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

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

Chamber Ref: FTS/HPC/PF/17/0258

Raeburn Common, Pettinain, Lanark
("The Property")

The Parties: -

James Prentice, 25 Raeburn Common, Pettinain, Lanark, ML11 8SX
("the Applicant")

Park Property Management Ltd, 11 Somerset Place, Glasgow, G3 7JT
("the Respondent")

Tribunal Members:
Josephine Bonnar (Legal Member)
Ahsan Khan (Ordinary Member)

DECISION

The Respondent has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with sections 1.1a (c)f, 2.1, 3.1 and 3.2 of the Code of Conduct for Property Factors. The Respondent has also failed to carry out its property factor duties in terms of section 17(5) of the Property Factors (Scotland) Act.

The decision is unanimous

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 as "The Regulations"

The Respondent became a Registered Property Factor on 13 March 2013 and it's duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By application received on 11 July 2017 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Conduct for property factors. The Applicant stated that the Respondent had failed to comply with sections 1.1a (c) f, 2.1, 3.1 and 3.2 of the Code. The Applicant lodged a bundle of documents with the application. The Applicant subsequently lodged a letter notifying the Respondent that he considered it to have failed to carry out its property factor duties in terms of section 17(5) of the Act. The application was amended to include this complaint.

2. On 12 September 2017, an In-House Convener on behalf of the President referred the matter to a tribunal for a determination. A hearing was assigned to take place at Brandon Gate, Ground Floor Block C, Leechlea Road, Hamilton on 17 November 2017.

3. Prior to the hearing both parties confirmed that they intended to attend the hearing.

Hearing

4. The hearing took place before the Tribunal on 17 November 2017. The Applicant Mr James Prentice attended accompanied by his wife, Mrs Prentice, who was there as a supporter. Also present was Mrs Shelagh Craig, the Applicant in a related case against the Respondent under reference FTS/HPC/PF/0260. Both applications were being heard together in terms of Regulation 16(1)(b). Mr Paul McDermott, a director of the Respondent also attended. The parties and Mrs Craig confirmed that they had been advised that the cases were being heard together. The Applicant and Mrs Craig confirmed that they had no objection to this. Mr McDermott indicated that he had some concerns in relation to data protection and that disclosure of the information during the hearing might lead to a breach of the Data Protection Act. The Tribunal considered his concern but noted that the hearing was a public hearing and that the applicants in both cases did not object to the hearing of both cases together. Mr McDermott then confirmed that he had no objection to the hearing proceeding.

5. Mr Prentice gave evidence in relation to his application. The application (and that of Mrs Craig) relate to the maintenance of a piece of ground known as Raeburn Common, Pettinain, which is part of a development of houses. The builder had appointed Be Factored Ltd/ Be Maintained Ltd as property factor at the time of construction of the development and they remained the factor until October 2016. A letter was received by Mr Prentice dated 3 October 2016 from Park Property Management Ltd. The Be Factored and Be Maintained logos were on the letter and it was signed by Mr McDermott, on behalf of the

Respondent and by Graham McEwan, the Managing Director of Be Factored and Be Maintained. The letter (which was lodged by the applicant as part of his bundle of documents) states that Be Factored/Be Maintained had amalgamated its factoring resources with Park Property Management Ltd. Mrs Craig confirmed that she had received a similar letter. The letter advised that it would be the "same people plus some new ones", who would be providing the service. Mr Prentice advised the tribunal that he didn't know whether the letter meant that the Respondent had bought the company or just the book. However, he accepted that the Respondent became their factor at that point. He did not contact them to challenge the letter. He further explained that, at that time, there was no residents' association for the development. He thinks all the residents just accepted the position. Mrs Craig also confirmed that she accepted the letter as fact. Mr Prentice advised that the factoring contract with the Respondent is now at an end. He is unhappy that the Respondent does not intend to refund the residents entire floats, following that termination. This is because there is development debt, caused by some residents not paying their share of common charges, which the Respondent intends to divide up among the other proprietors. Mr Prentice has a number of concerns about this. Firstly, the title deeds do not make provision for the debt to be passed on to other residents. Instead, the property factor is empowered to take legal action for recovery. The second issue is that there is some uncertainty about the number of properties in the development. There are 36 houses and a schoolhouse. The latter may or may not be part of the development. It is his understanding that the schoolhouse owners did (at one point) pay a share of the maintenance of the common ground and then stopped, reason unknown. Mr Prentice says that in correspondence with the Respondent, Mr McDermott disclosed the identity of one of the non-payers as the school house. Mr Prentice is concerned that the schoolhouse owner is not being pursued because of the uncertainty surrounding their liability, and meantime the other owners are being expected to carry that share and any others which remain unpaid. Mr Prentice went on to say that he is extremely concerned about the existence and level of development debt. The previous factor told them nothing about it and since taking over, the Respondent waited until a meeting on 2 February 2017 to mention it. Following that meeting he asked for and was given a breakdown of what was owed. Mr Prentice referred to the title deeds and to a document - the Spice report – as authority for his claim that the factor cannot pass on to other homeowners, the shares not paid by some proprietors. Mr Prentice advised the Tribunal that this is his main complaint, and that in addition he has complaints in terms of the Code of conduct.

6. Mr McDermott firstly responded to Mr Prentices complaint by addressing the issue of the Respondent's appointment. He explained that his company bought a large number of factoring contracts from Be Factored Ltd and Be Maintained Ltd. The companies were, and are, completely separate. He wanted the changeover to be smooth and seamless, so the initial letter was signed by both companies. He bought the logos from the other companies as well and used them for a while, on his letterhead, to re-assure people about the change. Some staff members also transferred. He confirmed that prior to the purchase of the contracts he had no information about the level of development debt. It was part of the deal that he would not be given this information, and that was a

commercial risk that he took. At transfer he was given the funds held by the previous companies. Some residents were in credit, some in debit, and the floats had been partially used to cover development debt so that contractors could be paid. He referred to a letter issued to the homeowners on 11 November 2016 (within the documents lodged by the Applicant). It was a follow up to the earlier letter and referred to final accounts being issued. Mr McDermott advised that the staff members who had transferred had spent time making up the Be Factored final accounts. The letter advises homeowners that any credit balances would be automatically transferred unless the homeowner asked for a refund. He said that homeowners who applied for refunds, were provided with same. However, as there was development debt, the refund would be subject to a deduction for the homeowner's share of that. Mr McDermott further advised the Tribunal that he believes that he is entitled to do this, although there is no provision in the title deeds. He stated that the residents are responsible for the common repairs, not the factor. He doesn't know whether there are 36 or 37 liable properties and said that legal advice is needed on that point. In early 2017 the Respondent arranged meetings of homeowners for all of the contracts that it had purchased. The meeting at Pettinain was arranged for 2 February 2017. One of the purposes of the meeting was to ratify the Respondent's appointment. Voting forms were issued at most of the meetings. He advised the tribunal that, until the meetings, he considered that the Respondent was acting as property factor with the tacit authority of the homeowners. However, by the time of the Pettinain meeting he had received a letter from the recently formed residents' association terminating the factoring contract. This letter was received the day before the meeting. Despite the letter, the meeting went ahead. Various matters were discussed. His colleague (who attended the meeting) advised the homeowners that there is development debt which is due to some homeowners failing to pay. The termination letter was also discussed and the possibility of a new factor lite contract being agreed. It was agreed that this would be progressed with the respondent preparing a draft contract for them to consider. In the meantime, Mr McDermott indicated that he had not charged any management fees to the development and considered that, subject to seeing evidence that the termination had been a valid one, the Respondent was no longer the appointed factor. Subsequently, he was provided with evidence that the termination complied with the title deeds. The negotiations about a new factor lite contract were unsuccessful. He accepted the termination and confirmed that final statements would be issued. He confirmed that he currently holds the sum of £1300 for the development. However, some residents owe money and others are owed money. He does not feel that he can pass this money or the debt files to the residents' association because of data protection issues and because the residents' association is not a registered factor. He also advised the Tribunal that had the homeowners not terminated the Respondent's services, he would have taken legal action against the homeowners who had not paid their share of common charges, but he was not given the opportunity.

7. Mr Prentice confirmed to the Tribunal that he did not contact the Respondent on receipt of the letter of 11 November 2016 to ask for a refund. Mrs Craig indicated that she did make such a request in relation to her float. She said that this was refused. Mr Prentice also advised that he has no recollection of receiving a final Be factored/ Be maintained account and this was also Mrs

Craig's position. Mr Prentice also stated to the tribunal that he takes a different view of the meeting on 2 February 2017. While he accepts that a letter was issued dismissing the Respondent, that was before the meeting. Following the meeting he is of the view that they were in fact re-appointed but based on a factor lite arrangement with the residents' association taking a leading role. The precise terms of the contract were to be agreed, but the homeowner/property factor relationship continued. This is still his view although he understands that there might be a question over whether that meeting complied with the title deeds and therefore may not have had the necessary authority to overturn the previous decision to dismiss the respondent taken at a meeting of homeowners on 21 January 2017.

8. Mrs Craig confirmed in her evidence that she agreed with Mr Prentice in relation to the Respondent's appointment, the termination of its contract and the issue of the floats and development debt. She advised that following receipt of the letter of 2 October 2016, she had telephoned to query an invoice which she had already paid and asked the member of staff, Lisa Piper, if her float was being refunded. She was told that it was being transferred to the Respondent. Lisa Piper also confirmed that the Respondent was a separate company from the previous factor.

9. **Section 1.1a(c). "The written statement should set out:..what proportion, expressed as a percentage or fraction, of the management fees and charges for common work and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion, this should be stated."** The tribunal considered the terms of the statement of services which was within the case papers lodged by Mrs Craig. Mr Prentice indicated to the Tribunal that he has no recollection of ever receiving a statement of services and does not believe that he asked for one. The statement produced by Mrs Craig was accepted by Mr McDermott as the statement relevant to the period of dispute. Mr Prentice then referred the tribunal to the uncertainty surrounding the number of liable homeowners in the development. It was noted by the tribunal that the written statement does not stipulate a percentage payable by each household and simply refers the homeowner to the title deeds. Mr Prentice advised that the invoices issued always have the shares detailed as 1/37. Mr McDermott indicated that written statements were not issued to the homeowners automatically as he understands that he has 12 months to do so unless a copy is specifically requested. Mr Prentice had not made such a request. The written statement of services is however on the website. He further advised the tribunal that the percentages are stipulated as 1/37 on the invoices so the position is clear. He does not know whether this is correct, he has simply continued on the same basis as the previous factor and thinks legal advice will be needed to clarify the matter.

10. **Section 2.1. "You must not provide information which is misleading or false"** Mr Prentice has four complaints under this section. The first related to the initial correspondence from the Respondent, particularly the letter of 3 October 2017. He advised the tribunal that it was not clear from the letter whether the companies had merged, whether both were working together, or

the respondent was acting alone. The subsequent letter of 11 November 2016 refers to a takeover. He advised that he remained unclear about this issue until he received a detailed response to a written complaint on 17 May 2017, which explained that the companies are entirely separate, and that the respondent was acting alone in relation to the provision of factoring services to the development. He feels that the earlier correspondence was misleading. Mr McDermott disputed the allegation. He referred to the letter of 3 October which specifically says, "amalgamating its factoring resources" and does not say that the respondent has taken over the other company. He stated that the correspondence is factually accurate. He accepts that the Be Factored and Be Maintained Logos are on the letters. He bought these and was entitled to use them.

11. The second complaint under this section relates to the letter from the respondent on 17 May 2017 in response to his formal complaint dated 7 March 2017. In the Respondent's letter it is stated, in paragraph 9, by Mr McDermott that Mr Prentice was "insistent that Park PM had until the end of the year to deliver the debt collection or be liable for the debt". Mr Prentice advises that he did not say this in his letter of 7 March 2017, or previously. What he had said was that it was agreed that the Respondent would work to reducing the debt and agreed targets had been discussed. The statement is therefore false. Mr McDermott disputed this interpretation of the correspondence. He referred to the letter of 7 March which clearly indicates that there is no guarantee of the respondent being retained as property factor. He indicated that his comment accurately reflects Mr Prentices' expectations.

12. The third complaint in terms of this section relates to the letter terminating the factoring contract sent by the residents' association to the respondent, the meeting on 3 February and a letter from the respondent dated 4 April 2017 sent to the Applicant which accepts the termination of the contract. Mr Prentice advised the Tribunal that a letter was sent to the Respondent after a residents' association meeting on 21 January 2017. At that point they did not know about the development debt and the reason for the decision was that the factoring charges were higher than before, and they thought the gardening could be cheaper. However, following discussions at the meeting on 2 February 2017 the termination letter was effectively withdrawn, and the decision made to continue, but on the basis of a factor light arrangement. A minute prepared by Mr Prentice of that meeting confirms that to be the position. The statement in the letter of 3 April 2017 that the contract had been terminated was false. Mr McDermott disputed the allegation. He advised that although a representative of the Respondent attended the meeting on 3 February 2017, they did not do so as the currently appointed factors. Evidence was still to be produced that the letter sent to the respondent complied with the title deeds, but it was assumed that this evidence would be forthcoming. After the meeting all that was agreed was that the parties would engage in negotiations regarding a new factoring contract. He also indicated that he didn't think the February meeting could legally revoke the decision of the previous meeting – something Mr Prentice accepted may well be the case. He therefore disputed the complaint that the letter of 3 April 2017 contained any information which was misleading or false. In response, Mr Prentice referred the Tribunal to an email from the Respondent dated 1 March

2017 in which it is stated, " I can confirm that we now have all the information required should you wish to terminate your factoring contract". Mr McDermott indicated that a member of staff sent this email – not him – and that the choice of words might have been better. The termination letter had been clear, and the email only referred to the evidence produced in support of same.

13. The final complaint in terms of this section is that the factor light contract drafted and issued to the homeowners by the respondent was not what had been discussed. Mr Prentice said that contained a lot of clauses which were not relevant and the document was not acceptable. Mr McDermott accepted the criticism of the contract, saying that the draft was not very good. However, this was a draft to be negotiated, not a final version for signing, and did not amount to the provision of misleading or false information. Furthermore, as the respondent was not the factor at the time of the contract being issued, the draft contract and associated correspondence is not covered by the Code.

14. **Section 3.1 "if a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account, This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services). Section 3.2 Unless the title deeds specify otherwise, you must return any funds due to the homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor".** Mr Prentice advised the Tribunal that he had waited until three months after the letter of 3 April 2017 before submitting his application to the Tribunal as he expected to get a final account or statement during that time. He did not. However, he advised that he had in the few days prior to the hearing received a final invoice. He had not lodged this in advance of the hearing, but Mr McDermott advised the tribunal that he had no objection to it being considered. The document is in 2 parts. The first an invoice for a 1/29th share of the hire of the hall for the meeting on 2 February 2017 for £1.03. It also advises Mr Prentice that he owes £85.27 and that the development debt has reduced but the shortfall has been funded from the floats. The second is described as a first and final reminder and seeks payment of £103.27 to include a late payment fee of £15.00. Mr Prentice advised the Tribunal that both letters arrived together. He indicated that no breakdown of the sum due is provided although there is clear reference to development debt. Mrs Craig advised the tribunal that she had received similar correspondence in September, although her account showed a credit balance. Mr McDermott advised the tribunal that he had understood that these final statements had been issued some time ago. The issuing of these is not dealt with in house but via an internet company. He confirmed that Mr Prentice is due to pay £85.27. That includes his share of the development debt which is £54. He is not due a refund of his float. Mr McDermott maintained that the Respondent is entitled to deduct, not only a homeowners personal debt, but also their share of development debt before settling with homeowners.

15. **Failure to carry out property factor duties.** Mr Prentice advised the Tribunal that he considered that the Respondent's failure to return his float without taking deductions for payment of other homeowner's debt amounted to a failure to carry out property factor duties in terms of section 17 (5) of the Act. Mr McDermott accepted that he was not refunding the homeowners' entire floats. His explanation is that he took over the contract and whatever credit or debit balances existed at the time of the handover. He has not charged any management fees during the respondent's brief period as factor for the development. His position is that, whatever is stated in the title deeds, the usual business practice is for floats to be used to cover personal and development debt. As he had not been given time to pursue non payers through court action, he had no option but to divide the debt up among the homeowners. As liability for common repairs rests with homeowners, not the factor, the homeowners can take legal action to recover their losses. When questioned by the tribunal he confirmed that he had no written contract with the homeowners and there is nothing in the statement of services which stipulates that the Respondent would pass on development debt to other proprietors. Mr McDermott also advised the tribunal that the development debt existed prior to the acquisition of the contracts. Both parties acknowledged that the 36/37 liable properties issue is only relevant if the school house is liable for a share of the common repairs. If it is not, there is no additional development debt. However, that question remains unresolved and the Tribunal noted that the Respondent has treated the schoolhouse as liable and therefore it appears that the development debt may include payments not made by that property. Mr Prentice concluded by referring again to the Spice report which specifically states that the property factor cannot pass on development debt to other homeowners, absent a provision in the title deeds. He added that the homeowners had been keen to pursue the factor lite option. Mr McDermott stated that the Spice report is only guidance and said that usual business practice suggested otherwise.

16. **The tribunal make the following findings in fact:**

(i) The Applicant is the owner of a dwellinghouse at 25 Raeburn Common, located within a development of houses in Pettinain, Lanark. Within the development there is an area of land, owned in common by the proprietors of the dwellinghouses. The Applicant together with the other proprietors are liable for the maintenance of the area of land.

(ii) The Respondent was the Property Factor for the development between 3 October 2016 and 1 February 2017.

(iii) The Respondent purchased the contract for the provision of factoring services at the development from the previous property factor. The Applicant, along with other homeowners, were not consulted by either company regarding the purchase.

(iv) Following a meeting of proprietors on 21 January 2017, at which a vote was taken, the Applicant wrote to the Respondent terminating the factoring

arrangement with them.

(v) In November 2017 the respondent issued final statements to the Applicant, with a demand for payment, which included a demand for a share of development debt not owed directly by the Applicant. This development debt is a result of some proprietors failing to pay their share of common charges.

Reasons for Decision

17. In his application, the Applicant states that the Respondent has breached Sections 1.1a (c) f, 2.1, 3.1 and 3.3 of the Code and has failed to carry out its property factor duties. The Tribunal first considered whether the Respondent was in fact a property factor for the development in terms of the Act and if so, whether it has ceased to be the property factor, and when that occurred. The circumstances of the Respondent's appointment do not appear to comply with the title deeds. No doubt the sale by the previous factor to the Respondent of its portfolio of property factor contracts is not unusual. However, the Tribunal is of the view that homeowners ought to have been notified about the transaction by both seller and purchaser. A property factor is usually appointed by homeowners, not the outgoing property factor. It therefore appeared to the tribunal that there are issues regarding authority to act. However, between 1 October 2016 and 1 February 2017 it appears that the Applicant, Mrs Craig and the other homeowners regarded the Respondent as their property factor, as did the Respondent. In the circumstances, the Tribunal concluded that the Respondent had the "tacit" authority of the homeowners referred to in his evidence, although the circumstances are somewhat unsatisfactory. In terms of the termination of the "contract" the tribunal accepted the Respondent's evidence that, having received a letter terminating the services on 1 February 2017, that is when the arrangement came to an end. Whether or not the meeting on 3 February 2017 could have revoked the decision or not, the written termination letter which was subsequently accepted by the Respondent appears quite clearly to bring the arrangement to an end. The tribunal proceeded to consider the application.

18. **Section 1.1a (c) (f)** The Tribunal considered the written statement of services. It notes that there is no reference to the percentage or fraction of common charges to be paid by each homeowner. The tribunal notes that the invoices issued do stipulate 1/37 (which may be incorrect) and also that the Respondent has not in fact charged the Applicant any management fee for the period of their appointment. However, the provision in the Code is quite clear. For a written statement of services to comply with this section of the code the homeowners share of charges must be stated. In the circumstances the tribunal concluded that the Respondent is in breach of this section of the code.

19. **Section 2.1.** The tribunal firstly considered whether the correspondence issued by the Respondent in October and November 2016 contained information which was misleading or false. It noted that although there does not appear to be any information regarding the transfer which is actually untrue, the Applicant and Mrs Craig (the applicant in the related case) had difficulty

understanding what had taken place. The references to amalgamation of resources and takeover suggest that the previous factor was still involved when in fact, they had sold the contract and a completely new company was now dealing with matters. The use of the logos added to the confusion. The tribunal noted the respondent's explanation that he wanted the transfer to be smooth and to re-assure people. However, it appeared to the tribunal that the Respondent's aim was to minimise the risk of homeowners rejecting the new company, as they were entitled to do. The Tribunal found the language in the letters to be ambiguous and misleading and concluded that the respondent had breached this section of the code in relation to same. The tribunal next considered the Applicant's complaint about the statement in the letter of 17 May 2017, a response to the applicant's complaint letter of 7 March 2017. The tribunal noted that the Respondent did not specifically refer to that letter when it made the statement complained of. It appears to the Tribunal that the statement was more likely to have been a reference to another communication or to discussions at the meeting which took place on 2 February 2017. In addition, the tribunal considered that the statement was unlikely to equate to the provision of "information" in terms of the Code and therefore took the view that it did not require to determine whether the Applicant had said what is alleged to have been said, or otherwise. No breach of this section of the code is established. The third alleged breach of section 2.1 relates to the Respondents letter accepting the termination of the contract. The Tribunal concluded that the Respondent was entitled to issue this letter, although it appears that it delayed doing so until it was clear that the factor lite contract was not going forward. The applicant, along with other homeowners, had terminated the contract and therefore there was no misleading or false information in the letter. Lastly, the applicant complained about the terms of the draft factor lite contract. Again, the tribunal did not consider this to be a provision of information in terms of the code. The draft contract was, parties were agreed, not well drafted, but the applicant could not claim to have been misled by same. It was a document which was being negotiated by the parties and the applicant, along with other homeowners, had the option of revising it or rejecting it altogether. Furthermore, it was sent after the respondent had ceased to be the factor for the property.

20. **Sections 3.1 and 3.2.** Having considered the evidence in relation to the final accounts and statements, the tribunal is satisfied that the Respondent has failed to comply with section 3.1. The respondent was unable to offer any explanation for the Applicant only receiving his final account a few days before the hearing and Mrs Craig only in September 2017, both significantly more than 3 months after termination of the contract. There appears to be no justification for this. The Respondent was only in post for 4 months and did not have a number of contractors' accounts to settle. Furthermore, the final statement does do not provide any breakdown for the payment which is sought. In particular, it does not advise the applicant that £54 of the sum sought is his share of development debt. In terms of section 3.2 the Tribunal also concludes that the Respondent did not establish that it is entitled to pass on development debt to other homeowners. There is no provision for same in the title deeds. There was no written contract with homeowners which stipulated that the respondent could take this action. They did not issue a written statement of services to homeowners stipulating that this was part of their terms and conditions. The

tribunal accepts the evidence from the respondent that it did not receive the whole floats when it took over the contracts. However, that was the respondent's choice, its commercial risk, as Mr Mcdermott acknowledged. The Applicant was oblivious to the existence of development debt and certainly did not give his consent for his float to be used to cover same. The Tribunal is satisfied that the respondent has breached these sections of the Code.

21. **Failure to carry out property factor duties.** The tribunal considered whether the Respondent's actions in passing on a share of the development debt to the Applicant also amounted to a failure to carry out its property factor duties and concluded that it did. A property factor must apply the terms of the title deeds for a development where these make provision for the division of common charges, unless there is a legally enforceable contract which stipulates otherwise. The Applicant believed that his entire float, less any outstanding payments due by him, had been passed by the previous factor to the Respondent. This was not the case. Had the applicant been made aware of the situation by the previous factor, then his complaint would have been directed at that company. However, the Respondent purchased the contracts with the shortfall in the floats, advised the homeowners that it was the new factor and embarked on the provision of factoring services with the issue of development debt unresolved. The Tribunal does not consider that the time which elapsed between taking on the contract and notifying homeowners of the debt was excessive, and accepted Mr McDermott's evidence that it took a number of weeks to finalise previous accounts. However, once the state of the development finances was known, and having presumably familiarised himself with the terms of the title deeds, it was for the Respondent to account to the homeowners for the sums due to them. It may be that if he had been given the opportunity of taking legal action against non payers, much of the debt would have been addressed. He was not given that opportunity. The uncertainty over the number of liable properties ought also to have been addressed, when it came to light, so that homeowners could be re-assured when they received their final accounts that they were being charged the correct share. Again, the Respondent did not have much time to investigate this issue but simply relied on what it was told by the previous factor. The tribunal has some sympathy for the Respondent and notes that it was keen to provide the applicant and other homeowners with a better factoring service than they had previously enjoyed. However, the tribunal is satisfied that there has been a failure by the Respondent to carry out its property factor duties by passing on a share of the development debt to the Applicant. The Tribunal noted that this share has been calculated to be £54 although until the 36 or 37 properties issue has been resolved, that figure is perhaps unreliable and may need to be further investigated if either party is considering legal proceedings for payment.

22. The Tribunal concluded that there had been breaches of sections 1.1a c (f), 2.1, 3.1 and 3.2 of the Code and a failure to carry out property factor duties. The tribunal noted however that with regard to section 1.1a (c) (f), the Applicant did not recall having been issued with or requesting a copy of the statement of services. Any impact on him of this breach would therefore have been minimal. Only one of the Applicant's four complaints in terms of 2,1 of the Code is upheld, namely the misleading communications issued with regard to the change of

factor. The tribunal also notes that the Applicant may not be due the return of his float because of sums he personally owes to the respondent and its predecessor rather than the share of development debt which only accounts for the sum of £54, if the Respondent's calculations are correct. The Tribunal therefore concluded that an award of compensation in the sum of £60, for inconvenience, is appropriate. The Tribunal recommends that if it receives the written authority of all homeowners in the development, the Respondent should pass the factoring files to the resident's association who now appear to be dealing with maintenance of the common ground. If the Respondent had remained the property factor for the development, amendments to the written statement of services would also be required in terms of the proposed PFEO. However, in the circumstances, this is not necessary.

Proposed Property Factor Enforcement Order

The tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

Appeals

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

Josephine Bonnar, Legal Member

8 December 2017