred to a series of emails which appear to establish that this was the case. However, there was no evidence presented that the homeowners were unaware that one of their number had failed to pay their common charges between 2010 and 2017. In the absence of this, the Tribunal is not persuaded that the Homeowner has established that this was the case. In relation to the post 2017 debt, Mr Alam himself referred the Tribunal to an email sent to all homeowners in December 2020 which advises the homeowners that there are outstanding invoices and that these have been referred for legal action.

Section 4.7 – You must be able to demonstrate that you have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging those remaining homeowners if they are jointly liable for such costs.

135. In the submissions the Homeowner only states " Again it is submitted that reasonable steps were not taken from 2011 to 2017". The Tribunal is not clear what this means. As previously stated, the evidence did not establish whether Mr Alam's share of any common repairs were passed onto the other homeowners. The only cost which was clearly passed on was the bill from the solicitor for the legal action. Neither party gave evidence about whether the Property Factor endeavoured to recover these costs from the Homeowner first. The Tribunal is therefore not persuaded that this complaint has been established.

Section 4.8 – You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.

136. Very limited evidence was given about this at the hearing. However, the Homeowner lodged the simple procedure action paperwork with his application. This includes a " Notice of intention to commence proceedings in Sheriff Court" dated 17 March 2017 and letters to the Homeowner dated 13 May 2016 and 5

April 2016. There is also a letter from the solicitors dated 17 March 2017 which is headed "Final demand for payment". It therefore appears that, before the court action commenced, there were attempts by the Property Factor and their solicitor to recover the sums due. Mr Alam also told the Tribunal that the first he knew about the Property Factor and the debt was when he received debt collection letters, not when he was served with the simple procedure summons.

137. In the submission the Homeowner refers to emails sent asking for information with a view to resolve matters. However, he does not specify where these emails are to be found and they were not referred to during the hearing. The Tribunal is not persuaded that this complaint has been established.

Section 4.9 – 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.

138. In the submission, the Homeowner claims that the Property Factor ignored him and refused to deal with communications from him appropriately. Instead, they communicated with the other homeowners and set them against the Homeowner. It is also stated that there was no evidence of communications with the homeowners about the debt, that they were not advised of the legal costs involved in the court action and the Property Factor failed to address the concerns they raised in their emails.

139. Once again, the Homeowner fails to direct the Tribunal to evidence led on this issue or relevant documents. Even if the Tribunal was persuaded that the Property Factor had failed to communicate with the homeowners as a group or set the other homeowners against Mr Alam, that would not be relevant to this section of the Code. There was no evidence (oral or documentary) that there was any threatening or intimidating behaviour by the Property Factor or their agents. Furthermore, Mr Alam's claim that the other homeowners have taken against his family because of the Property Factor's actions is illogical and unsubstantiated. Any animosity which exists is almost certainly due to the failure by the Homeowner to pay his common charges. The Tribunal is satisfied that a breach of this section has not been established.

Section 5.2 – You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested in which case you may impose a reasonable charge for providing this.

140. The submission states that the Property Factor has not evidenced that this information was provided and that only the name of the company and policy number were eventually provided. The Homeowner has paid twice as he has

arranged his own insurance.

141. The Tribunal notes that covering letters are issued with each annual invoice. These letters provide the name of the insurance company and the policy number. The invoices show the homeowner's share of the premium. The letters also provide information about any claims which have been made in the preceding year. The letters for 2020 and 2021 also specify the commission paid to the Property Factor although this information is missing from the earlier letters. Mr Miller told the Tribunal that an annual summary of the insurance is issued each year. However, neither party provided any evidence that this was the case and at least some of the letters state that a copy of the policy and summary of cover can be emailed, suggesting that this is not automatically sent out. The letters and invoices do not provide all the information specified in this section of the Code. When Mr Alam junior made a request for full details of the insurance in May 2019, an email was sent to him which states that a copy of the certificate of insurance is attached. Mr Alam told the Tribunal that it was not. However, although there was further email correspondence between the parties, there is no evidence that he notified them that the attachment was missing.

142. The Tribunal is satisfied, in the absence of evidence to the contrary, that the Property Factor failed to provide some of the information specified in this section of the Code, including the sum insured and the excesses which apply.

Section 5.3 - You must disclose to homeowners in writing any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing insurance.

143. The submission states that insurance commission and payments from the insurance company have not been provided and no evidence has been produced that they did. In addition, it is stated that the large number of insurance claims which have been submitted are due to the Property Factor financially benefiting from same when cheaper repairs could have been carried out.

144. The Tribunal is satisfied that the Property Factor has, since 2020 disclosed the insurance commission it receives. It is referred to in the letters attached to the annual statement. However, the letters issued between 2010 and 2019 do not appear to have this information. As previously stated, the Tribunal was not provided with evidence that an annual summary of the insurance was issued to the homeowners. It therefore appears that the Property Factor may have failed to provide this information routinely before 2020.

145. The claim regarding inappropriate insurance claims was not supported by any evidence. Even if these had been established, it would not have amounted to a breach of this section of the Code which only relates to the disclosure of information about payments received from insurance companies. In any event, the suggestion that the Property Factor receives a payment from

the company for every claim is completely illogical. Why would an insurance company encourage or induce a Factor to make claims or arrange for homeowners to do so? Insurance companies are more profitable when claims are not made. Mr Miller told the Tribunal that he would receive a higher commission if he dealt with the submission of claims. However, he does not do so. Presumably the higher rate of commission would be paid whether or not any claims are submitted.

146. The Tribunal is satisfied that a breach of this section of the Code is established only in relation to the disclosure of commission between 2012 and 2020.

Section 5.4 – If applicable you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for example for private or internal works) you must supply all information that they reasonably require in order to be able to do so.

147. In the submission the Homeowner says that there is no claims procedure, no evidence about failed claims and no clarity as to why insurance claims were chosen over just arranging a repair. Also, that residents are not notified when there has been a claim. The Tribunal notes the following:-

(a) Mr Miller told the Tribunal that they do not deal with claims. They arrange the insurance and collect the premiums and the policy excess from the homeowners, when it is a common repair. This being the case, they do not require to have a procedure.

(b) As previously stated, there is no evidence of unnecessary claims or of repairs being carried out at inflated costs.

(c) It is usual for a homeowner to claim on their insurance if this reduces the amount they have to pay for a repair – that is one of the reasons for taking out insurance.

(d) The Homeowner has failed to pay his common charges since 2010 (except for the sum which he had to pay following the court order). In those circumstances, the other homeowners are unlikely to favour an option which may leave a share of a repair unpaid as this might result in essential work not taking place.

148. The Tribunal is satisfied that no breach of this section is established.

Section 5.5 – You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.

149. Again, this section appears to relate to a situation where the Property Factor is responsible for submitting claims on behalf of the homeowners. That is not the case. Furthermore, there was no evidence that the Homeowner has

ever submitted a claim for which he would require an update. In relation to claims relating to common repairs, the Property Factor's role is to collect the excess. The Insurance company and/or loss adjuster would be responsible for providing the homeowners with updates.

Section 5.6 – On request, you must be able to show how and why you appointed the insurance provider, including any cases where you decided not to pursue multiple quotes.

150. During his evidence Mr Alam referred to a number of emails between himself and Christine Allison at the Property Factor's office (page 171 of the joint bundle onwards). He stated that he had made repeated requests for information about the insurance and claims which had been made. The Tribunal notes that Section 5.6 relates to the appointment of the insurance provider. There was no evidence led that the Homeowner ever asked why the current or previous insurance companies were chosen. Mr Miller confirmed in his evidence that the provider changes when more competitive quotes are obtained. As this section only requires the Property Factor to provide information "on request", the Tribunal is satisfied that no breach of this section has been established.

Section 5.7 – if applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you may make a reasonable charge for providing this, subject to notifying the homeowner of the charge in advance.

151. As with the previous section, there was no evidence presented to the Tribunal that a request for tendering documentation was ever made by the Homeowner. In his submission the Homeowner challenges the level of delegated authority. It is not clear how this is relevant to this section of the Code. In any event, that is a contractual matter between the homeowners as a group and the Property Factor. No breach of this section is established.

Section 5.8 – You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance and adjust this frequency if instructed by the appropriate majority of homeowners in the group.

152. In the submission, it is simply stated that this information was not provided. Again, there was no evidence given to the Tribunal at the hearing and Mr Miller was not asked about this issue when he gave his evidence. As it is for the Homeowner to establish the breach, the Tribunal is not satisfied that a breach of this section has been established.

Section 6.1 – You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job specific progress reports are not required.

153. In the submission, the Homeowner states that no reports have ever been provided in relation to repair work and claims that states that evidence was given about the pest control work for which no reports were provided. He also states that annual statements are vague and unclear and "in the last communal meeting two repairs were outstanding for a period of 12 – 24 months".

154. As previously indicated, Mr Alam did not give oral evidence about the pest control issue at the hearing. He stated in his evidence that that there was a meeting of homeowner in 2021 which the Factor did not attend. A number of matters were discussed including delayed repairs. However, he did not provide any details of the repairs in question or refer the Tribunal to any documentary evidence which established that the Property Factor had failed to progress repairs or provide updates. Furthermore, Mr Miller was not asked about any specific repairs in the context of updates or delays. The Tribunal is therefore not stratified that the Homeowner has established this complaint .

Section 6.3 – On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in house staff.

155. In the submission the Homeowner simply states that this information was not provided. However, the Homeowner once again misses the point that this obligation only arises when there is a request. No evidence was led that any such request has ever been made. No breach of this section is established.

Section 6.4 – 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.

156. In the submission, the Homeowner states that the organisation of repairs is left to the homeowner and contractor and that there is no follow up once it is instructed. There was no evidence to support this statement which appears, in any event, to be irrelevant to this section of the Code. In his evidence, Mr Miller confirmed that the Property Factor does not carry out inspections. They provide a purely reactive service – arranging repairs when these are reported. This statement was not disputed as Mr Alam said that he did not know what the arrangement is regarding inspection. As the WSS does not specify periodic inspections as part of the service, the Tribunal is satisfied that Mr Miller accurately explained the nature of the agreement with the homeowners. This may also have been discussed at the meeting which led to his appointment which the Homeowner did not attend. No breach of this section is established.

Section 6.5 – You must ensure that all contractors appointed by you have public liability insurance.

157. The submission states that no information was provided, and contractor invoices are not provided. Again, the Tribunal notes that no evidence was led on this issue and Mr Miller was not asked about it. The section does not require the Property Factor to routinely provide homeowners with evidence of the

insurance, only that they must ensure that it exists. Mr Alam did not refer the Tribunal to any evidence that an appointed contractor is not insured. No breach of this section is established.

Section 6.6 - if applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you may make a reasonable charge for providing this, subject to notifying the homeowner of the charge in advance.

158. This section of the Code is the same as Section 5.7 in the Insurance section. As with the decision on 5.7, the Tribunal notes that no evidence was presented to the Tribunal that Mr Alam has ever requested this information and the obligation only arises if a request is made.

Section 6.7 – You must disclose to homeowners in writing any commission, fee or other payment or benefit that you receive from a contractor appointed by you.

159. In the submission the Homeowner states that the Property Factor has failed to provide information and documents and that the Homeowner has not received any document "pertaining to commission". This is incorrect. The last page of the WSS, under the heading "Declaration of interest" states that no commission, fee, or benefit is received from any contractor who is appointed" Section 6.7 only requires disclosure of contractor fees and commission if these exist. No evidence was led that any such payments have been received by the Property Factor or that the Homeowner has ever asked about this. No breach of this section was established.

Section 6.8 – You must disclose to homeowners, in writing, any financial interests that you have with any contractors appointed.

160. Again, there was no evidence led at the hearing on this issue and the submissions only refer to the tendering process and state that local contractors ought to have been used. No specific examples are given, and it is not claimed that the Property Factor has any financial interests in relation to any contractors used by them. The last page of the WSS under the heading " Declaration of interest" specifically states that the Property Factor has no financial or other interest in any contractor who is appointed. A breach of this section has not been established.

Section 7.1 – You must have a clear written complaints procedure which sets out a series of steps with reasonable timescales linking to those set out in the written statement which you will follow.

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

161. In the submissions, the Homeowner states that the WSS does not provide clear steps. It only states that they will respond within 5 days and if the homeowner remains dissatisfied the complaint will be considered by a director. That did not happen and there is no evidence that complaints were escalated or that a decision was issued within 21 days. The submission goes on to refer to the evidence given by Mr Alam that he asked for the director's contact details to escalate his complaint. In response, he was provided with the Chamber's email address. The Homeowner concludes by saying that if there is a procedure, it is not being applied or followed by the Property Factor.

162. In his evidence Mr Alam referred to emails from page 171 onwards of the joint bundle in which he asked for the Complaints procedure. In their response, the Property Factor referred him to the WSS. He sent a further email which mainly related to the insurance but also asked for clarification of the complaints process and an email address to which his complaint should be sent. He stated that he did not receive a reply to this email and claims that no evidence was provided by the Property Factor to contradict this.

163. The Complaints procedure is set out on the last page of the WSS. It is certainly brief. However, the Code does not dictate the number of stages which the Property Factor must have in their procedure and there is no reason why a simple procedure cannot be Code compliant. The WSS states that if a telephone or in person discussion does not resolve the issue, the homeowner should put the complaint in writing and that they aim to respond within 5 working days. If this does not resolve the matter, the homeowner must put in writing the reasons why he is remains dissatisfied and a director will consider the complaint and respond within 21 days. The WSS concludes by providing the homeowner with the name, address, email address and telephone number of the Chamber.

164. The Tribunal is satisfied that the Property Factor has complied with Section 7.1. The procedure is straightforward and clear, and all necessary information is included. The section only requires a Property Factor to have a procedure. It does not state that the Factor must apply it, although this may be implied. In any event, the Tribunal is not persuaded by the Homeowner's statement that they did not do so. In the emails, the Mr Alam asks for the procedure. In their response, the Property Factor refers to the WSS. His subsequent email appears to ask again for the procedure, and then requests an email address for a complaint to be submitted. Even if he did not receive a response to this email, and it appears he did not, he already had all the relevant information. He had the postal address of the Property Factor and the email address of a member of staff, if he wished to submit his complaint by email. There is no evidence that he did so. No breach of this section is established.

165. As section 7.2 only applies if there has been a written complaint, the Homeowner has also failed to establish a breach of this section.

166. The Tribunal therefore concludes that the Property Factor has failed to comply with Sections 4.1, 4.5, 5.2 and 5.3 of the Code. The other complaints were not established.

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.

Josephine Bonnar, Legal Member 12 August 2023