

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/23/3095**

**Property: 2 Gaskell Street, Edinburgh EH14 2AF (“the Property”)**

**The Parties:-**

**Ms Marnie Tindale, 2 Gaskell Street, Edinburgh EH14 2AF (“the homeowner”)**

**Residential Management Group Scotland Limited, registered in Scotland under the Companies’ Acts (SC591810), having their registered office at Unit 6, 95 Morrison Street, Glasgow G5 8BE and having a place of business at RMG House, Essex Road, Hoddlesdon, Hertfordshire EN11 0DR (“the property factors”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Frances Wood (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that it was able to decide the application without a Hearing and decided that the property factors had failed to comply with OSP2, OSP3 and Sections C7 and 3.1 of the Property Factors Code of Conduct effective from 16 August 2021. The Tribunal proposes to make a Property Factor Enforcement Order as set out in the accompanying Notice under Section 19(2)(a) of the Act.**

### **Background**

1. By application, received on 7 September 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with OSP2, OSP3, OSP6 and Sections C7, C10, 2.1, 2.3, 2.7,

- 3.1, 5.3, 5.4, 5.9 and 5.10 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code of Conduct”). The complaint also related to a failure to carry out the property factor’s duties.
2. The homeowner’s complaint was that the property factors had failed to inform her of the apportionment of the cost of insurance that she should be paying. She had received conflicting responses from them when she asked for clarification.
  3. In her application, the homeowner said that she moved into the Property in July 2019. The property factors contacted her in April 2020 with their contact information and a welcome letter. There was also a spreadsheet titled “Development Schedule”. This confirmed that the property factors arranged the buildings insurance for the Property and that it would be divided amongst 104 units. The homeowner paid the insurance quarterly in advance, when it was charged. Her Invoice from the property factors, which she received on 11 April 2022, included an insurance payment of £193.67. This was significantly higher than the amount she had been paying quarterly in advance, so she emailed her property manager (DG). She asked why it had changed from a quarterly to an annual charge and whether they had looked for a cheaper policy.
  4. DG confirmed that it was the annual payment and that he had questioned the rise with the supplier. He shared with the homeowner the broker’s explanation of pricing and stated that he was assessing the insurance charges for the following period and that he would communicate with owners before the charges were applied. He also indicated that he would investigate alternative quotes, as requested by the owners. The homeowner was not pleased, but paid her Invoice.
  5. On 17 August 2022, the homeowner attended a residents’ meeting at which the matter of insurance was discussed. The property factors explained the increase and said that three companies had declined to quote, as the policy had to cover the entire development. The residents were also informed that the premium had been divided amongst 104 units rather than 154, owing to an error by the property factors. They were told that a refund would be issued and that owners would be sent a letter. This was never received.
  6. On 26 January 2023, an email was received via the RMG Residents Portal with an update to the Minutes of the Meeting of 17 August 2022. The update noted that the original charge for 2021/2022 had been credited back to everyone’s accounts and the new charge, based on 154 units in terms of the Deed of Conditions, applied.

7. On 10 July 2023, the property factors sent the homeowner her quarterly Invoice, which showed the insurance premium divided by 150. As this was incorrect, when compared with the information previously given, and was again an annual figure and as the owners had not been notified in advance, as promised by DG, the homeowner decided to lodge a complaint against the property factors.
8. The homeowner emailed her complaint to the property factors' CEO (HMcG) on 17 July 2023. She explained that she had concerns regarding the apportionment of the insurance cost and asked for an explanation for the lack of advance information about insurance prices, despite guarantees that this would not happen again. She also mentioned that she was still waiting for responses to other issues she had raised with DG. She received an acknowledgement on 19 July and on 21 July, the property factors emailed her with options for a payment plan.
9. On 31 July 2023, the homeowner received a response from the Regional Manager (LP) to her Stage 1 complaint. She (LP) stated that the amount applied, based on 150 units, was the correct apportionment and that the insurers could not agree to quarterly payments. There was no apology in the response. The homeowner asked, on 6 August, that her complaint be escalated to Stage 2, as she did not feel that her questions had been answered or an explanation provided regarding the apportionment of the insurance. On the same day, she went on to the portal and via the live chat requested details of her home insurance policy, as there was no insurance certificate on the portal and nothing online about the property factors' insurance process. She was advised to email the property factors, which she did on that day. She chased this up on 18 August and had received no response by the date of her application.
10. On 7 August 2023, the homeowner received an email from the property factors with a letter dated the same day. This was the letter that should have been issued prior to the Invoice in July. It was not issued until the homeowner highlighted the omission in her Stage 2 request. The letter named the 4 companies contacted for quotes and included a Certificate of Insurance. The Certificate, however, was for the previous year's policy, with a renewal date of 11 July 2023. No evidence of the current year's policy was included. Having checked on 31 August, the homeowner found that the updated Certificate of Insurance and policy document were now on the portal, but she had still not received a

response to her email or the details regarding the property factors' insurance process.

11. The homeowner received the Stage 2 response on 18 August 2023, from Operations Director, JH. He acknowledged that the welcome letter had stated the apportionment as 1/104<sup>th</sup> and advised that the communications made through the Residents' Meeting and updated Minutes confirmed the breakdown as 1/154<sup>th</sup>. The homeowner's Invoice showed 1/150<sup>th</sup>, so she was no further forward regarding what she should be paying. JH acknowledged that had been a delay in response to her other enquiries and offered a goodwill gesture of a refund of one month's management fee, which the homeowner declined.
12. The homeowner emailed the property factors to advise that she was proceeding to the Tribunal. This was acknowledged by the property factors but there had been no communication since.
13. The homeowner summarised her complaint with reference to the various Sections of the Code of Conduct.
14. In their contacts with her, the property factors had not been honest, open, transparent and fair. They had given her false information about insurance costs, had failed to notify her of any changes to the insurance, from quarterly to annual, and had failed to give her clear information about the costs she must pay. (OSP2).
15. They had failed to present information in a clear and understandable manner. She had only received a welcome letter verifying the apportionment of the insurance costs and the property factors had failed to clarify this despite her requests. She was always informed of different apportionments. (OSP3).
16. Communication and lack of contact have been an ongoing issue. Responses are not provided by the property manager within 2 working days as provided in the Written Statement of Services ("WSS"). (OSP6).
17. The homeowner did not feel the property factors had supplied her with clear information regarding the proportion of management fees and common charges for common works and services for which she is accountable, expressed as a percentage or fraction. (Section C7).
18. The property factors have neglected to provide the homeowner with the timing and frequency of her home insurance billing. She used to pay quarterly in advance, but that was changed to an annual basis with no notice. Residents were informed that the property factors would

- investigate before the next payment whether they could revert to the quarterly basis, but this was not done, and the full annual payment was once again collected without notice. The homeowner was also told that a letter should have been issued with the Invoice, but this did not happen. (Section C10).
19. The property factors had failed to provide access to the information the homeowner needed to understand their operation in relation to home insurance costs. (Section 2.1).
  20. The property factors had failed to provide paper copies of documents required for the home insurance. On two occasions, the homeowner had sought information about the property factors' insurance renewal process, a copy of the current policy documentation and an insurance certificate, but had received no response. (Section 2.3)
  21. The property factors had not responded to enquiries in a timely manner or within the 2 working day timescales set out in the WSS. (Section 2.7).
  22. The property factors had failed to provide transparency in relation to insurance costs and, when the homeowner had been overcharged, she had to wait months for refunds to be sorted out and explained. (Section 3.1).
  23. The property factors failed to provide an annual insurance statement (Section 5.3), failed to notify her of any substantial change to the cover provided by the policy (Section 5.4). failed to provide any documentation relating to any tendering process, despite this being requested (Section 5.9) and had not provided in writing the frequency with which property revaluations will be undertaken to establish the building reinstatement valuation for insurance purposes (Section 5.10).
  24. On 17 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the property factors were invited to make any written representations by 7 November 2023.
  25. On 30 October 2023, having received the Tribunal's letter and the case papers, the property factors emailed the homeowner. They apologised for the confusion caused around the apportionments of insurance charges and explained that when the homeowner moved into the Property and received the Development Schedule, the apportionment was 1/104<sup>th</sup>, as the property factors had not had a handover of Block E and did not have confirmation that it was going to be given to them to factor. Once Block E was handed over, the apportionment became 1/150<sup>th</sup> and this was communicated to owners at a residents' meeting,

but there had been a typo in the Minutes, which stated 1/154<sup>th</sup>. They apologised for that error and confirmed that the apportionment stated at the meeting itself was correct and that the homeowner's Invoices showed the apportionment as 1/150<sup>th</sup>, which resolved the matter.

26. The property factors said that they had communicated with owners and at residents' meetings that they were looking into securing payment terms with the insurers for monthly or quarterly charges, but the insurers had been unable to set it up in that way. Meetings with the insurers had taken place to ensure that there will be such an option at the time of the next renewal, and owners had been advised of this and also told that payment plans could be arranged with the property factors.
27. The property factors stated that they had identified that the communication regarding the insurance could have been better and, as a gesture of goodwill, offered the homeowner £300 compensation as full and final settlement if she withdrew her application. The homeowner told the property factors on 1 November 2023 that she did not accept their offer.
28. The homeowner made further representations to the Tribunal, but these were not considered, as they related to matters outwith the application, which is restricted to the insurance apportionment question.
29. The property factors made written representations to the Tribunal on 7 November 2023. They stated that their WSS was issued to the homeowner with a scheme schedule on 7 April 2021, The WSS contains a Section referencing the financial and charging arrangements. It advises that apportionments are determined by the title deeds and are detailed in the scheme schedule. The property factors rejected the claim that there had been a breach of Sections 1.5 or C7 of the Code of Conduct.
30. The WSS also contains a Section that references invoicing and clearly includes information about the timing, frequency and method of billing. Accordingly, the property factors rejected the claim that they had failed to comply with Sections 1.5 or C10 of the Code of Conduct.
31. They also denied having failed to comply with Sections 2.1 and 2.3 of the Code of Conduct, which relate to communication. They provide homeowners with information of their duties as factor in their WSS, welcome letter and scheme schedule. The homeowner had also signed up to their online portal on 14 April 2020, giving her online access to documents. The scheme schedule, provided to the homeowner on 7

April 2020, advises owners where they can access the insurance certificate and shows the apportionment of costs. The apportionment when the homeowner purchased was 1/104<sup>th</sup>, but it became 1/150<sup>th</sup> when Block E was handed over on 1 July 2021. Due to a system error, the charges were apportioned on the old basis. This was picked up and addressed to owners during a residents' meeting on 17 August 2022. Minutes of the meeting were uploaded to the portal and were available for the homeowner to view. The property factors then identified a typo in the Minutes, where the apportionment was written as 1/154<sup>th</sup>, but the owners had been told at the meeting that it was 1/150<sup>th</sup> share, and this was correctly shown on their subsequent Invoices.

32. In relation to the complaint under Section 2.7 of the Code of Conduct, the property factors stated that the homeowner contacted them on 17 April 2022 to question the insurance charge on her Invoice. She also queried the insurance renewal process and asked if there was an option to spread the cost over quarterly Invoices. She sent chasing emails on 27 April and 1 May. The complaint was passed to the Complaints Team on 9 May but was not raised, as the homeowner received a response from the property factors on the same day. Their property manager said that he had queried the increase with the insurers and provided their response. He had also asked whether the insurance charges could be applied quarterly rather than annually. The homeowner responded that she thought the increase excessive and that she would have appreciated communication to the owners prior to accepting the charge.
33. On 16 June 2022, the homeowner contacted the property factors online asking for the full policy to be sent, as the information on the portal was only the Schedule. She was directed to their Solicitors Enquiries Department for the full policy. The Department referred the matter back to the property factors and a copy of the full policy was sent to the homeowner on 10 July 2022.
34. On 17 July 2023, the homeowner contacted the property factors' managing director to raise a formal complaint regarding lack of communication. This was acknowledged on 19 July and timescales were provided. A response to the complaint was provided on 31 July. On 21 July, the property factors had put an announcement on the portal reminding owners that it had not been possible to agree a payment plan with the insurers, but that the property factors appreciated the large cost on the Invoice and were willing to arrange payment plans with the owners.

35. On 6 August 2023, the homeowner replied to the Property factors' response to her complaint. She remained unhappy with the handling of the issues raised and wished to escalate the complaint to the next stage. On the following day, the property factors acknowledged her reply and on 18 August they sent her their response. They stated that owners were provided with a scheme schedule with their welcome letter and that communication had been made at a residents' meeting to advise the change in apportionments. They also stated that their property manager had contacted the insurers to secure payment plans, but this had been declined and a communication had been sent to owners advising them of this.
36. On 27 August 2023, the homeowner told the property factors that she was still unhappy with the property factors' proposed resolution to the complaint and that she would be applying to the Tribunal.
37. The property factors denied that they had failed to comply with Section 3.1 of the Code of Conduct. They referred again to the fact that they provide a scheme schedule to new owners. This gives details of the services provided and the method by which charges are calculated. A breakdown of charges is shown in a clear format in their Invoices. Following the handover of Block E on 1 July 2021, the apportionment of insurance charges altered from 1/104<sup>th</sup> to 1/150<sup>th</sup> and this was communicated at the residents' meeting on 17 August 2022 and the Minutes were uploaded to the portal.
38. The homeowner raised a query about the insurance charge on an Invoice. The timeline had already been set out in their representations in relation to the complaint under Section 2.7 of the Code of Conduct and, as the homeowner had paid the Invoice, they regarded that issue as resolved. They also rejected the homeowner's claim that there had been a breach of Section 5.3 of the Code of Conduct. They provide annual insurance documentation on their online portal, including the current insurance schedules. The full policy wording is also on the portal and can also be provided on request.
39. Section 5.4 of the Code of Conduct requires property factors to notify homeowners of any substantial change to the cover provided by the policy. The property factors stated that there has been no change in the level of cover, so no breach of Section 5.4 had taken place. They also rejected the claim of a failure to comply with Section 5.9 of the Code of Conduct, which requires property factors to provide to homeowners on request documentation relating to any tendering or selection process. They said that they work with a third-party broker to complete a



tendering or selection process in relation to insurance renewals. The brokers obtain quotes from a panel of insurers and provide advice on the best quote. If an owner requests information on the tendering process, the property factors can obtain this from the brokers and provide it to owners. This was raised at a residents' meeting, and the property manager obtained the information and communicated it to owners.

40. In their WSS, the property factors advise that they will arrange reinstatement valuations every 5 years. As they took handover of the full development in 2021, they are within that timescale, so had not been in breach of Section 5.10 of the Code of Conduct.
41. Turning to OSP2, the property factors said that they had been open and honest regarding the insurance. They provided owners with the development schedule outlining a 1/104<sup>th</sup> share and, following the handover of Block E, they advised owners in communication and at the residents' meeting that this would change to 1/150<sup>th</sup>. Invoices showed that correct apportionment. They told owners that they were liaising with the insurers about securing monthly or quarterly payment terms, but that had been unable to be put in place. The property factors had, however, offered owners the option to set up a payment plan with them for these costs.
42. OSP3 requires property factors to provide information in a clear and easily accessible way. The view of the property factors was that they had complied with this. Information is clearly shown and is accessible through multiple channels, such as their website and customer portal and it is issued to owners via their preferred method, namely by post or email.
43. In relation to OSP6, the property factors recognised that some of their responses were longer than provided for in their WSS, but added that the property manager had always acknowledged and apologised for any delay. All queries had been answered in full, despite them coming directly to the property manager and not being raised initially with the customer service centre, as provided for in the WSS. The property factors did not accept there had been a breach of OSP6.
44. The property factors summarised that they had demonstrated through the supporting evidence that the various Sections of the Code of Conduct had not been breached. All the homeowner's queries had been responded to in full and regular residents' meetings were held, with supporting Minutes cascaded to the owners. They recognised that on a

couple of occasions they could have provided a better service to the homeowner and had tried to remedy this with an offer of £300 compensation, which had been rejected. They were still keen to resolve the matter outwith the Tribunal.

45. The property factors included with their representations many hundreds of pages of communications between the parties, but these were only considered by the Tribunal insofar as they related to the substance of the application, namely the insurance issue.

### **Case Management Discussion**

46. A Case Management Discussion was held by means of a telephone conference call on the morning of 21 December 2023. The homeowner was present. The property factors were represented by Mr Darren Gallagher.

47. The Parties were generally content to rely on their written representations, to which they had little to add.

48. The homeowner told the Tribunal of the stress she had incurred due to the lack of clarity on the part of the property factors. The Development Schedule (also referred to elsewhere in this Decision as “scheme schedule”) stated 1/104<sup>th</sup> shares and this was not altered after the residents’ meeting, as it should have been. It was still uncorrected on the online portal, and the letter offering the option of payment plans was not sent until after the owners were billed for the full year’s insurance. Information about the insurance renewal process and the full policy document had been requested but not provided. The homeowner still did not have clarity regarding the apportionment of the insurance cost. The Deed of Conditions said one thing, the Development Schedule another and the residents’ meeting yet another one. The amended Minutes of that meeting were wrong. She contended that the owners had been told at the meeting that the correct share was 1/154<sup>th</sup>.

49. Mr Gallagher said that it was agreed at a residents’ meeting in August 2022, that the property factors would look into agreeing payment terms with the insurers, via the brokers, but their attempts to reach such an agreement had not been successful, and owners had been advised of this in July 2023. For the upcoming year from July 2024, however, they had agreed payment terms. Due to the level of insurance cover required, they were dealing in a very limited market. Very few insurers will take on that level of risk. The brokers had approached a number of insurers on their panel who had refused to offer cover, partly due to the

building material of the blocks and partly due to the very high reinstatement cost that they were being asked to cover. The property factors had, in their email to her of 30 October 2023, apologised for the confusion and for the error in the Minutes of the residents' meeting, had accepted that their communication could have been better and had offered compensation by way of resolving matters.

50. The Parties then left the Case Management Discussion, and the Tribunal Members considered all the evidence, written and oral, before them. This included the Deed of Conditions for the development, the WSS and the original and amended Minutes of the residents' meeting of 17 August 2022.

### **Findings of Fact**

- i. The homeowner is the proprietor of the property, which is a flat in Block B of a large development of flats, terraced and other dwellinghouses, 157 units in all, known collectively as The Green, in the Longstone area of Edinburgh.
- ii. The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- v. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, received on 7 September 2023, under Section 17(1) of the Act.
- vi. The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- vii. The Deed of Conditions for the Development provides that, with the exception of 7 Plots, each Flat proprietor and Plot proprietor shall be bound to concur in a common comprehensive insurance policy.
- viii. The Development Schedule provided by the property developers with their welcome letter to the homeowner of 7 April 2020, indicates that each owner is liable for 0.96% of the annual maintenance charge

budget and that insurance premiums are included in that budget. It also states that the comprehensive buildings insurance does not include Block E.

- ix. In the years 2020/2021 and 2021/2022, the percentage of the insurance premiums invoiced to the homeowner was 0962% (a 1/104<sup>th</sup> share)
- x. The Minutes of a residents' meeting of 17 August 2022, attended by the homeowner, state that the brokers went to 4 insurers, 3 of whom declined to quote on the ground that the total rebuild cost was beyond the limit of cover that they could offer. The property factors told the meeting that, due to an error, only 104 units had been charged, instead of 154 units, and that a credit was on its way along with an apology letter for 2021/2022.
- xi. The Minutes of the meeting were later revised and sent to the homeowner on 26 January 2023. They again stated the charge should be based on 154 units "as per the deed of conditions".
- xii. The share of the premium invoiced to the homeowner on 10 July 2023 was 1/150<sup>th</sup>.
- xiii. The Development Schedule downloaded by the homeowner from the property factors' online portal on 25 August 2023 states that "All units excluding plots 41-86 and 151-157" are liable for a 1/104<sup>th</sup> share of the insurance premiums. Plots 1-46 comprise Block E of the Development.
- xiv. The Invoice issued to the homeowner on 10 July 2023 charged her a 1/150<sup>th</sup> share of the cost of the block insurance premium.
- xv. On 7 August 2023, the property factors sent a letter to the homeowner stating that attempts to secure payment terms with the insurers had been unsuccessful, but that payment terms could be arranged by calling the property factors' customer service team.
- xvi. On 30 October 2023, the property factors offered £300 by way of compensation to settle the homeowner's complaint. The Homeowner refused that offer.

### **Reasons for Decision**

- 51. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
- 52. The Tribunal noted that the correct proportion of the insurance premiums payable by the homeowner should be 1/150<sup>th</sup>. The property factors stated that this had been intimated to owners at the residents'

- meeting of 17 August 2022 and that there had been a typo in the Minutes, namely 1/154<sup>th</sup> rather than 1/150<sup>th</sup>. The amended Minutes, however, do not correct that error, although the next Invoice shows the correct apportionment. It was, however, sent in July 2023, eleven months after the meeting.
53. The Tribunal accepted that, at the time of her purchase, the share due by the homeowner would have been 1/104<sup>th</sup>, as Block E had not been taken over. The Development Schedule sent to the homeowner when she purchased states that Block E is excepted, but it was handed over to the property factors on 1 July 2021 and, as late as 25 August 2023, the Development Schedule had not been updated to incorporate the 46 properties in Block E.
54. Initially, the homeowner was charged 0.962% of the insurance premiums. This equates more or less to a 1/104<sup>th</sup> share. The Tribunal did not regard as material the difference between 0.962% in the Invoices and 0.96% set out in the Development Schedule which accompanied the welcome letter sent to the homeowner.
55. The Tribunal was, however, concerned that the Minutes of the residents' meeting of 17 August 2022 incorrectly stated 1/154<sup>th</sup> and that this was not in fact corrected when the amended Minutes were sent out on 26 January 2023. The property factors said that those at the meeting were told that the correct share was 1/150<sup>th</sup>. The homeowner said the figure quoted was 1/154<sup>th</sup> and this is confirmed in both the original and the amended Minutes.
56. The view of the Tribunal was that the property factors appeared not to have communicated to the owners that Block E was now included in the insurance cover. Indeed, as late as 25 August 2023, whilst it was not mentioned by name, the Schedule available on the property factors' online portal still indicated that 46 properties were not included. This was a full year after the residents' meeting at which owners were told that they had been overcharged. The property factors should have clearly explained to the homeowner and other owners when they took on Block E in July 2021 that their shares had changed, and this should have been reflected in the July 2022 Invoice. It was 17 August 2022 before they told the owners that their shares had reduced and even then, it appears that they got the new apportionment wrong.
57. **OSP2** of the Code of Conduct states that property factors must be honest, open, transparent and fair in their dealings with homeowners. The Tribunal upheld the homeowner's complaint under OSP2. There was no question of dishonesty, but their communication in relation to the insurance arrangements was confusing and far from transparent.
58. **OSP3** of the Code of Conduct states "You must provide information in a clear and accessible way." It was not sufficient to tell a poorly-attended meeting that an error had been made without following it up with all the

owners by letter or email. The Minute of the meeting did not contain an explanation for the change in apportionment and, in any event, it was wrong. The homeowner had failed to adequately clarify the position when it was queried by the homeowner. The Tribunal upheld the complaint under this Section.

59. **OSP6** of the Code of Conduct provides “You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.” The Tribunal did not uphold the complaint under this Section. There was evidence, accepted by the property factors, that their property manager had, on occasion, failed to provide responses within 2 working days. The Tribunal noted, however, that the instances were few, and that where he had failed to respond on time, he had apologised.
60. **Section C7** of the Code of Conduct states that the WSS must state “what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner is responsible for.” The Tribunal upheld the complaint under this Section as, although the WSS provided to the homeowner on 7 April 2021 was correct at the time, she had not been provided with an updated WSS when the apportionment changed after the property factors took on Block E.
61. **Section C10** of the Code of Conduct requires the WSS to state “the timing and frequency of billing and by what method homeowners will receive their bills”. The Tribunal did not uphold the complaint under this Section. The WSS met the requirements of Section C10 and the fact that the insurance billing changed from quarterly to annual did not amount to a failure to comply, as the Invoices from the property factors were still issued in line with the detailed provisions set out in the WSS.
62. **Section 2.1** of the Code of Conduct provides, *inter alia*, that homeowners need to have access to the information that they need to understand the operation of the property factor. The Tribunal did not uphold the complaint under this Section. The WSS, welcome letter and Development Schedule set out the information a homeowner would need as to the factor’s duties and the apportionment of costs, and the homeowner would be able to access the insurance schedule on the online portal. The Tribunal noted that there was a delay in providing the homeowner with a copy of the full insurance policy, but it was supplied, and there was no evidence that the homeowner did not have access to information, as opposed to explanations, for the change in apportionments and the errors in the original and amended Minutes of the residents’ meeting.
63. For the same reason, the Tribunal did not uphold the complaint under **Section 2.3** of the Code of Conduct. The delay in providing the full insurance policy was not such as to constitute a failure to comply.

64. **Section 2.7** of the Code of Conduct requires a property factor to respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. The Tribunal did not uphold the complaint under this Section. It was accepted that there had been occasional delays in responding but, seen in the context of the volume and regularity of correspondence that passed between the Parties, these occasional lapses did not, in the view of the Tribunal, constitute a failure to comply.
65. **Section 3.1** of the Code of Conduct states that homeowners should be confident that they know what they are being asked to pay for and that no improper payment requests are included on any financial statements/bills. The Tribunal upheld the complaint under this Section. There was a lack of transparency in relation to the insurance costs, with the WSS not being updated when the property factors took on Block E and with complete confusion when the wrong apportionment was charged in Invoices. That confusion was compounded by the error in the Minutes of the residents' meeting.
66. **Section 5.3** of the Code of Conduct requires the property factor to provide an annual insurance statement. The Tribunal did not uphold the complaint under this Section. The information required by Section 5.3 was available to the homeowner as the insurance schedule was on the online portal. The failing was that on two occasions, it stated the wrong share of the premium that fell to be paid by the homeowner. This was a failing better dealt with under OSP2 and Sections C7 and 5.3 of the Code of Conduct.
67. **Section 5.4** of the Code of Conduct states that homeowners must be notified of any substantial change to the cover provided by the policy. The Tribunal did not uphold the complaint under this Section. The proportion of the premium payable by the homeowner may have changed, but there was no evidence of any substantial change to the cover provided by the policy.
68. **Section 5.9** provides that, if applicable, documentation relating to any tendering or selection process must be made available to homeowners on request. The Tribunal did not uphold the complaint under this Section, as the property factors did not conduct a tendering exercise themselves. The recommendation for the appointment of insurers was done by third-party brokers, and the property factors had, in any event, provided the homeowner with information to the effect that 4 companies had been approached but that only one of them was prepared to quote for the business. This information had been requested at the residents' meeting.
69. **Section 5.10** requires property factors to notify homeowners in writing of the frequency with which property revaluations will be undertaken to establish the building reinstatement valuation for the purposes of building insurance. It goes on to say that it is good practice for re-

valuations to be undertaken at least every 5 years. The Tribunal did not uphold the complaint under this Section. The WSS states that the property factors will arrange reinstatement valuations in line with RICS recommendations. No evidence was provided to indicate that the RICS recommend this exercise be carried out more frequently than every 5 years. Handover of the full development to the property factors did not take place until Block E was added in 2021. Consequently, they have not failed to comply with the good practice recommendation in Section 5.10 of the Code of Conduct.

70. The homeowner did not provide any evidence in support of her complaint that the property factors had failed to carry out the Property Factor's duties, so the Tribunal made no finding on this matter, but noted that all the issues in the application had been covered by the complaints made under the Code of Conduct.

71. Having decided that the property factors had failed to comply with OSP2, OSP3 and Sections C7 and 3.1 of the Code of Conduct, the Tribunal then considered whether to make a Property Factor Enforcement Order. The Tribunal's view was that the failures on the part of the property factors had created confusion and had caused the homeowner considerable distress and inconvenience. The Tribunal decided that it would be appropriate to make a Property Factor Enforcement Order.

72. The Tribunal proposes, therefore, to make a Property Factor Enforcement Order requiring the property factors to pay the homeowner the sum of £200, which the Tribunal regards as reasonable compensation for the inconvenience and distress caused by the property factors' failures to comply with the Code of Conduct.

73. The decision of the Tribunal was unanimous.

## **Right of Appeal**

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

Signed

Date: 31 January 2024

George Clark (Legal Member/Chairman)