

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision: Section 17 of the Property Factor (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors

Chamber Ref: FTS/HPC/PF/20/0931

Property at 3/1, 3 Albion Gate, Glasgow, G1 1HE (“the Property”)

The Parties:-

Dr Eileen Mills, Flat 3/1, 3 Albion Gate, Glasgow, G1 1HE (“the Applicant”)

Speirs Gumley Property Management, 270 Glasgow Road, Glasgow, G73 1UZ (“the Respondent”)

Tribunal Members:

Andrew Cowan, Solicitor (Legal Member)

**Andrew Murray (Surveyor Member)
(the Tribunal”)**

Background

The Tribunal considered an application by the Homeowner in relation to the Property Factor’s acting’s as a Property Factor for the Property. The application in in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2002 Act). The application alleges that the Respondent has failed to comply with parts of Section 1,2,3,6 and 7 of the 2012 version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”). It also states that the Homeowner considers that the Property Factor has not carried out the Property Factors duties in terms of the 2011 Act. The application was dated 13th March 2020 and the application was accompanied by a considerable number of documents prepared and submitted by the Homeowner.

Procedure and Hearing

1. At a hearing on 9th September 2020, the Tribunal sought to clarify the nature and extent of the Homeowners complaint. The Tribunal sought to establish from the Homeowner how she had complied with the requirement to notify the Property Factor in writing as to why the Homeowner considered the Property Factor had failed to carry out the Property Factors duties or to comply with the Code. At that hearing the Homeowner made reference to a letter dated 18th June 2019 to the Property Factor. That letter did not however specifically refer to those parts of the Code which the Homeowner considered the Property

Factor had failed to comply with. The Tribunal had been presented with a large file of a multitude of emails, photographs and reports by the Homeowner. These papers were not indexed or numbered and it was not possible (particularly in a conference call) to easily refer to any particular item or correspondence. Notwithstanding these difficulties the Tribunal noted that the Homeowner's primary complaint was that the Property Factor had delayed in progressing with procuring a contractor to complete works in relation to the roof and guttering at the property. Following discussion with parties, it was agreed to adjourn proceedings at that time as part of the Homeowner's complaint was an on-going matter and, if works were progressed at the Property, then the Homeowner's complaint may have been resolved. At that time the Tribunal accordingly adjourned proceedings to allow the Property Factor an opportunity to provide further information to the Homeowner in relation to proposed works at the property.

2. At a further hearing on 1st December 2020 the parties reconvened. At that time it was apparent that the Homeowner was not satisfied that the Property Factor had been able to progress necessary works at the Property. The Tribunal accordingly issued Directions to the parties. In particular the Tribunal directed that the Applicant was to resubmit her application and, in respect of each heading of complaint in that application, was to
 - a. Refer to the specific parts (or part) of the Property Factors Code of Conduct, or the Factors Duties with which the Applicant believes the Respondent has failed to comply, and
 - b. Give stated reasons for considering that the Respondent has failed to comply with either the Property Factors Code of Conduct, or the Factors Duties, and
 - c. Make reference to the specific documentation upon which the Applicant wishes to refer in support of each heading of complaint in the Application. All supporting documentation requires to be numbered in a manner which allows the Tribunal to identify the relevant document referred to, presented in a bundle, with an inventory of the documents presented.

The Property Factor was given a period of time in which to respond to the material lodged by the Homeowner.

3. Following an extension of time to allow the Homeowner to complete compliance with the Direction, the Homeowner lodged with the Tribunal a twenty three page written submission in which she referred to the various parts of the Code which she considered the Property Factor has failed to comply with. In relation to each part of the code she has attached various productions as evidence in support of her complaint. She lodged further productions. In total the Homeowner lodged over seven hundred pages of productions. Only some of the productions were actually referenced in the Homeowners amended Statement of Complaint.
4. The Property Factor lodged written submissions in response to the amended application and also lodged their own productions.

5. Following further Case Management Discussions and delays due to non-availability of parties, the Tribunal sought to hold a further case management hearing on 5th April 2022. At that time the Property Factor chose not to attend that hearing.
6. At the case management discussion on 5th April 2022 the Tribunal decided it would reach a decision based on the written material which had been lodged by parties.
7. Having considered all of the evidence available to the Tribunal, the Tribunal have made the following findings and facts.

The Tribunal make the following findings in fact:

- A. The Homeowner is the owner of the property situated at and known as Flat 3/1, 3 Albion Gate, Glasgow.
- B. The Property Factors are the Factors for the development known as Albion Gate, Glasgow.
- C. By letter dated 18th June 2019, the Homeowner raised complaints with the Property Factor in relation to the services of the Property Factor.
- D. The Property Factor has in place a written Statement of Services which complies with the Property Factors Code of Conduct.
- E. The Property Factor has not made false or misleading statements or communications to the Homeowner.
- F. The Property Factor has not fully responded to the written complaint of the Homeowner date 20th June 2019.
- G. The Property Factor has not responded to the Homeowners complaint dated 20th June 2019 within prompt timescales.
- H. The Property Factor has not informed the Homeowner where the Property Factor might reasonably have sought additional time to respond to the complaint raised by the Homeowner.
- I. The Property Factors have complied in general with Section 3 of the Code of Conduct for Property Factors (Financial Obligation).
- J. The Property Factor has a written complaints resolution procedure which sets out steps and timescales within which they intend to deal with written complaints. In that respect the Property Factor has not failed to comply with Section 7 of the Code (Complaints Resolution).

Reasons for Decision

Complaint under Section 1 of the Code

8. The homeowner has raised a number of complaints in relation to the Property Factor's written Statement of Services. In summary she complains that a written Statement of Services was only produced by the Property Factor to the Homeowner 9 weeks after she asked for it. She further complains that the complaints procedure which forms part of the Statement of Services does not

confirm how she should make a complaint and in particular does not reference where to seek the availability of an applications form. She further complains that the Property Factor has not dealt with a complaint which she made, dated 18th June 2019, in accordance with the complaints procedure which forms part of the written Statement of Services.

9. In all of these matters in relation to the Property Factor's written Statement of Services, the Homeowner has complained to the Tribunal with reference to Section 1 (Written Statement of Services) Paragraph D (Communications Arrangements) of the Code.
10. The Code of Conduct for Property Factors provides that "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 arrangements in place between you and the homeowner."
11. It further provides that the written Statement of Services must be available to all homeowners and it further provides certain information which all written Statement of Services must set out.
12. The Homeowner has accepted in her own submissions that 'as at the date of raising the Application to this Tribunal, she has had sight of a written Statement of Services from the Property Factor.
13. The Tribunal have reviewed the terms of the written Statement of Services and are satisfied that the terms of that written Statement of Services complies with Section 1 of the Code.
14. The issues raised by the Homeowner under this part of her application specifically relate to communication arrangements, and in particular the failure of the Landlord to properly communicate and consult with the Homeowner in relation to the operation of their complaints procedure. These matters are matters which can be dealt with under Section 2 of the Code (Communication and Consultation). The homeowner's application includes a separate complaint to the Tribunal under that section. The Tribunal's decision in relation to that part of the Application is considered elsewhere in this written decision.
15. The Tribunal are satisfied that a suitable written Statement of Services is available to the homeowner from the Property Factor that is compliant with Section 1 of the Code of Conduct for Property Factors. Accordingly, there is no breach by the Property Factor of Section 1 of the Code of Conduct in relation to this matter.

Complaint under Section 2 of the Code (Communication and Consultation)

16. The Homeowner maintains in her application that the Property Factor breaches certain parts of Section 2 of the Code of Conduct in relation to communication and consultation. The relevant parts of the Code of Conduct to which the homeowner refer are:

“2.1 You must not provide information which is misleading or false.” and;

“2.5 You 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 as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement”

17. The homeowner maintains that the Property Factor has provided information which is misleading or false. In an extensive written submission she has produced evidence of a written requests where she has sought information or responses to emails and where the Property Factor has allegedly failed to respond, or has failed to adequately respond in full, to the terms of her requests.

18. In response to the averments of the homeowner, the Property Factor has stated that;

“We have responded to all communications from the owner and have endeavoured to provide relevant information and progress matters in order to resolve the owners’ concerns. We have responded to the client by telephone, in writing and have also met onsite.”

19. In reaching a decision as to whether the Property Factor has complied with paragraph 2.1 of the Code the Tribunal have considered whether there is evidence to support a finding that the Property Factor has provided information which is misleading or false. The Tribunal consider that, in order for there to be a failure to comply with paragraph 2.1 of the Code, it would be necessary for the Factor deliberately attempted to mislead or to lie or to have failed to take reasonable care from providing information to the Homeowner. Whilst the Tribunal recognise that there may have been a number of times that the Property Factor has failed to fully respond to matters raised by the Homeowner there is no evidence to support the contention that correspondence or communication from the Property Factor meets those cr.

20. The Tribunal are satisfied that it is important to make a distinction between the actions of a Property Factor whose communication is poor and those who deliberately provide false or misleading information. The Tribunal are satisfied that there is no evidence that the Property Factor provided information which is misleading or false and that there is no breach of paragraph 2.1 of the Code.

21. In considering whether the Property Factor has complied with paragraph 2.5 of the Code, the Tribunal require to consider whether the Property Factor has responded to enquiries and complaints made by the Homeowner within prompt timescales. The code confirms the overall aim for Property Factors should be to deal with such enquiries as quickly and as fully as possible and to keep homeowners informed if additional time is required. The Property Factors' written statement of services provides that they will respond to any complaint within 7 working days confirming a timescale for resolution and that they will investigate the complaint and endeavour to resolve it within 28 days.
22. The Tribunal are satisfied that the Property Factor has failed to fully respond to the Homeowner within prompt timescales. The Property Factor has further failed to keep the Homeowner informed where they required additional time to respond.
23. The main subjects of the Homeowner's complaint relate to, what the Homeowner considers to be, an unreasonable delay in addressing issues with the building in which the Homeowners flat is situated. In particular the Homeowner has concerns that a failure by the Property Factor to investigate and instruct necessary repairs to guttering at the building has led to a deterioration in the fabric of the building and dampness within the Homeowner's property. The Homeowner has repeatedly raised a number of concerns with the Property Factor in relation to these issues. The Homeowner has repeatedly expressed concern in relation to, what she considers to be, delay on the part of the Property Factors to take forward necessary action to resolve the Homeowner's concerns.
24. By letter dated 18 June 2019, addressed to Mr Brian McManus a Director at the Property Factor, the Homeowner made a formal complaint to the Property Factor. She expressed concern regarding the quality of certain inspections which have been carried out at the property; she sent photographs of dampness at the property; she expressed concern that there may be further damage caused at the property caused by problems with the roof; and she requested that action was taken to have these issues resolved.
25. The Property Factor acknowledged the Homeowners written complaint of 18th June 2019 by email dated 20th June 2019. The Property Factor indicated that they considered the best way to resolve the issue was to meet the Homeowner at the property.
26. At no time has the Property Factor provided, in writing, a detailed response to the Homeowners complaint. They have not set out the specific actions they proposed to take in relation to the complaint raised by the Homeowner, nor have they given any expected timescales to complete any such necessary actions. The issues raised by the Homeowner would require inspection by the Property Factor and would probably require costs to be obtained (through a tender process). They would also require the consent of other owners in the

building, who would require to pay their share of the necessary costs. These are all matters which may have caused reason for the Property Factor to delay in responding to the Homeowners complaint. The Property Factor did not however fully and reasonably keep the Homeowner informed if they required additional time to respond (as required by the Code of Conduct).

27. The Homeowner has provided an extensive file of correspondence where she has sought answers to reasonable questions in relation to the Property Factors' actions to deal with issues the Homeowner has raised in relation to the property. Whilst it is clear that the Homeowner has asked a large number of questions and sought to challenge some of the decisions made by the Property Factor, the Property Factor has failed to fully respond to the reasonable requests of the Homeowner for further information. Some of the Homeowners requests are simply acknowledged with no substantive response. Other requests are partially responded to, but supporting reports which have been requested have not been provided. In an email of 5th June 2019 from the Homeowner to the Property Factor the Homeowner highlights six emails which the Homeowner has previously sent to the Property Factor in which she has been reporting her concerns regarding the fabric of the building, the guttering and dampness within her property. She has requested updates on reports which had been made available to the Property Factor in relation to these issues and has also asked for copies of professional reports which are being prepared. The Homeowner did not receive a full or substantive response to these requests for information.
28. In an email of 18th September 2020 the Homeowner set out extensive detailed information which she requested from the Property Factor. The Homeowner maintains that she has not been given that information, nor has she been given any updates to when she can expect to receive such information.
29. By email dated 30th September 2019 the Homeowner wrote again to the Property Factor seeking an update in the Factors proposal in relation to addressing issues at the property.
30. By email on 1st October 2019, Mr Ian Friels (an employee of the Property Factor) confirmed that he has been asked to respond to the Homeowner's request and that "major repairs are being muted" but no substantive response is given in terms of what actions were proposed and within which timescales.
31. In summary the evidence provided by the Homeowner supports her contention that enquiries and complaints raised by her have not been dealt with within prompt timescales. The Homeowner has not been kept informed when further additional time was required by the Property Factor to respond.
32. In their written submission the Property Factor states that they consider they have replied within prompt timescales to communications received from the client. They make reference to the significant volume of correspondence

provided by the Homeowner and that if there are any specific communications that the Homeowner feels have not been responded to within timescales they have requested that these are highlighted to the Property Factor to allow them to respond.

33. The Tribunal are satisfied that the Property Factor has not adequately dealt with enquiries and complaints received by the Homeowner. They have not been dealt with within prompt timescales and have not been dealt with as quickly and as fully as possible. The Homeowner has not been informed where the Property Factor might reasonably have sought additional time to respond.
34. In her written submission the Homeowner has set out a number of instances where she considers that the Property Factor fully responded to the issues which she has raised. Issues raised by the Homeowner cannot be considered to be dealt with simply if they are acknowledged by the Property Factor without any substantial detail as to action they intend to take.
35. The Homeowner has not received full answers to questions asked and has not been regularly and clearly updated on the Property Factors plans to address the issues with the building. It is evident to the Tribunal that whilst the Property Factor has endeavoured to take action, they have not regularly kept the Homeowner updated on their plan.
36. In all of the circumstances therefore the Tribunal are satisfied that the Property Factor has failed to comply with Section 2.5 of the Code in relation to these matters.

Complaint under Section 3 of the Code (Financial Obligations)

37. The Homeowner has made a complaint that the Property Factor has failed to comply with Section 3 of the Code (Financial Obligations).
38. The provisions of Section 3 of the Code state that "Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved."
39. The Homeowner firstly complains in relation to a charge, which was included in an account issued by the Property Factor on 12th August, for attending to a reported leak at a cost of £81.60. The Property Factor apportioned this charge amongst the owners of the eight flats in the block in which the property is situated.
40. The Homeowner maintains that the accounts issued by the Property Factor in relation to this work should not have apportioned between all eight owners of the flats in the building. The Homeowner is of the view that she is solely responsible for that particular cost as she reported the work which solely

related to her property and was not in relation to any common parts of the building.

41. The Tribunal are of the view that the Code is designed to ensure that Property Factors remain accountable for the financial transactions they conduct on behalf of Homeowners. The Tribunal consider that it is not intended that an error made by the Property Factors should be seen as a failure to comply with this part of the Code. The Tribunal do not consider that the Factors apportionment of this particular account to all the Homeowners in the block is a breach of the financial obligations of the code. That said, it would be prudent for the Property Factor to revisit this particular charge and, if satisfied that it does not relate to common property, ensure that it is now appropriately solely charged to the Homeowner and that other appropriate account amendments are made.
42. The second part of the Homeowners complaint in relation to this part of the Code relates to certain charges which the Property Factor indicated in a letter of 7 January 2020 they planned to make to all the Homeowners in the block in relation to surveys which had been carried out in the property. In the event that those charges were not made and there cannot therefore be a breach of the financial obligations in this respect. The Homeowner further complains that requests for reports and explanations as to the detail of certain charges has not been provided. These matters relate to a potential failure by the Property Factor to provide information and to communicate and these matters have been dealt with under the complaints made by the Homeowner under Section 2 of the Code (Communication and Consultation).
43. The Tribunal do not consider that there is evidence to support a failure by the Property Factor to comply with Section 3 of the Code.

Complaint under Section 6 of the Code (carrying out repairs and maintenance)

44. The Homeowner complains that the Property Factor has failed to comply with parts 6.1, 6.2, 6.3, 6.4, 6.6 and 6.9 of Section 6 of the Code (Carrying out Repairs and Maintenance). The relevant sections of the Code are as follows:
 - “6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.
 - 6.2 If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs wherever possible.

- 6.3 On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.
- 6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.
- 6.6 If applicable, documentation relating to any tendering process (excluding and commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.
- 6.9 You 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. “

45. Paragraph 6.1 requires the Property Factor to have in place procedures to allow homeowners to notify them of matters which require repair, maintenance or attention. It further requires the Property Factor inform homeowners of the progress of work including estimated timescales for completion (unless agreed otherwise).

46. The Homeowner complains that she has not been informed of progress in relation to work to replace the gutters at the property. She further contends that there had been significant delay in assessing the requirement for work and obtaining the necessary tenders for required works. The Homeowner's complaints relate to the Factors' efforts to put in arrangements for work to be carried out at the property. Until those initial reports are complete, the Factors will not be in a position to accept a tender and thereafter advise the Homeowners of the progress of the work. Whilst there has been a considerable delay by the Factors in obtaining the necessary tenders for works to the property, some of this delay may be attributable to the recent difficulties in securing tradesmen and the recent Covid pandemic. The Factors have in place procedures which allowed them to be notified of matters requiring repair and there is evidence that the Factors have informed homeowners as they have progressed the necessary work to instruct consultants and contractors and to agree a price in relation to those necessary works. In particular the Tribunal have had sight of letters from the Factors to the owners of the properties dated :

- a. 17th October 2019
- b. 3rd December 2019
- c. 7th January 202
- d. 9th April 2020
- e. 28th June 2020 and
- f. 3rd August 2020.

This correspondence from the Property Factors to the Homeowners at the development within which the property is situated does inform the Homeowner of the steps the Property Factor is taking to progress necessary works. By August 2020 the Property Factor has indicated that they are in a position to instruct the works by December 2020 (although the Tribunal understand that there were then further delays in the work starting). Whilst (a) the assessment of the work required, (b) the instruction of the work and (c) the commencement of the works have taken a considerable length of time the Tribunal are satisfied that the Property Factor has not failed to comply with Section 6.1 of the code. The Property Factor has procedures to allow homeowners to notify of matters requiring repair, maintenance or attention. The Property Factor has informed the Homeowners of the progress of this work, including estimated timescales for completion.

47. The Tribunal do not consider there has been a failure by the Property Factor to comply with Section 6.1 of the Code.
48. Section 6.2 of the Code requires the Factor to put in place the procedures for dealing with emergencies if such emergency arrangements are part of the service provided to the homeowners. The Property Factors Statement of Services include details of arrangements which homeowners must follow in the event that they have an out-of-hours emergency.
49. In her application the Homeowner makes reference to a request for "high priority" attention to be given to issues regarding tiles falling off her kitchen wall. The Tribunal do not consider that such issues fall within the definition of an emergency. The Tribunal do not consider there to have been a breach of the code by the Property Factor in relation to section 6.2 of the Code.
50. Section 6.3 of the Code requires the Property Factor to show how and why they have appointed contractors, including cases where the Property Factor has decided not to carry out a competitive tendering exercise or use in-house staff
51. The Homeowner complains that the Property Factor did not carry out a tendering exercise when they appointed Northwest Roofing Contractors to carry out certain works to the roof of the property. The Tribunal have not seen any request by the Homeowner to the Factor to show how and why they appointed those contractors. Section 6.3 of the code requires the Property Factor to give reasons only when such a request has been made. In any case the Tribunal note that the Property Factor was not satisfied with the work carried out by Northwest roofing contractors. Northwest roofing contractors were not paid for the work carried out. The Property Factor had initially apportioned the cost of the cost of the work carried out by Northwest amongst affected homeowners in the development. As a consequence of the fact that Northwest were not paid for this work all affected owners accounts were adjusted to remove this cost from their accounts. The Homeowner was not

therefore ultimately charged for the work carried out by Northwest roofing contractor.

52. The Tribunal do not consider that there was a breach by the Property Factor in relation to Section 6.3 of the Code.
53. Section 6.4 of the Code provides that where the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then the Property Factor must prepare a programme of works. The Property Factors Statement of Services provides for inspections to be carried out at the property. It indicates that such inspections will be carried out four times annually. The Homeowner accepts that periodic property inspections had been carried out by the Factor but complains that she has not had sight of any planned programme of works being undertaken as a result of those inspections. The fact the Homeowner is not aware of this does not in itself mean that no such programme of works has not been prepared. There is no evidence to support the contention that the Property Factor has failed to fully comply with the terms of paragraph 6.4 of the Code.
54. The Tribunal do not accept that there has been a failure by the Property Factor to comply with Paragraph 6.4 of the Code.
55. Paragraph 6.6 of the Code requires that the Property Factor requires to make available documentation relating to any tendering process. The Homeowner accepts that documentation in relation to a recent tender exercise to carry out works to the roof and guttering of the property has been provided to her. The Homeowner has challenged, however, some of the specific detail of the tender and in particular the size and type of gutter that it is proposed to use in terms of the tendered works. The Homeowners challenge in this regard does not mean that the Property Factor has failed to comply with Section 6.6 of the Code. The Property Factor has as requested provided the Homeowner with documentation relating to the tender process. That is in compliance with the Code.
56. The Tribunal do not accept that the Property Factor has failed to comply with Section 6.6 of the Code.
57. The Homeowner maintains that the Property Factor has failed to comply with Section 6.9 of the Code which provides that the Property Factor must pursue a contractor to remedy defects in any inadequate work or service provided. The Homeowner does not however suggest that the Factor should have pursued this particular contractor to remedy any defect. The Property Factor arranged for the reimbursement of the cost of this particular contractor. In those circumstances it would not be appropriate to pursue that contractor to remedy defects. The Tribunal do not consider that there has been a breach of Section 6.9 of the Code in relation to this matter.

Complaint under Section 7 of the Code (Complaints Resolution)

58. The Homeowner complains that the Property Factor has failed to comply with Section 7 of the Code (Complaints Resolution). In general, this matter has already been addressed in this decision in the section which addressed the Homeowners complaints under Section 2 (Communication and Consultation) of the Code. The Tribunal are satisfied that the Property Factor has a written complaints resolution procedure which sets out a series of steps with reasonable timescales and that these are set out in the written statement.

Complaint that the Property Factor has not carried out the Property Factors' duties

59. The application states that the Homeowner considers that the Property Factor has not carried out the Property Factors duties in terms of the 2011 Act. The Homeowner has not identified or specified any such failure within her application. The Tribunal do not consider there has been a failure of the Property Factor to carry out the Property Factors' duties.

General

60. The Homeowner was invited to set out how she would wish to see her complaint to the Tribunal resolved. In answer to that question the Homeowner wished the Tribunal to instruct the Factor to arrange gutter replacements, to provide clarity about different tiles, to arrange attendance of contractors, to arrange assessments of brickwork, to require the Property Factor to meet the cost of necessary repairs to the brickwork and to account for taking ownership of work. All of these issues are out with the jurisdiction of the Tribunal. The Tribunal's role and function is to determine whether the actions of the Property Factor comply with the Code of Conduct. The Tribunal's decision in relation to these matters are referred to above.

Disposal

61. The tribunal considered what the appropriate disposal should be.

The Law

Property Factors (Scotland) Act 2011

Section 19 Determination by the First-tier Tribunal

(1) The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide—

(a) whether 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, and

- (b) if so, whether to make a property factor enforcement order.
- (2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it 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 it.

62. Since the tribunal had found that the Respondent had failed to comply with Section 2.5 of the Code, it required to consider whether to make a property factor enforcement order.

63. In considering the terms of the PFEO, the Tribunal took into account the distress, frustration and inconvenience caused to the Homeowner by the Property Factor's failure to comply with the Code.

64. There had been non-compliance with the Code and the tribunal proposes to make a property factor enforcement order requiring that the Respondent pays the sum of £300 to the Applicant as compensation in respect of its non-compliance. It resolved to issue a proposed property factor enforcement order which would be sent to the parties.

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.

Legal Member and Chair

15/02/2023

Date