

# **Housing and Property Chamber**

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

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

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

**Chamber Ref: FTS/HPC/PF/17/0346**

**2/1, 6 Ratho Drive, Springburn, Glasgow, G21 1NA**  
**("the Property")**

**The Parties:-**

**Ms Fiona Taylor, 57F Drumbathie Mansions, Drumbathie Road, Airdrie, ML6 6EW**  
**("the Homeowner")**

**James Gibb Property Management Limited, 65 Greendyke Street, Glasgow, G1 5PX**  
**("the Property Factor")**

**Tribunal members**

**Susanne L M Tanner Q.C. (Legal Member)**  
**Sara Hesp (Ordinary Member)**

### **DECISION**

1.
  - a. The Property Factor has failed to carry out its property factor's duties.
  - b. The Property Factor has failed to ensure compliance with sections 1 and 5.2 of the Code.
  - c. The Property has not failed to ensure compliance with Sections 2.2 and 7.1 of the Code.

**d. The decision of the tribunal is unanimous.**

**STATEMENT OF REASONS**

2. In this decision the tribunal refers 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"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 as "the 2016 Rules"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 as "the 2017 Rules".

**Background**

1. The Property Factor became a Registered Property Factor on 23 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.
2. The Homeowner lodged an application ("the Application") with the tribunal on 13 September 2017.
3. The Homeowner provided documentation with the Application. Thereafter the Homeowner submitted further documentation and information, including the Homeowner's formal notification of the complaints to the Property Factor on 21 September 2017.
4. On 1 December 2017 the Convener with delegated powers under Section 18A of the 2011 Act considered the Application paperwork submitted by the Homeowner in the period 7 September to 27 November 2017 and the Application was referred to the tribunal in terms of Section 18A of the 2011 Act.
5. A hearing was fixed for 26 January 2018.

**Written Representations and Documents lodged in advance of hearing; Tribunal Directions and refusal of Property Factor's postponement request**

6. On 28 December 2017 the Homeowner indicated that she wished to attend the hearing but did not wish to lodge any written representations in advance of the hearing.
7. On 29 December 2017 the Homeowner indicated to the tribunal's administration that she wished to lodge an additional document, namely a table illustrating insurance payments. She was advised by the tribunal administration of Rule 22 of the 2017 Rules relating to the lodging of

documents to which she wished to refer no later than 7 days prior to the hearing.

8. On 19 January 2018 the tribunal issued Directions dated 15 January 2018 requiring both parties to do certain specified things by 23 January 2018; and varying the date for lodging any lists of witnesses and documents to 23 January 2018.
9. On 19 January 2018 the tribunal issued its decision of 16 January 2018 refusing the Property Factor's application dated 11 January 2018 for postponement of the hearing fixed for 26 January 2018.
10. On 22 January 2018 the Homeowner lodged an additional document, namely a spreadsheet prepared by her showing insurance payments in the period 14 April 2014 to 27 November 2017 (now **HO doc 14**).
11. On 22 January the Property Factor lodged Written Representations and a list of ten documentary productions; together with a witness statement from a former employee Sharon Cosgrove. The Property Factor stated: *"As Graeme Stewart and Sharon Cosgrove are no longer employees of James Gibb residential factors and as a result of the personal accusations the complainer has made against Mrs D Rummens, we request this complaint is heard by the First-tier tribunal based on written representations from James Gibb residential factors only"*.
12. On 25 January 2018 the tribunal advised the Property Factor by email and letter that the hearing would be proceeding and sought confirmation from the Property Factor as to (i) whether it was attending the hearing; (ii) if it was not attending the hearing, that it understood that the hearing would proceed in its absence and (iii) asking whether the witness Ms Cosgrove would be attending the hearing.
13. On 25 January 2018 the Property Factor confirmed that it would not be attending the hearing and that it understood that the hearing would proceed in its absence. The Property Factor confirmed that Ms Cosgrove was unable to attend as a witness.
14. Neither party lodged a list of witnesses.

## Hearing

15. A hearing took place on 26 January 2018 at Wellington House, Glasgow.
  - a. The Applicant attended the hearing.
  - b. The Property Factor did not attend the hearing and was not represented.

## **Preliminary matter – late lodging of documents by Homeowner**

16. The Homeowner wished to lodge two additional documents at the hearing, namely: an email of 1 April 2016 from the Homeowner to Mr Stewart of the Property Factor (2 pages) with 3 page letter attached, and an email of 28 March 2017 to Mr Stewart of the Property Factor (2 pages) plus attached reminder letter.
17. The Homeowner's explanation for late lodging was that she had received the Property Factor's written representations and List of Documents on 24 January at 1.15, by email from the tribunal administration. She was only able to obtain physical copies of the Property Factor's documents on 25<sup>th</sup> January, which was the night before the hearing, as she has no printer at home and had to print the documents at the library. She considered the Property Factor's written representations and documents on 25<sup>th</sup> January and made her own notes and collated further information. As a result of the documents produced by the Property Factor she decided that she wished to lodge the additional two documents which were said to further evidence her contact with the Property Factor and her attempts to resolve the issues raised in the Application.
18. The tribunal had a short adjournment of the hearing to consider the matter. The tribunal decided that the documents were relevant to the matters under consideration given that both documents were correspondence from the Homeowner to the Property Factor in relation to matters raised in the Application and there was no prejudice to the Property Factor in allowing them to be lodged at the hearing. The tribunal decided to allow late lodging on the basis that the homeowner had a reasonable excuse in terms of Rule 22(2) of the 2017 Rules.
19. As the Homeowner had already lodged documents which were numbered 1-14 the new documents were numbered **HO doc no 15** and **HO doc no 16**.

## **Summary of submissions and evidence**

20. The tribunal heard submissions from the Homeowner in relation to the alleged breaches of the **Code, sections 1, 2.2, 4.2, 5.2 and 7.1** and alleged breaches of property factor's duties, in so far as included in the Application and notified to the Property Factor. The Tribunal had regard to the Written Submissions lodged by the Property Factor together with documents lodged by it in so far as they were referred to in the Property Factor's Written Submissions or referred to by the Homeowner.
21. The tribunal heard evidence from the Homeowner in relation to her complaint under **Section 2.2 of the Code** in relation to a meeting which took place between her and two employees of the Property Factor on 22 July 2016. The tribunal had regard to the Property Factor's written witness statement of Ms Cosgrove relative to the said meeting.

22. The tribunal heard the Homeowner's response in relation to the Property Factor's Written Submissions and written witness statement.

23. The parties' submissions and evidence (where applicable) in relation to each complaint are summarised, as follows:

**24. 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 any new homeowners within four weeks of agreeing to provide services to them; to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage; to existing homeowners within one year of initial registration as a property factor. However,... if you are requested to do so by a homeowner (within four weeks of the request) or by the homeowner housing panel (within the timescale the homeowner housing panel specifies)... to any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement”.**

**a. Homeowner's complaint and submissions**

- i. Although the Homeowner had listed a number of subsections of Section 1 of the Code in her Application (1.1a B c and d; C e; D l and m) she specified in the Application and in her notification letter to the Property Factor that the her complaint in terms of Section 1 of the Code related to the general provision in the preamble to **Section 1 of the Code** that the Property Factor “*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.*”
- ii. In her Application and notification letter to the Property Factor she complained that the Written Statement of Services (“WSS”) has “*never been received since the Property Factor has taken over from Grant & Wilson*”. Grant & Wilson sent **HO doc no 1A**, the letter dated 12 March 2015 to advise of the acquisition by the Property Factor. No WSS has been received.
- iii. In oral submissions the Homeowner explained by way of background that she had decided as part of her retirement strategy to become a social landlord and provide accommodation for refugees. The first two properties she bought were the Property and another property at Memel Street, which were both purchased on 14 April 2014.
- iv. The Property is in the Hawthornhill Development (“the Development”) in Glasgow.

- v. When the Homeowner acquired the Property, the factor was Grant & Wilson Property Management Limited (“Grant & Wilson”).
- vi. After the Homeowner acquired the Property she was issued with an invoice by Grant & Wilson dated 14 April 2014 to her home address. The invoice included charges for building insurance from 14-30 April 2014 of £11.20 and two quarters in advance for 14/15 at £63.41 per quarter, plus a float.
- vii. She did not receive a copy of Grant & Wilson’s WSS at any time. She did not know what core services or other services would be provided or how charging would work.
- viii. The Property Factor acquired Grant & Wilson Property Management Limited on or about 12 March 2015.
- ix. She did not receive a copy of the Property Factor’s WSS after its acquisition of Grant & Wilson on or about 12 March 2015.
- x. On 21 September 2017, after she had made her Application to the tribunal, the Homeowner sent an email to the Property Factor attaching her letters notifying the Property Factor of her complaints in terms of the Code and property factor’s duties (in HO doc 6) formally requesting a hard copy of the WSS from the Property Factor,
- xi. On 2 October 2017, Catherine Flanagan, Business Improvement Manager of the Property Factor sent **HO doc 6**, an email to the Homeowner with letter attached, stating *“I have been passed your complaint. I am sorry that you have felt the need to make a complaint. Please find attached your letter of confirmation of receipt of same and reference number. Please also see below for links to our Written Statement of Service and our Complaints Guide.”* Web links to the WSS and Complaints Guide were provided in the email. No hard copy of the WSS was provided to the Homeowner.
- xii. The Homeowner did not make any submissions about the individual subsections of Section 1 other than to say that as no WSS had been provided to her, she had not been provided with information on the core services provided, services outwith the core services, the financial and charging arrangements or the complaints handling procedure.

**b. Property Factor’s written submissions**

- i. The Property Factor responded to the Homeowner’s Section 1 complaint in Paragraph 1 of its written submissions.

- ii. The Property Factor disputed that the Homeowner did not receive a copy of the WSS.
- iii. In support of its submission, the Property Factor referred to 3 of its lodged documents and two lodged by the Homeowner:
  - 1. **PF doc 1**, A letter from Grant & Wilson Property Management Ltd dated 22 January 2018 with handwriting thereon stating *"Date printed from RPM. Date sent by G&W PML 1/5/14 Following date of entry"* which was said to attach a welcome pack;
  - 2. **PF doc 2**: Terms of Service of Grant & Wilson;
  - 3. **HO doc 1A/1B**, letters from Grant & Wilson dated 12 March 2015, advising the Homeowner of the takeover of Grant & Wilson by the Property Factor on 2 March 2015; and
  - 4. **PF doc 3**, a copy of the Property Factor's newsletter from Autumn 2015, following the takeover, which was said to have been attached to a charge statement issued to homeowners on 28 August 2015. The Property Factor submitted that the newsletter clearly explained its WSS and how a copy could be obtained from the website as well as advising that if the client does not have web access or would prefer a hard copy it could be posted.
- iv. The Property Factor further submitted that the Homeowner did not request a hard copy of the WSS from the Property Factor at any time prior to her request of 21 September 2017.

#### **c. Homeowner's Response to Property Factor's submissions**

- i. In response, the Homeowner stated that she had never seen **PF Doc 1** and **PF doc 2** until they were lodged by the Property Factor for the hearing. She noted that the letter was addressed to the Property address and not her home address, whereas the invoices she received from Grant & Wilson was sent to her home address. The letter **PF Doc 1** was dated 22 January 2018 and only the handwriting said it was sent on 1 May 2014. There was no proof of posting on 1 May 2014 or proof of delivery. Even if it was sent on 1 May 2014 there was nobody living in the Property at that time. The Homeowner referred to **PF Doc 9**, an email with attached invoices, from 24 April 2014 onwards, which were all addressed to her home address at the time, not to the Property. This showed that Grant & Wilson had her home address and were using it for invoicing.
- ii. The Homeowner said that contrary to what was stated by the Property Factor in its written submissions, the newsletter which had been lodged as **PF doc 3** had no information at all about the WSS or how it could be obtained.

- iii. The Homeowner accepted that she probably had not asked for a copy of the WSS prior to 21 September 2017. She was not aware that she needed one. She did not receive the Grant & Wilson WSS at all and did not receive the one from the Property Factor until the web link was sent on 2 October 2017. She explained that in her discussions with Ms Rummens of the Property Factor Ms Rummens told her that the Homeowner needed to go back to her own solicitor to ask for a copy of the title deeds and that everything that the Homeowner needed to know would be in there. Ms Rummens did not mention or offer a copy of the WSS. The Homeowner did not know about the existence of a WSS or the requirements on the Property Factor to provide one until she started her Application with the tribunal.
- iv. The Homeowner confirmed that now that she has been provided with a weblink to the WSS from the Property Factor, she is not saying that there are specific clauses are missing from the document, but rather she is saying that she did not receive the WSS until the web link was sent by the Property Factor on 2 October 2017.

**25. 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).”***

**a. Homeowner’s evidence and submissions:**

- i. The Homeowner’s complaint in terms of Section 2.2 focused on her contact with Ms Rummens, Operations Director of the Property Factor at a meeting at the Property Factor’s offices on 22 July 2016.
- ii. In the Application the Homeowner stated that Ms Rummens was both threatening and abusive; Ms Rummens dissolved a face-to-face meeting into anarchy due to lack of knowledge; and that Ms Rummens was vile to the Homeowner at the meeting – not only was she unable to answer the Homeowner’s questions but was very rude. The Homeowner made reference to the factor’s duty of care. The Homeowner stated that she was extremely upset with Ms Rummens and stated that an Operations Director should conduct herself in a professional manner.
- iii. In the Homeowner’s notification letter to the Property Factor she expanded on her recollection of the meeting which took place on Friday 22 July 2016 at the Property Factor’s offices between the Homeowner and Ms Rummens and Ms Cosgrove of the Property Factor. She described Ms Rummens as becoming aggressive in response to questions raised by the Homeowner about poor service provision; and stated that Ms Rummens



stood up, got angrier and pointed her finger at the door demanding in a threatening manner that the Homeowner leave the office. On trying to exit the office the Homeowner was unable to open the door and Ms Rummens pinned her against the wall in a threatening and bullying manner. The Homeowner made reference to the height and stature of Ms Rummens relative to the Homeowner with the Homeowner being 5 ft and feeling physically threatened by Ms Rummens. The Homeowner summarised Ms Rummens' manner as threatening and aggressive and described her loss of self-control as unbecoming of a professional person.

- iv. The Homeowner gave oral evidence at the hearing about the meeting of 22 July 2016. The meeting was arranged at the Homeowner's request to question a number of matters including landscaping costs, the state of cleaning of closes, damage done to some gates and the lack of cleanliness of the bin area. The Homeowner wanted to question why the Property Factor was spending all of this money and the work was not being done.
- v. The Homeowner originally understood the meeting was to be with Mr Stewart. He was off sick so Ms Rummens stepped in and she brought Ms Cosgrove. The Homeowner had not met either of them before that day. There was no agenda. The purpose of the meeting was to go over the invoices, to gain an understanding of what the Homeowner was being charged, to obtain answers about overcharging of insurance and why the factoring fees were so high generally.
- vi. The Homeowner said that Ms Rummens was both abusive and intimidating.
- vii. The Homeowner referred to **HO Doc 1**, which was her list of attempts to resolve the issues with the Property Factor between 23 February and 22 July 2016. On pages 1 and 2 of the document there was a summary of what occurred at the meeting on 22 July 2016. The Homeowner said that Ms Rummens was unable to answer any of her questions and that every question she asked was fielded to Ms Cosgrove. The Homeowner remembers saying: *"What is this lady doing here because I'm addressing my questions to you and you are addressing them to her."* In response, Ms Rummens got very uppity with the Homeowner. The Homeowner said that Ms Rummens had a duty of care towards her homeowners. Ms Rummens was rude and very cheeky. Ms Rummens said the Homeowner had no right to ask the questions and should not be asking these questions. The Homeowner remembers saying *"I have every right I am paying these bills, I have been at the Property and the stairs are disgusting"*. The Homeowner gave specific examples to Ms Rummens. The Homeowner asked Ms Rummens if she

had been at Property and she replied that she had not. The Homeowner felt that it was very rude to say she had no right to ask questions. Ms Rummens was cheeky, very impudent and putting her down. The Homeowner felt like Ms Rummens was saying '*what do you know*', although those exact words were not used. The Homeowner explained to Ms Rummens that she could tell the work was not being done. She told Ms Rummens that her father is a landscape horticulturist. The homeowners had paid £7000 for landscaping that month and the Homeowner asked if someone would look at the contract. Ms Rummens became aggressive and started to raise her voice because the Homeowner was giving specific examples. It was like the Homeowner had no right to question her authority. That was the way she made the Homeowner feel, not something Ms Rummens actually said.

- viii. Ms Rummens stood up, became very aggressive towards the Homeowner and asked her to leave. The Homeowner said "*this won't go away you know and you have no right to speak to me like that*". Ms Rummens stood up and shouted "*get up, get out, I want you to leave my office*". The Homeowner refused to appear intimidated although she was intimidated.
- ix. Ms Cosgrove did not say anything at all. She did not open her mouth as soon as Ms Rummens started being aggressive. She sat bolt upright with her hands in front of her chest. She did not look at the Homeowner or Ms Rummens. She sat motionless.
- x. The Homeowner stood up to leave the office and lifted her papers. She said to Ms Rummens, "*I don't think you have any right to speak to me this way*". The Homeowner asked who she could escalate the matter to which incensed Ms Rummens. Ms Rummens took great delight in saying she was the boss and there was nobody to escalate the matter to, stating: "*I'm the boss, I make all the decisions.*" Ms Rummens was coming round the side of the desk. The Homeowner said "*you have to answer to someone*". This conversation was still being conducted at volume. Ms Rummens said "*You can't report me to anybody*". The Homeowner said that she thought Ms Rummens standing up pointing and shouting that she had to get out of her office was ludicrous.
- xi. The Homeowner said she has a clear recollection of the meeting despite the fact that it was one and a half years ago. She didn't forget the way Ms Rummens made her feel.
- xii. There is a corridor outside the office. The Homeowner opened the first door and went into the corridor. At end of corridor, which was dark, the door would not open. The Homeowner had to turn back and say "*I can't get out*". Ms Rummens came down the

corridor. The door opened inwards. The Homeowner was standing at the door and Ms Rummens literally pushed herself up against her and leaned over and pressed the button. She pinned the Homeowner against the wall. The Homeowner was horrified. Ms Rummens was larger than the Homeowner in height and width.

- xiii. **PF doc 5** is an email dated 25 July 2016 following the meeting on 22 July 2016. Ms Rummens apologised to the Homeowner for her part in the way the meeting progressed. The Homeowner said that Mr Weir's name which is mentioned in the email was definitely not mentioned to her at the meeting on the Friday because Ms Rummens kept insisting that she was the boss and the Homeowner had no opportunity to escalate it. The Homeowner had no idea who Mr Weir was when she received the email.
- xiv. Within the email **PF Doc 5** Ms Rummens offered the Homeowner a meeting with Graeme Stewart. The tribunal asked if the Homeowner had responded to this offer. The Homeowner did not think that she ever responded to Ms Rummens. She remembers going back to Mr Stewart but not at the time. She thinks that she next responded to the Property Factor when she received an outstanding invoice. (She referred to **HO Doc 3** dated 1 November 2015 as being the first time she went back to the Property Factor [although the tribunal noted that this pre-dates the 22 July 2016 meeting. **HO Doc 8** is an email from the Homeowner to Mr Stewart dated 28 March 2017 where the Homeowner requests a meeting to discuss her properties in response to an email sent on 28 March 2017 about a recent invoice]). The Homeowner did not make arrangements to speak to the Property Factor's Chief Executive. This was because she thought that if there is any issue the Property Factor should come to her and not vice versa.
- xv. As the Property Factor was not represented at the hearing, there was no cross-examination of the Homeowner's evidence about the meeting.

#### **b. Property Factor's evidence and submissions**

- i. The Property Factor's Written Submissions in relation to the Section 2.2 complaint are in paragraph 3.
- ii. In summary, the Property Factor vehemently disputes the Homeowner's version of events of the meeting. It says that at no point was the complainer threatened and the meeting did not "*dissolve into anarchy*".

- iii. The Property Factor confirmed that the meeting took place with Ms Rummens, Operations Director, in place of Mr Stewart who was off sick. Ms Cosgrove, the then Technical manager, was asked to attend by Ms Rummens as Ms Rummens was not personally involved in the day to day points being discussed.
- iv. Reference was made to **PF doc 4** which is an email from Ms Rummens to Douglas Weir, the CEO of the Property Factor following the meeting on 22 July 2016. Ms Rummens informed the CEO that she had given his name and contact details to the Homeowner during the meeting. She provided a summary of the meeting to Mr Weir.
- v. Reference was also made to **PF Doc 5** which is an email from Ms Rummens to the Homeowner dated 25 July 2016 referring to the meeting.
- vi. The Property Factor submitted that Ms Rummens has been involved in the property industry at a senior level for over 30 years and at no time has a complaint of this nature been raised against her.
- vii. The Property Factor stated that Ms Cosgrove no longer works for it and is not available to be called as a witness at this late stage, however it requested that she provide an email stating her witnessing of events.
- viii. The Property Factor also states that Ms Rummens has taken legal advice relating to the defamation detailed by the Homeowner and would request that no defamatory comments made by the Homeowner are published as they have not been legally proven to be true.
- ix. **Written evidence of Sharon Cosgrove.** The Property Factor lodged **PF Doc 11** which was a written statement of Ms Cosgrove dated 19 January 2018. The Property Factor had explained in correspondence that Ms Cosgrove was formerly employed by the Property Factor. The Property Factor also advised in advance of the hearing that Ms Cosgrove was unavailable to give evidence in person at the hearing.
- x. It is not known if anyone other than Ms Cosgrove was involved in the preparation of her written statement. It is not known what information was provided to Ms Cosgrove or what questions (if any) she was asked to address. It appears from the terms of the statement that Ms Cosgrove had been provided by the Property Factor with a summary of the Homeowner's complaints as she has responded to four numbered allegations before providing her own account of the meeting on 22 July 2016.

- xi. Ms Cosgrove stated that *“at no time”* did she witness the following: *“(1) Debbie Rummens was rude, cheeky or very aggressive; (2) Debbie Rummens towered over the Homeowner in a very threatening manner (3) Debbie Rummens pinned the Homeowner against the wall or (4) Debbie Rummens lost control and took great delight in telling the Homeowner that “she was the boss and there was no-one to report her to”.”*
- xii. Ms Cosgrove stated that she witnessed a conversation in which the Homeowner was both rude and cheeky and after making every effort to address the issues the Homeowner was upset about, Ms Rummens advised the Homeowner that the conversation was going around in circles and it was clear that nothing could be achieved at the meeting. Ms Rummens suggested that they bring the meeting to a close and reconvene at an alternative time, when the Homeowner would have sufficient time to take advice from her solicitor regarding the documents already provided by Mr Stewart. The Homeowner was unhappy about this and asked who she could complain to about Ms Rummens’ decision to close and reconvene the meeting and she was given the name and contact details of Mr Weir, Chief Executive.
- xiii. Ms Cosgrove stated that Ms Rummens opened both the internal and external office doors to assist the Homeowner as she was carrying a trolley case.
- xiv. The tribunal did not have the benefit of seeing the witness to be able to judge her demeanour, and form views about her reliability and credibility and the Homeowner did not have the opportunity to cross-examine her.

**c. Homeowner’s response to Property Factor’s evidence and submissions**

- i. The Homeowner stated that she did not agree with what Ms Cosgrove said in her written statement. The Homeowner’s recollection is different. The Homeowner disputed that she herself was rude and cheeky. The Homeowner said that she was definitely standing up to Ms Rummens because no attempts were made to address the issues. The Homeowner repeated the fact that Ms Rummens said that the Homeowner needed to obtain the title deeds from her solicitor and the Homeowner kept explaining to Ms Rummens that that was not what the issue was about.
- ii. The Homeowner said that there was no suggestion by Ms Rummens that the meeting should be reconvened at an alternative time.

- iii. The Homeowner said that she was not given the name and contact details of Mr Weir, Chief Executive. Ms Rummens refused to provide details and said that the Homeowner could get details on the website.
- iv. Ms Rummens pressed a button on the external door. The Homeowner was so traumatised she just had to get out. The Homeowner could not see the button, she was so stressed. The Homeowner had to sit in her car for quite some time before she could even drive.

**26. Section 4.2: “If a case relating to a disputed debt is accepted for investigation by the homeowner housing panel and referred to a homeowner housing committee, you must not apply any interest or late payment charges in respect of the disputed items during the period that the committee is considering the case.”**

- a. The Homeowner withdrew her complaint under this Section during the hearing as no interest or late payment charges have been applied during the period from the complaint being referred to the tribunal to date.

**27. Section 5.2: “If your agreement with homeowners includes arranging any type of insurance, the following standards will apply: 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.”**

**a. Homeowner’s submissions**

- i. In the Application the Homeowner stated that she had asked for information from the Property Factor as she had paid up front in full for one year but she did not own the Property for part of the period that she was being charged for. She referred to letters and emails sent by her to the Property Factor from 26 October 2015 to 21 August 2017 in which she asked for information about the basis of the charges for insurance (**HO docs 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 15 and 16**). She believes she has been overcharged for insurance. She got so fed up trying to get a straight answer about the insurance that she gave up. However, as the Property Factor would not resolve the issue it started charging her late fees and they have ended up in dispute about the fees. She would have liked another face to face to go over

the dates and costs of the insurance, to be shown the policy and to have an explanation of the charges relating to her property.

- ii. In the Homeowner's notification letter to the Property Factor she said that Property Factor has simply not provided clear information about the basis upon which has insurance premium has been calculated. At the Friday 22 July 2016 meeting with Ms Rummens and Ms Cosgrove the Homeowner questioned the Property Factor's charging for insurance and no answer was given providing such information. The Homeowner questioned the Property Factor again about charges made for dates before she owned the Property and no satisfactory answer was given.
- iii. In the Homeowner's oral submissions, she repeated the statement that she has never had the original WSS. She never had a reason as to why she was paying these charges up front. The issue was that she had no idea what the insurance charges were for.
- iv. The Homeowner referred to **HO Doc 2** which is her letter of 26 October 2015 to the Property Factor in which she made various queries relating to specific invoices in order that she could provide information to her accountant. On page 2 she referred to the Property, including the invoice 707170 dated 24 April 2014. She queried why she was being charged for a period prior to her ownership. She had asked Melissa Syme at Grant & Wilson after she bought the Property. The Homeowner asked Ms Rummens at the 22 July 2016 meeting.
- v. The Homeowner's view is that invoices have been rendered for a period prior to her ownership: 28.11.13-27.2.14 and 28.2.14 and 27.5.14. She says that as she purchased 14.4.14 she would only have been responsible for part of the second invoice. She has never received an answer about why she was charged for a period prior to her ownership. When she was submitting property income information to HMRC she wanted to make sure everything was correct for her tax return but she could not understand the Property Factor's procedures.
- vi. The Homeowner referred to **HO Doc 14**, her spreadsheet. She said it shows the charges which were contained on the first invoice of 14 April 2014, an introductory payment of £11.20 and, two quarters in advance for 2014/15 AT £64.31 each. She said that she had no understanding of Grant & Wilson's procedure for charging two quarters in advance in 2014 when she bought the property.

#### **b. Property Factor's submissions**

- i. In its written submissions, paragraph 2, the Property Factor stated that Mr Stewart, Technical Manager, addressed each issue raised by the Homeowner in **PF doc 9**, his email response of 7 April 2016 at 17.29.
- ii. It was further stated that the process undertaken by Grant & Wilson Property Management Limited was to collect the insurance premiums in advance, which was explained in **PF Doc 2**, their Terms of Service sent 1 May 2014 and reiterated in Graeme Stewart's email of 7 April 2016.

**c. Homeowner's Response to Property Factor's submissions**

- i. The Homeowner stated that **PF doc 9**, Mr Stewart's email of 11 April 2016, which has been lodged and relied on by the Property Factor in its written submissions, relates to the wrong property – a property at 1/2, 14 Memel Street and not the Property. Mr Stewart's email states that he will refer to the common charges for the Property by separate email. No email or letter has been lodged by the Property Factor relating to the Property.
- ii. After the Homeowner received the email from Mr Stewart dated 11 April 2016 about the other property in Memel Street, she still wanted to meet him face to face to go through matters relating to the Property.
- iii. The Homeowner also repeated her statement that Grant & Wilson had not provided her with its WSS (as per her submissions in relation to Section 1 of the Code).
- iv. The tribunal asked the Homeowner about **PF Doc 5**, in which the Property Factor states that it returned the advance payments the Homeowner made in 2014. Ms Rummens quotes the amount of £141.54 which will be refunded to the Homeowner. The Homeowner stated that she was happy with that amount as she thought that represented what had been overpaid when she took entry to the Property.

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

**a. Homeowner's submissions:**

- i. In her Application the Homeowner stated that her Section 7 complaint was that she has been trying to resolve these issues since 2015 and they are still not resolved. She referred to written correspondence sent by her between 26 October 2015 and 21



August 2017 (now **HO docs 2, 3, 4, 5, 7, 8, 9, 10, 11, 12**); and the fact that on 28 March 2017 she specifically emailed Graeme Stewart to call her in person (now **HO doc 8**). She has not received a phone call.

- ii. In her notification letter to the Property Factor she stated that the Property Factor has simply not provided the written complaints resolution procedure. She stated that when she made her first approach in June 2015 she should have been provided with this. She sent a full and detailed letter on 26 October 2015 (now **HO doc 2**). She compares this to an *“in-house style explanation on 7 April 2016 [contained in **HO doc 7**. As noted above, this relates to a different property] which bears no resemblance to answer any of my detailed questions, this flaunts the Code in a simple and transparent way”*.
- iii. In her oral submissions, the Homeowner stated that as the Property Factor sent her a web link to the Complaints Procedure on 2 October 2017, the Property Factor obviously must have a complaints resolution procedure but the Homeowner does not think that the Property Factor followed it.
- iv. **PF Doc 8** is the complaints procedure for which the link was sent on 2 October 2017.
- v. The Homeowner's complaint is that she was not provided with complaints procedure prior to 2 October 2017, in a response to her notification letter on 21 September 2017. She thinks that if the complaints procedure was going to be offered it should have come with the email of 25 July 2016 (**PF doc 5**) following the meeting at the Property Factor's offices.

**b. Property Factor's submissions:**

- i. In its written submissions, paragraphs 4 and 5 the Property Factor states that efforts have been made to attempt to resolve the complainer's issues, as per the attached documents. [However, there is no further specification provided in the paragraph nor reference to any particular lodged documents].
- ii. The Property Factor further states that it was formally advised that the complainer had approached the tribunal in her email of 21 September 2017 [now **HO doc 6**, the email attaching the complaints notification letters and requesting a hard copy of the WSS]. The Property Factor states that this was formally acknowledged by its Business Improvement Manager on 2 October 2017 and that this acknowledgement provided links to the WSS and Complaints Guide (also contained in **HO doc 6**). In accordance with its Internal Complaints Procedure the

complaint of 21 September 2017 was investigated and a full response provided on 24 October 2017 (now **PF doc 6**). This response was neither acknowledged nor requested to be escalated to Stage 5 of its Complaints Procedure by the Homeowner.

**c. Homeowner's Response to Property Factors submissions**

- i. The Homeowner stated that the Property Factor's submission is irrelevant as it does not relate to her complaint about the failure to provide the complaints procedure until 2 October 2017.
- ii. The Homeowner stated that one might have expected the complaints procedure to be mentioned at the meeting on 22 July 2016. Instead Ms Rummens said *"you can't take this to anyone. I am the boss."*
- iii. The Homeowner stated that in para 5 of the Property Factor's written representations, the Property Factor admits that the Complaints guide was not sent to her until 2 October 2017.

**29. Alleged failures to comply with Property Factor's duties – Section 17(5) of the 2011 Act**

- a. The Homeowner's notification letter to the Property Factor of 21 September 2017 listed six allegations of failures to carry out property factors' duties in terms of Section 17(5) of the 2011 Act. These are listed as PF duties 1 to 6 below, for ease of reference.
- b. The Homeowner expanded on each of these alleged failures to comply with property factors' duties in her oral submissions, in most cases adopting her submissions already made in relation to the alleged breaches of the Code.
- c. The Respondent did not provide any written representations in relation to the alleged failures to comply with Property Factors' duties.

**30. (PF duty 1) Written Statement of Services**

- a. Notification letter: As new incoming Property Factors the Property Factor should have provided a WSS. It was Grant & Wilson who sent the letter dated 12 March 2015 (HO doc 1A) to advise of the acquisition. No WSS has been received.
- b. In her oral submissions the Homeowner adopted what she had already said in relation to the alleged breach of the Code Section 1, which

included her submission that the first time she was provided with the WSS was a web link by email of 2 October 2017 (see **HO doc 6**).

### **31.(PF duty 2) Complaint Resolution and Duty of Care**

- a. Notification letter: If a client continually makes contact to advise that they are not sure about why they are receiving charges and the Property Factor makes no attempt to resolve the issue then the Property Factor is failing in its duty of care. If the Property Factor has a formal complaints procedure then this document should be sent out if a client registers a complaint.
- b. In her oral submissions the Homeowner adopted what she had already said in relation to alleged breaches of the Code, specifically Section 7.
- c. She added that the Complaints Procedure should have been sent to her anyway but even if not, Ms Rummens the Operations Director should have advised her of the protocol at the meeting on 22 July 2016 or in her follow up letter on 25 July 2016 (**PF doc 5**).

### **32.(PF duty 3) Information about taking a complaint further**

- a. Notification letter: At the meeting on Friday 22 July 2016 with Ms Rummens and Ms Cosgrove, Ms Rummens refused to advise that the Homeowner could escalate this complaint further. Surely as Operations Director, with a duty of care to one's clients, one would have openly and honestly advised that complaint escalation was possible.
- b. In her oral submissions the Homeowner adopted what she had already said in relation to alleged breaches of the Code, specifically Section 7, and in relation to PF duty 2 above.
- c. She added that the Complaints Procedure link was not sent until 2 October 2017 (see **HO doc 6**) when it was already a tribunal complaint.

### **33.(PF duty 4) Knowledge, approach, manner and behaviour towards clients**

- a. Notification letter: At the Friday 22 July 2016 meeting with Ms Rummens and Ms Cosgrove the Homeowner feels that someone in a position of authority should be able to handle situations and not display a complete loss of control and shout at clients and display threatening behaviour or pin people against a wall or door.
- b. At the oral hearing the Homeowner made clear that she was referring in particular to Ms Rummens at the meeting of 22 July 2016 and she adopted the submissions already made in relation to alleged breaches of the Code, in particular Section 2.2.

### **34.(PF duty 5). The Importance of Communications**

- a. Notification letter: The Scottish Government places heavy emphasis on the importance of communications especially between Property Factors and Owners' Associations and the help that factors can provide in setting these up. The Homeowner has never seen any encouragement from the Property Factor and when advised of the outstanding debt at the Development this would have been of benefit, not least of all to the Property Factor.
- b. In her oral submissions the Homeowner said that she had been advised by Melissa Syme at Grant & Wilson that there are huge outstanding debts on the Development and they (Grant & Wilson) were desperate to get money in. The Property Factor should have told owners about level of debt on the Development. The charges were escalating and the Development was getting more and more run down. The Property Factor should have communicated with homeowners about the debt. Homeowners never get information about outstanding debt on the Development.

### **35.(PF duty 6). Factors' fees**

- a. Notification letter: The Homeowner was advised at the time of her purchase of the Property that the Factor's fees would be in the region of £400 per annum. The Property Factor's fees (and for that matter Grant & Wilson, reported publically for the extent of their fees) are far in excess of the said quoted amount.
- b. In her oral submissions the Homeowner stated that rather than £400 per annum the charges have been £640 / £650. They were always very high, not just when the Property Factor took over. She stated that the information she was given was inaccurate.
- c. When asked by the tribunal where the information had come from she stated that it was provided by the seller's solicitor but she does not know if it came from the Property Factor.
- d. The tribunal also asked the Homeowner whether the fees she was complaining about were actually the factor's fee or the total invoices. The Homeowner confirmed that it is the total invoices. The Management fee she is actually paying the Property Factor on the invoices is £15/£16 a quarter. The Homeowner's complaint is with everything else and the overall costs, not factor's fees as such. For example, for cleaning going back to 2015 was £7812 for one quarter for the Development. That is before gardening, repairs and maintenance and utilities.

### **36.The tribunal make the following findings in fact:**

37.The Homeowner became the owner of the Property on 14 April 2014.

38. The Homeowner is a non-resident social landlord.
39. The Property is a flat within the block of properties at Hawthornhill Development ("the Development").
40. On 14 April 2014 the factor of the Development was Grant & Wilson Property Management Limited ("Grant & Wilson").
41. Grant & Wilson / the Property Factor did not provide inaccurate information prior to the Homeowner's purchase of the Property about the annual amount of factoring fees per property in the Development.
42. Grant & Wilson did not provide their WSS for the Development to the Homeowner within four weeks of agreeing to provide services to the Homeowner, nor at any time prior to 2 March 2015.
43. Grant & Wilson did not provide their in-house Complaints Procedure to the Homeowner at any time prior to 2 March 2015.
44. The Homeowner did not request the WSS or in-house Complaints Procedure from Grant & Wilson.
45. Grant & Wilson and the Property Factor have issued all invoices to the Homeowner at her home address in respect of the factoring of the Development.
46. The first invoice 707170 dated 24 April 2014 included charges for building insurance from 14-30 April 2014 of £11.20 and two quarters in advance for 14/15 at £63.41 per quarter, plus a float of £50.
47. Invoice 712491 dated 21 May 2014 included a charge of £67.50 for a buildings insurance premium for the period 28 May to 27 August 2014 and a further float amount of £50.
48. Further invoices were issued in 2014 and 2015 which included charges of £67.50 per quarter in respect of insurance.
49. On or about 2 March 2015 the Property Factor acquired Grant & Wilson and became the factor of the Development.
50. The Property Factor has been the factor of the Development since on or about 2 March 2015.
51. The Respondent became a Registered Property Factor on 23 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.
52. The Property Factor has produced a WSS for the Development and a Development Schedule to be read in conjunction with it.

53. The Property Factor's terms of service for the Development are different from the terms of service of its predecessor. The basis of charging for insurance is different.
54. The Property Factor did not provide a WSS for the Development to the Homeowner at any time prior to 2 October 2017.
55. The Homeowner made written complaints and enquiries to the Property Factor in the period 26 October 2015 to 21 August 2017 about its charging basis and charges for insurance.
56. The Property Factor did not respond in writing to answer the Homeowner's enquiries about insurance charges in respect of the Property until 25 July 2016 and even then a detailed response was not provided.
57. On 22 July 2016 a meeting took place at the property factor's offices between the Homeowner and Ms Rummens, Operations Director and Ms Cosgrove, Technical Manager of the Property Factor.
58. Ms Rummens, the Operations Director did not communicate with the Homeowner in an abusive or threatening way at the meeting.
59. The Homeowner was not provided with information about the basis of charging or charges for insurance at the meeting on 22 July 2016.
60. The Homeowner was not provided with the WSS or the in-house complaints procedure at the meeting on 22 July 2016.
61. Ms Rummens sent an email to the Homeowner on 25 July 2016 to follow up from the meeting. The Homeowner was not provided with the WSS or the in-house complaints procedure, or information in respect of the same.
62. On 25 July 2016 the Property Factor provided a basic explanation to the Homeowner of the previous insurance charging structure and the new basis of charging for insurance.
63. On 25 July 2016 the Property Factor made an offer to refund advance insurance payments made in 2014 in the Homeowner's next common charges account.
64. On 28 August 2016 the Property Factor credited the Homeowner's account with the sum of £141.54 in respect of advance insurance payments collected by Grant & Wilson in 2014.
65. The Homeowner lodged the Application with the tribunal on 7 September 2017.
66. On 21 September 2017 the Homeowner notified the Property Factor in writing about the alleged breaches of the Code of Conduct and property factors'

duties which form the basis of the Application and requested a hard copy of the WSS.

67. The Property Factor first provided a web link to its WSS to the Homeowner on 2 October 2017 in its letter acknowledging the Homeowner's notification of complaints. A web link to the Complaints Guide was also provided. The Property Factor did not provide a hard copy of the WSS or Complaints Guide.

## 68. Reasons for Decision

### 69. Section 1

- a. The tribunal has found that the Property Factor did not provide a link to the WSS to the Homeowner until 2 October 2017, following a request from the Homeowner on 21 September 2017 for a hard copy. The Property Factor has never provided a hard copy of the WSS directly to the Homeowner. A copy has been lodged in these proceedings **PF doc 7**, as has a copy of the Grant & Wilson terms of service: **PF doc 2**.
- b. In its written submissions, the Property Factor sought to rely on **PF doc 1 and 2**, to show that it (via its predecessor) had complied with the Code by providing the WSS on or about 1 May 2014. **PF doc 1** is a letter addressed to the Homeowner at the Property dated 22 January 2018, with handwriting thereon stating "*date printed from "RPM" and "date sent to client by ex w pml 1/5/14 following date of entry"*". There is no proof of posting, delivery or receipt. **PF Doc 2** is Terms of Service and Delivery of Standards.
- c. The tribunal accepted the Homeowner's evidence that she had not seen **PF Doc 1** or **PF Doc 2** at any time. The tribunal also accepted her evidence that all invoices have been sent by the Property Factor and its predecessor to her home address, whereas **PF Doc 1** bears to have been sent to the Property address at a time when the Property was empty.
- d. **PF Doc 7** is the Property Factor's WSS and Development Schedule. It contains different terms from its predecessor's terms of service. By way of example, the basis of charging for insurance has changed.
- e. The Property Factor sought to rely on **PF Doc 3**, which is its Newsletter from Autumn 2015 to show that the Homeowner should have been aware of the WSS and how to request and/or obtain it. Contrary to the Property Factor's submissions there is nothing in the document lodged directing homeowners to its WSS or the methods for requesting and/or obtaining the WSS and the tribunal rejects the Property Factor's submissions that this supports its argument that the WSS was provided to the Homeowner.

- f. The WSS was not offered to the Homeowner at the meeting at the Property Factor's offices on 22 July 2016 or in the follow up letter on 25 July 2016.
- g. The Property Factor further sought to rely on the fact that the Homeowner did not ask for the WSS until 21 September 2017. Section 1 of the Code places a duty on the Property Factor to provide a WSS to homeowners within the stipulated timescales for specified situations, whether or not the homeowner requests the same.
- h. The Property did not provide the WSS to the Homeowner within four weeks of being made aware of the change in ownership of the Property, nor did the Property Factor provide its WSS to the Homeowner at the earliest opportunity when it issued its new WSS and Development Schedule.
- i. The Property Factor did not ensure compliance with the Code Section 1.

## 70. Section 2.2

- a. Although it was accepted by both parties that a meeting took place at the Property Factor's offices on 22 July 2016, there was a divergence of testimony on whether or not Ms Rummens, the Property Factor's Operations Director communicated with the Homeowner in a way which was abusive or intimidating.
- b. The tribunal heard evidence from the Homeowner. As the Property Factor was not present or represented there was no cross-examination of the Homeowner's evidence.
- c. The Property Factor produced a written witness statement from Ms Cosgrove. There was no dispute that she was present throughout the meeting. As Ms Cosgrove did not give oral evidence the tribunal was unable to see the witness in order to judge her demeanour or assess her credibility or reliability and the Homeowner was unable to cross-examine her.
- d. The tribunal did not accept the Homeowner's evidence that she was pinned against the wall at any point by Ms Rummens. Rather, it appears that whatever had taken place during the meeting Ms Rummens was, at the point at which the Homeowner was leaving, assisting her to exit the Property Factor's offices.
- e. The tribunal had regard to the terms of **PF Doc 4** and **PF Doc 5** when considering the evidence of the witnesses. The apology from Ms Rummens was for her part in the meeting not progressing in the way that they had both hoped. There is nothing that can be taken from that



apology to suggest that Ms Rummens did not comply with Section 2.2 of the Code during the meeting.

- f. The tribunal was unable to find on the evidence on the balance of probabilities that Ms Rummens communicated with the Homeowner in a way which was abusive or intimidating.
- g. **The Property Factor ensured compliance with the Code Section 2.2.**

## **71. Section 4.2**

- a. The Homeowner withdrew her complaint in terms of Section 4.2 during the hearing.

## **72. Section 5.2**

- a. The Homeowner made written complaints and enquiries to the Property Factor about its charging basis and charges for insurance from 26 October 2015 to 21 August 2017.
- b. The Property Factor did not respond in writing to answer her detailed inquiries about insurance charges in respect of the Property. The letter of 7 April 2016 which was lodged and referred to by the Property Factor in its written submissions **PF doc 9** relates to a different property.
- c. In its email of 25 July 2016, **PF doc 5**, the Property Factor gives a basic explanation of the previous insurance charging structure and the new basis of charging for insurance and makes an offer to refund advance payments in the next common charges account. It is not a detailed response to the Homeowner's enquiries.
- d. The Property Factor credited the sum of £141.54 to the Homeowner's account for the Property on 28 August 2016. This was in respect of advance insurance payments made by the Homeowner in 2014 (to Grant & Wilson).
- e. Although the advance payments were ultimately refunded to the Homeowner on 28 August 2016 it was over two years after the payments were made in May 2014 and one a half years after the Property Factor acquired Grant & Wilson in March 2015, during which time the Homeowner had made repeated requests for information about the basis of the charges for insurance.

- f. **The Property Factor did not ensure compliance with the Code Section 5.2.**

### **73. Section 7.1**

- a. The tribunal is satisfied on the evidence that the Property Factor did have a Complaints Procedure that complies with the requirements of the Code Section 7.1.
- b. The factual basis of the Homeowner's complaint was that she was not provided with the complaints procedure by the Property Factor until a link was provided on 2 October 2017; rather than a complaint in terms of Section 7.1 of the Code.
- c. It is noted by the tribunal that in the preamble of Section 7 of the Code that **"it is a requirement of Section 1 (Written Statement of Services) of this Code that you provide homeowners with a copy of your in-house complaints procedure and how they make an application to the homeowner housing panel"**.
- d. The tribunal is not persuaded that the Property Factor provided the Homeowner with a copy of the in-house Complaints Procedure or how she could make an application to the HOHP (now the tribunal) until 2 October 2017 and this matter is considered further in relation to failure to comply with Property Factors' duties, below.
- e. The tribunal also notes that failing the complaints procedure being provided in terms of Section 7, there was an opportunity to provide the in-house complaints procedure at the meeting of 22 July 2016 or in the follow-up email of 25 July 2016.
- f. **The Property Factor ensured compliance with the Code Section 7.1**

### **74. (PF duty 1) Written Statement of Services**

- a. For the reasons given above in relation to the Property Factor's failure to comply with the Code and having regard to its finding in fact the tribunal is satisfied that the Property Factor failed to comply with its duty to provide a WSS of services to the homeowner from the start of her period of ownership until 2 October 2017.

### **75. (PF duty 2) Complaint Resolution and Duty of Care**

- a. The tribunal is satisfied that the Property Factor unreasonably delayed in dealing with the homeowner's enquiries and complaints.
- b. The tribunal is satisfied that the Property Factor should have provided a copy of its in-house complaints procedure in any event; which failing

it should have been provided to the Homeowner by Ms Rummens the Operations Director should at the meeting on 22 July 2016 or in her follow up letter on 25 July 2016 (**PF doc 5**), or at the very least referred to.

- c. The tribunal is satisfied that the Property Factor failed to comply with its duties in relation to resolution of complaints.

#### **76.(PF duty 3) Information about taking a complaint further**

- a. For the same reasons as outlined above in relation to PF duty 2, the tribunal is satisfied that the Property Factor failed in its duty to provide information about taking a complaint further in terms of its in-house complaints procedure.

#### **77.(PF duty 4) Knowledge, approach, manner and behaviour towards clients**

- a. The Homeowner's complaint about this alleged failure was focussed on the meeting of 22 July 2016.
- b. For the same reasons as given in relation to its findings in respect of Section 2.2 of the Code the tribunal is not satisfied that the Property Factor has failed to comply with its duties in knowledge, approach, manner and behaviour towards clients.

#### **78.(PF duty 5). The Importance of Communications**

- a. There was insufficient evidence for the tribunal to make any finding about the level of outstanding debt at the development or any duty on the Property Factor to make homeowners aware of the same.
- b. The tribunal was not satisfied that the Property Factor had failed in any duties in relation to communication in this regard.

#### **79.(PF duty 6). Factors' fees**

- a. The Homeowner indicated that the information about the amount of annual factoring fees per property on the development had been provided by the selling solicitor prior to her purchase of the Property. There was no evidence that the Property Factor had provided inaccurate information about the amount of factoring fees on the Development.
- b. The tribunal was not satisfied that the Property Factor had failed in any duty in relation to provision of inaccurate information about factoring fees.

## **Proposed Property Factor Enforcement Order**

80. 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.
81. Although the advance insurance payments were credited to the Homeowner's account on 28 August 2016, the Homeowner has suffered delay, worry and inconvenience since she first enquired about the charges for insurance and waited a considerable time for matters to be resolved during which time there have been multiple pieces of her correspondence which have gone unanswered by the Property Factor. Had the Property Factor provided its WSS, Complaints procedure (at least on 22/25 July 2016), answered correspondence and dealt with issues more quickly, the Homeowner would have suffered less delay and inconvenience and probably would not have had to make the Application to the tribunal.
82. The tribunal propose that the Homeowner receives financial recompense for the delay, worry and inconvenience occasioned by the Property Factor's failures.
83. The tribunal proposes that the Property Factor issues a written apology to the Homeowner in respect of (i) the delay in answering her enquiries about insurance charges, (ii) the delay in providing a copy of its WSS, (iii) the delay in providing details of its in-house complaints procedure and (iv) the delay until 28 August 2016 in refunding the advance insurance charges; and provide a copy of the same to the tribunal.

## **84. 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.**

S Tanner

Susanne L M Tanner QC  
Legal Member

26 February 2018