

Housing and Property Chamber

First-tier Tribunal for Scotland



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

By virtue of the Tribunals (Scotland) Act 2014 and the First tier-Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations, the functions of the Homeowner Housing Committee transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") on 1st December 2016.

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: HOHP/PF/16/0103

Property: Flat 1/2, 11 Aberfeldy Street, Glasgow, G31 3NS ("the property")

The Parties:-

Ms Wanda Anna Kawik, Flat 1/2, 11 Aberfeldy Street, Glasgow, G31 3NS ("the homeowner") represented by David Balmer, Citizen's Advice Bureau, 14 Anderson Street, Airdrie, ML6 0AA

Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG ("the property factors") represented by agent, Richard Taylor, solicitor and Timothy Lovat, Managing partner.

Tribunal Members:

Simone Sweeney (Legal chairing Member) Elizabeth Dickson (Housing Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determines;

- (i) That there is evidence before the tribunal which shows a failure on the part of the property factors to comply with the property factors' duties created by Section 17 of the Property Factors (Scotland) Act 2011.
- (ii) That the property factors are not in breach of sections 5.4 or 7.2 of the Code of Conduct ("the code") created by Section 14 of the Property Factors (Scotland) Act 2011.
- (iii) That the property factors are in breach of sections 2.5 and 6.9 of the code.
- (iv) That a notice of proposed property factor enforcement order ("PFEO") in terms of Section 19(2) (a) of the Property Factors (Scotland) Act 2011 is to be issued.
- (v) That this decision is unanimous.

Background

1. By application of 21 July 2016, the homeowner applied to the Homeowner Housing Panel ("HOHP") for a determination on whether or not the property factors had failed to: (i) comply with sections 2.5, 5.4, 6.9 and 7.2 of the Code of Conduct ("the code") imposed by Section 14 of the Property Factors (Scotland) Act 2011 and; (ii) to carry out the property factor's duties in terms of Section 17 of the Act in the homeowners' complaint. The application was referred to a Homeowner Housing Committee.
2. A tribunal heard evidence from both parties at Wellington House, 134/136 Wellington Street, Glasgow on 25th November 2016. The tribunal had before it written submissions from each party, together with copies of various pieces of correspondence, letters and emails which had gone between the parties and copy documents. The homeowner was in attendance at the hearing and was represented by David Balmer from Citizen's Advice Bureau. The property factors were represented by managing director Timothy Lovat and their solicitor, Richard Taylor.

Preliminary issues

3. The legal chair referred to papers having been received on 17th November 2016 which the property factors wished to be considered by the tribunal in support of their response to the application. The homeowner's representative advised that he had not had sight of these and wished an opportunity to consider the content. The tribunal allowed an adjournment of half an hour to allow the homeowner and her representative to consider the papers and reach a view on whether or not they were content for the papers to be received, though late. When the hearing resumed, the homeowner's representative, Mr Balmer, confirmed that the homeowner was content for the papers to be received, that she was now amending the allegation that there has been a breach of section 7.2 of the code and that she wished for the hearing to proceed on all remaining parts of the application. Mr Balmer advised that the basis of the alleged breach of section 7.2 of the code was due to a failure on the part of the property factors to provide the homeowner with a final decision on her complaint. Furthermore, the property factors had failed to provide details of their escalation process or to provide what he described as a final "deadlock" letter. However, having considered the late papers from the property factors, Mr Balmer accepted that within the papers was an email to the homeowner dated 12th June 2013 which made reference to an escalation process. However, he felt that this did not go far enough and the homeowner wished to continue with the section 7.2 code complaint.
4. The legal chair referred to another email from the property factors also dated 17th November 2016 which enclosed a copy letter sent to the homeowner on 10th October 2016. The background to the application was that the property factors had instructed decoration of the common close in late 2012. During the course of the works it was alleged by the homeowner that the contractors had caused damage to the front door of her home. The homeowner had been forced to meet the costs of repairs to the door at the sum of £500. The letter enclosed a cheque for £500. The property factors claimed that the cheque had been cashed by the homeowner. The cheque attached to the letter of 10th October 2016 was in respect of this cost. The letter stated that the money was offered, "as a gesture of good will" and that any allegation of damage to the door was, "without foundation." The legal chair enquired what

response, if any, the homeowner had to make to this recent information. Mr Balmer advised that the homeowner confirmed that she had received the cheque and cashed it. However, she took issue with the offer being made as a gesture of goodwill and believed that the property factors were at fault for the damage to her front door. She wished to continue with her application. The property factors offered no objection.

Submissions of homeowner

5. Mr Balmer began with the allegation that the property factors had breached section 2.5 of the code. Section 2.5 places duties on the property factors on how they communicate and consult with homeowners. It provides that the property factors:

"must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement."

6. Mr Balmer was invited to show evidence in support of this allegation. Mr Balmer provided the tribunal with examples of failures on the part of the property factors to respond timeously. He advised that he had written to the property factors on 23rd August 2016. A copy of this letter was within the papers before the tribunal. The letter set out the basis of the homeowner's complaint. No response was forthcoming until 12 September 2016. The response was made by way of a telephone call rather than a letter. The telephone call was made by Mr Taylor on behalf of the property factors. Mr Balmer submitted that a written response ought to have been issued to him within 14 days (8th September 2016). The call was received by Mr Balmer when he was on holiday. Mr Balmer advised that he would return the call when he returned to work the following day. A telephone conversation took place on 13th September when Mr Taylor advised that the property factors wished to resolve the dispute without the need to refer the matter to a tribunal. Mr Balmer submitted that the settlement acceptable to the homeowner was £850. This comprised £500 for the damage to the front door. Also it included £350 for an excess which the homeowner had paid to her

insurers when she had made a claim for damage due to water ingress from the flat above. Mr Taylor had indicated that he would be prepared to offer around £1,000 to avoid the matter being heard by a tribunal. Mr Balmer requested that Mr Taylor formalise the offer in writing and he would take instructions. On receipt of this written offer, Mr Balmer would inform the HOHP that the dispute had resolved and a hearing no longer required. Nothing was forthcoming in writing from the property factors. Mr Balmer made contact with the tribunal's administration on 14th September to explain the current position. On 15th September Mr Balmer wrote to Mr Taylor by email confirming that the homeowner would accept the offer of £1,000 and enquired how it was proposed that the payment would be made. It was made clear in the email that, only upon receipt of the funds, would the homeowner discharge the hearing before the tribunal. No response was forthcoming from the property factors. Mr Balmer contacted Mr Taylor by telephone on 20th September providing a deadline of 25th September 2016. The response of the property factors was to settle payment for the door but not the policy excess of £350. There being no further contact from the property factors, the homeowner continued with her application. The next contact which Mr Balmer received from the property factors was an email from their managing director, Timothy Lovat, on 11th October 2016. Mr Lovat requested confirmation of the homeowner's address to enable a cheque to be sent to her. Mr Balmer replied with the requested information and enquired if the value of the cheque was for settlement, in full. The homeowner received a letter on 21st October 2016 from the property factors. The letter was in fact dated, 21st October 2016. The letter had, attached to it, a cheque for £500. On 17th November Mr Taylor contacted Mr Balmer by telephone to enquire if he was aware that the cheque had been cashed and if this altered the homeowner's position to the application. Mr Balmer declined to have any further discussion with the property factors.

7. The second example provided from Mr Balmer related to a letter which he had sent to the property factors on 12th March 2015. He claimed to have not received an acknowledgement letter until 23rd March 2015 and a full response to the original complaint was not issued until 22nd April 2015. Copies of the

relevant letters were before the tribunal. This was, in Mr Balmer's submission, an unacceptable delay and another example of a failure on the part of the property factors to respond to a complaint within a prompt timescale as per their obligations in terms of section 2.5.

8. The third example of a breach of section 2.5 by Mr Balmer related to an alleged delay by the property factors in response to a letter which he had sent to them on 15th July 2015. A copy of this letter was within the tribunal's papers. The property factors had issued an acknowledgement letter on 31st July but had not provided a full response until 5th August 2015.
9. Finally, by way of illustration of how the property factors had breached section 2.5 of the code, Mr Balmer submitted that the homeowner had first made the property factors aware of the damage to her door in February 2013. The complaint was intimated by email from the homeowner. Her email was acknowledged. The property factors responded by having their contractors inspect the door. There was no inspection of the door by the property factors, themselves. However little was done to remedy the problem and delay occurred throughout, so much so that the homeowner was forced to instruct the necessary repairs. The homeowner took exception to the wording of the letter of 10th October 2016 which read, *"Your claim for damages to your door are without foundation."* Mr Balmer submitted that the property factors knew that the homeowner had concerns about her door, did little to assist and continued to deny any damage was their fault.
10. The second part of the complaint concerned section 5.4 of the code. Section 5.4, which deals with insurance provides that:

"If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for e.g. private or internal works) you must supply all information that they reasonably require in order to be able to do so."
11. Mr Balmer submitted that the way in which the insurance policy had been set up and administered by the property factors had breached section 5.4 of the

code. When she made a claim on her insurance policy (which had been set up by the property factors) the homeowner found herself due to pay the full policy excess of £350. Mr Balmer submitted that this was unfair. He provided an explanation of the background to the claim. During September 2013 the homeowner's property was damaged by water ingress from the flat above. The damage was within the kitchen of her property. The repairs were handled by an insurance company at a cost of £1,650. The homeowner received only £1300 as the insurance company had deducted their policy excess of £350. This was a common insurance policy. The broker was a company called Bruce Stevenson. The residents in the property above the homeowner were also party to the policy. Mr Balmer submitted that section 5.4 requires the property factors to deal with insurance claims correctly and fairly and that this had not occurred here. He submitted that the homeowner ought not to have been required to pay the excess. Mr Balmer referred the tribunal to section 5 of the written statement of services produced by the property factors and before the tribunal. In particular, Mr Balmer drew to the attention of the tribunal the part of Section 5 which read, "*We (the property factors) receive a rebate from the insurers to cover the administration of the policy on behalf of the insurers.*" This meant, claimed Mr Balmer, that the property factors were *de facto* administrators for the insurers despite their position that the insurance policy had nothing to do with them. Mr Balmer submitted, further, that if the property factors receive a rebate then they should have administered the entire claims process for the homeowner and not allowed the claims to have been handled as a single event.

12. Mr Balmer submitted that the insurance policy identifies the insured party as the property factors. As such, the property factors should submit all claims whether these are a single or a common event. The property factors should then apportion the excess across all parties covered by the policy. Further, the insurance policy provides for mortgagees, the interests of owners or other interested parties and that each individual flat is covered in the policy.
13. It was accepted by Mr Balmer that the factors do have, "*a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly.*" It was

accepted that having "a *procedure in place*" was the requirement of section 5.4. Mr Balmer submitted that the homeowner did not dispute that there was a procedure in place. Her contention was with the particular procedure which the property factors had in place. He submitted that the policy excess is applied to lower the premium on a joint policy which makes the excess part of the insurance cost. Mr Balmer invited the tribunal to find that the excess on the insurance policy be considered a service charge. In conclusion, Mr Balmer stressed that the main issue for the homeowner is the way in which the insurance policy is administered by the property factors. He invited the tribunal to order the property factors to return the policy excess of £350 to the homeowner and to find that the aforementioned showed a breach of section 5.4 of the code by the property factors.

14. The tribunal was invited to find that the property factors had breached their duties in respect of section 6.9 of the code which deals with carrying out repairs and maintenance and requires that the property factors, "*...must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.*"
15. It was submitted that the property factors had failed to diligently pursue the contractors alleged to have damaged the homeowner's front door during the decoration works of the common close despite the contractors having public liability insurance (the tribunal was not directed to any evidence to support this claim). Mr Balmer submitted that the property factors insisted throughout that they had no liability for any damage to the door. The failure on the part of the property factors to address required repairs to the front door resulted in the homeowner paying for the repairs herself. Mr Balmer accepted that any damage to the door of the homeowner's property was the direct result of the contractors carrying out the decoration to the close. He accepted that the damage was not caused by the property factors directly.
16. Mr Balmer directed the tribunal to letters from the property factors dated 11th January 2016 and 10¹ October 2016 in which liability for the damage to the door was denied by the property factors. Both letters were within the papers

before the tribunal. Mr Balmer then referred the tribunal to a letter from the property factors dated, 27th August 2015, specifically a section which read, *"Further, we are aware that the contractor returned to site and cleaned the pain splashes from Ms Kawik's door. They advised us at the time and have since confirmed that she said that she was happy with the outcome of the works carried out."* Also, the tribunal was directed to an email from the property factors dated, 22nd February 2013. The email was sent to the homeowner, directly. The author of the email was the property factors' property manager, Alasdair MacDonald. The email read, *"I have finally had it confirmed by Key Trade that they have had the paint removed from your door."* Mr Balmer invited the tribunal to find that there were inconsistencies in the property factors' position.

17. The final section of the code which the homeowner alleged to have been breached by the property factors was section 7.2. Section 7 deals with how property factors should handle complaints. Section 7.2 provides:

"When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This Jetter should also provide details of how the homeowner may apply to the HOHP."

18. Mr Balmer referred to his submissions at the opening of the hearing and to the email from the property factors to the homeowner of 11h June 2013 which he had not had sight of until the day of the hearing. Mr Balmer accepted that the email read, *"If you remain unhappy with our final response you have the right to forward your complaint to the HOHP who will carry out their own practice of resolution."* Mr Balmer accepted that the property factors had directed the homeowner to the HOHP.

19. Mr Balmer accepted that the email from the property factors of 12th June 2013 read:

"If you wish to escalate your complaint please do so in writing to.

Timothy Lovat

Complaints Partner

Edzell Property

1008 Pollokshaws Road

Shawlands

Glasgow G41 2HG"

20. Mr Balmer accepted that this email directed the homeowner to the HOHP should she remain dissatisfied with her complaint. Mr Balmer accepted that the homeowner had received information of where she should escalate her complaint. Mr Balmer argued that the property factors ought to have directed him, as the homeowner's representative, to the HOHP. Mr Balmer conceded that he was an experienced legal representative of the Citizens' Advice Bureaux. He accepted that he had submitted an application to the HOHP on behalf of the homeowner. Mr Balmer conceded that there was a possibility that the property factors' might expect an experienced legal representative to be aware of the legal remedies available to a homeowner in a dispute with her property factors. He accepted that this could be an explanation for the property factors omission in directing him to the HOHP. However, Mr Balmer maintained his position that the property factors ought to have not only directed the homeowner but also the homeowner's representative to the HOHP.

Submissions of the property factors

21. Mr Lovat submitted that intimation of any issue on the part of the homeowner was made to the property factors in 2013. He referred to the various emails submitted on 17th November 2016 which the homeowner was content for the tribunal to consider in support of the homeowner's response to the application. Mr Lovat submitted that these emails demonstrated how the property factors had dealt with the issue internally and how they had communicated with the homeowner. The homeowner's "*problem*" as he described it, had come to the attention of Mr Lovat on 12th June 2013. Until

this date, Mr Lovat did not consider the issue raised by the homeowner to be a "complaint." Mr Lovat had addressed the complaint in his email to the homeowner of 12th June 2013. His position was that the email made clear that the property factors now considered the matter to be at an end. This email read:

"Dear Ms Kawik

I have spoken to your property manager and am satisfied that he has acted properly with regard to your queries. I have been copied into his response sent this morning including copies of emails sent regarding your initial queries.

If you wish to escalate your complaint please do so in writing to;

Timothy Lovat

Complaints Partner

Edzell Property Management

1008 Pollokshaws Road

Shawlands

Glasgow G41 2HG

This will result in an investigation of your complaint as per our complaints procedure. If you remain unhappy with our final response you have the right to forward your complaint to the HOHP who will carry out their own practice of resolution.

I would ask you to read the correspondence dated 5th March 2013 and 4th June 2013 from Mr Alastair MacDonald and ensure that your questions have not already been answered.

If you would like to come into our office to discuss this matter further in order to resolve this issue then please let me know and I will make suitable arrangements.

Regards"

22. Mr Lovat advised that his company ceased to factor the homeowner's property on 4th April 2014 when Redpath Bruce had become the property factors at the building. No evidence had been produced by the homeowner to support any damage to her front door, he submitted. The tribunal enquired if a representative from the property factors had or could have visited the homeowner's property to establish this for themselves. Mr Lovat's response was that he did not know if this had occurred but would have expected all of his property managers at that time to have visited the property to identify any damage. The homeowner submitted to the tribunal that she was sure that nobody from the property factors had attended her property to investigate the damage. Mr Lovat maintained that, in his response of 12th June 2013, he had concluded the complaint. Moreover, he had directed the homeowner to the HOHP. The relevant contact details for the HOHP were contained within the

23. Mr Lovat denied all allegations of the homeowner of the property factors having demonstrated delay in their responses to the homeowner. It was Mr Lovat's position that this allegation was irrelevant in any event as, by the time Mr Balmer became involved, Mr Lovat had concluded the complaint; that his company was no longer factoring the property; and that his company had done all that was required of it in terms of the Code of Conduct and the Property Factor's duties by directing the homeowner to the HOHP if she remained dissatisfied. Mr Lovat advised that he could see no issue with the timescales of the written responses referred to by Mr Balmer.

24. With regards to the alleged breach of section 5.4 of the code, Mr Lovat queried the specific breach which the homeowner was alleging. Mr Lovat advised that he had nothing to say in response to the allegation. He was satisfied that the property factors had procedures which satisfied all that was required by section 5.4 of the code. The property factors did not manage any claims. He could have understood if the homeowner was under the misunderstanding that the property factors were responsible for pursuing and managing insurance claims. However, it was Mr Lovat's position that the homeowner was clear in her understanding that responsibility for pursuing an insurance claim rested with her and she had pursued her claim, with success.

25. With regards to any breach of section 6.9 of the code, Mr Lovat claimed that no evidence had been produced to show any damage to the door having been caused by the property factors or their contractors. He claimed that, no longer factoring the property meant that the information available to him of what efforts (if any) were made by the property factors to pursue the contractors, was limited.
26. Finally, Mr Lovat disputed any allegation of a breach of section 7.2 of the code. Mr Lovat submitted that the complaint had been exhausted on 12th June 2013, at which point the homeowner had been directed to the HOHP. In response to Mr Balmer's earlier comment, Mr Lovat submitted that his email of 12th June 2013 was a "deadlock letter." As far as the property factors were concerned, the complaint was drawn to a conclusion on this date.

Final submissions

27. The tribunal chair invited the homeowner to make any final comments or submissions. The homeowner advised that she had lost a day's work to attend the hearing. The water ingress into her property continued for 2 weeks. The homeowner believed that the property factors had treated her unfairly. She did not understand why a representative from the property factors didn't attend her property when she reported damage in February 2013 to see the damage for themselves.
28. In response, Mr Lovat stated that this was an unfortunate set of circumstances but not the result of the property factors' making.

Findings in fact

29. That the homeowner is the heritable proprietor of the property at, Flat 2/1, 11 Aberfeldy Street, Glasgow, G31 3NS.
30. That the property factors were registered as property factors of the building in which the homeowner's property is located on 19th December 2012.
31. That the homeowner made a complaint to the property factors by email of 10th January 2013.

32. That the property factors were responsible for arranging and administering repair and maintenance of the common parts of the property at the date on which the homeowner made her complaint and continued in this responsibility until April 2014.

33. That the email from the homeowner dated 10th January 2013 (which was before the tribunal) was sent to Timothy Lovat of the property factor.

34. That the email of 10th January 2013 read

"I'm writing to you because contractors hired to re-decorate close damaged my front door. They dropped bucket of paint from the floor above and some of the paint splashed my front door. They removed the paint but there are marks left after scraping it of the door with knife or other sharp tools that damaged wood and varnish, also there is part of the door that became discoloured by chemicals used to remove the paint.

My front door has been completely renovated last year and expect your contractors to fix all damage they caused..."

35. That the property factors' managing director, Timothy Lovat, received intimation of the email on 10th January 2013.

36. That the evidence of Timothy Lovat before the tribunal was that he first became aware of the matter by email of 12th June 2013.

37. That the emails of 10th January and 12th June 2013 were contained in the papers produced by the property factors.

38. That the content of the email of 10th January 2013 was a complaint by the homeowner.

39. That an email was sent to the homeowner dated 4th June 2013 from the property factors' Alastair MacDonald which read:

"I refer to your recent emails of 30th May and 3rd June to my colleague Rhury Smith. With regards to the damage to your door caused by the painting contractor, I have spoken to them again about this matter and I have asked for a written response to your complaint by the end of this Week.

40. That the homeowner raised her complaint with the property factors on further occasions including by her email of 11th June 2013, addressed to the property factors' Rhury Smith.

41. That the homeowner's email of 11th June 2013 read :

"I will not pay until my complaint is taken care of Nobody so far contacted me regarding fixing my front door..."

42. That this email of 11th June 2013 from the homeowner was received by the property factors' Timothy Lovat who shared it with his colleagues by an email from him of 11th June 2013. The email read:

"Gents.

Please let me know who is handling this and what has and will be done.

I wish to be copied in to the email responses.

I do not want this going to the hohp!"

43. That the email of Timothy Lovat of 12th June 2013 provided a decision that the property factors found that their property manager had, "*acted properly*" in the complaint of the homeowner.

44. That the email of Timothy Lovat of 12th June 2013 used the phrase, "*final response*."

45. That the email of Timothy Lovat of 12th June 2013, provided details of the property factors' escalation policy should the homeowner be dissatisfied with their decision.

46. That, in doing so, the email of 12th June 2013 leaves the complaint unfinished

47. That the email from the property factors to the homeowner of 12th June 2013

48. That the email of Timothy Lovat of 12th June 2013 directed the homeowner to the HOHP should the homeowner remain dissatisfied with the "*final response*" of the property factors.

49. That the email of Timothy Lovat of 12th June 2013 failed to provide contact

50. That the contact details of the HOHP (including address, email address and telephone number) were within the property factors' written statement of services at the foot of page 9 under the heading, "*Edzell Property Management Complaints Procedure S7*."

51. That the homeowner brought an application before the HOHP with the advice of a legal representative.

52. That the property factors' written statement of services, at page 4, under the heading, "*Communications and Consultation*", section 5, reads:

"We aim to respond to enquiries and complaints received by letter or email within prompt timescales, and aim to keep you informed of the progress of matters and if we will require additional time to resolve.

53. That a copy of the written statement of services was before the tribunal.

54. That the property factors failed to address the damage to the homeowner's front door.

55. That the homeowner carried out works to the door to rectify the damage at a cost of £500.

56. That the property factors sent a cheque to the homeowner on, 10th October 2016 with a cheque for £500 to cover the cost which she had incurred.

57. That the homeowner's complaint of 10th January 2013 remained outstanding in June 2013.

58. That the property factors failed in their property factors' duties under section 17 of the Act; failed to satisfy the terms of their own written statement of services at section 2 (5) page 4 of their written statement of services and; failed to satisfy section 2.5 of the code.

59. That the homeowner made a successful claim against her insurance policy arranged by the property factors.
60. That details of arrangements with insurers and insurance brokers are contained within the property factors' written statement of services at section 5, page 6.
61. That the damage caused to the homeowner's kitchen from water ingress in or around April 2013, was made good.
62. That the homeowner had a policy excess of £350 deducted by her insurance company.
63. That there was no evidence before the tribunal that the property factors did not have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly.
64. That there is no evidence before the committee of a breach of section 5.4 of the code or the property factors' duties in this regard.
65. That the damage of paint splashes to the homeowner's front door was caused by the property factors' contractors.

66. That there was no evidence before the tribunal to suggest that the property factors had pursued their contractors to remedy the damage to the homeowner's front door.

67. That the tribunal finds that the property factors have failed to satisfy section 6.9 of the code.

68. That the damage to the door of the homeowner was addressed and the homeowner was fully compensated for her loss.

69. That, notwithstanding the breach of section 6.9 of the code by the property factors, the damage to the door has now been resolved.

70. That, at no point, had the property factors confirmed to the homeowner that their in-house complaints procedure was at an end.

71. That the property factors directed the homeowner to the HOHP in their email of 12th June 2013.

72. That the tribunal finds no evidence of a breach of section 7.2 of the code or the property factors' duties in this regard by the property factors.

Reasons for decision

73. The tribunal had before it an email dated 10th January 2013 from the homeowner to the property factors' Timothy Lovat. In this email the homeowner put the property factors on notice that damage had been caused

to the front door of her property by their contractors. The tribunal is satisfied that the email was a complaint and requested that the damage be addressed. Whilst the damage has now been resolved, the property factors failed to act upon the complaint timeously. There was no evidence before the committee that the property factors had visited the property or inspected the door themselves. The matter remained outstanding on 12th June 2013 when Timothy Lovat responded to the homeowner, by email. The content of that email was unclear. Reference was made to a "*final response*," but the email invited the homeowner to take matters forward by writing to Timothy Lovat should the homeowner wish to, "*escalate*" her complaint. Between 10th February and 12th June 2013 little had been done by the property factors to move matters forward for the homeowner. Her complaint remained outstanding. For these reasons the tribunal is satisfied that the property factors failed to satisfy the requirement of section 2.5 of the code.

74. Whilst there may be confusion for the homeowner in the way in which the insurance arrangements were administered and what the rebate received by the property factors was intended to cover, there is no evidence of a breach of section 5.4 of the code by the property factors. The tribunal recommends that the property factors ensure that their written statements are clear on insurance arrangements in the future.

75. The tribunal did not consider the property factors to have done enough to pursue their contractors for their inadequate service at the homeowner's property as required by section 6.9 of the code. However any damage has now been rectified and the homeowner accepts that she has been compensated for her financial loss.

76. Although there remained a dispute between the parties about whether or not the property factors had resolved the homeowner's complaint, it was accepted by the homeowner that she had been directed to the HOHP by the property factors and had made an application.

Proposed Property Factor Enforcement Order (PFEO)

77. The committee proposes the following Property Factor Enforcement Order (PFEO):

Within 28 days of notification of this order, the property factors must:

- **Must issue a written apology to the homeowner for their failure to comply with section 2.5 of the code of conduct and for their failure to meet the property factors duties as required by the Act.**
- **Make a payment to the homeowner of £100 in recognition of the inconvenience which the homeowner has experienced and by way of compensation for the failure to provide an adequate service between January and June 2013.**

78. Section 19 of the Act provides as follows:

"(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so-

- (a) give notice of the proposal to the property factor, and*
- (b) allow the parties an opportunity to make representations to them.*

(3) If the committee is satisfied, after taking account of any representations made under subsection 2(b) that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order."

79. The service of this decision to the parties should be taken as notice for the purposes of section 19(2) (a) and the parties are hereby given notice that they

should ensure that any written representations which they wish to make under section 19(2) (b) reach the tribunal's offices no later than 14 days after the date of service of this decision upon them. If no representations are received within that timescale, then the committee may proceed to make a property factor enforcement order without seeking further representations from the parties.

80. Failure to comply with a PFEO may have serious consequences and may constitute a criminal offence.

Appeal provisions

81. 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.

Simone Sweeney



Legal chairing member

AT GLASGOW ON 2 May 2017