

Housing and Property Chamber

First-tier Tribunal for Scotland



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/18/3124

**Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
("the Property")**

The Parties:-

**Eric Hamilton, Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
("the Applicant")**

**(1) YourPlace Property Management Limited, (company number SC245072)
(formerly known as GHA (Management) Limited, Wheatley House, 25 Cochrane
Street, Glasgow G1 1HL
("the First Respondent")**

**(2) Wheatley Homes Glasgow Limited, (Company number SP2572RS) (formerly
known as The Glasgow Housing Association Limited), Wheatley House, 25
Cochrane Street, Glasgow G1 1HL
("the Second Respondent")**

**Tribunal Members:
Graham Harding (Legal Member)
Mike Scott (Ordinary Member)**

DECISION

The Second Respondent has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections 2.1 and 2.2 of the Code

The decision is unanimous

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

Background

1. By application dated 19 November 2018 the Applicant complained to the Tribunal that the First Respondent was in breach of Sections 1.1b, 1.1d, 1.1C(g), 1.1d(L, M, N), 1.1c, e, 2.1, 2.2, 2.5, 3.3, 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, 4.8, 4.9, 7.1, 7.2, 7.4 and 7.5 of the Code and had also failed to carry out its property factor's duties. More specifically the Applicant complained that the first Respondent had failed to carry out stair cleaning and back court services at the Applicant's block throughout the period they had factored the property and were unable to provide receipts for the services paid for over the previous four years. The Applicant also complained that he had been taken to the small claims court for unpaid factoring fees despite advising the First Respondents that the fees were being withheld until the issues complained about were resolved. The Applicant also complained that the First Respondents had disclosed personal information to a third party without consent.
2. The Applicant submitted substantial copy documentation in support of his claim including prints of his contact history with the First Respondents over the course of 2018 together with earlier correspondence with the Second Respondents and Glasgow City Council.
3. By Notice of Acceptance dated 22 November 2018 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned to take place on 18 January 2019.
4. By letter dated 14 December 2018 the Applicant submitted further written representations.
5. In light of the representations received from the Applicant a Tribunal issued Directions to the Applicant and First Respondents dated 14 December 2018.
6. By letter dated 21 December 2018 the First Respondents submitted written representations and an Inventory of Productions in response to the Applicant's complaint.
7. By Direction dated 21 December 2018 a Tribunal refused the Applicant's request for a postponement of the hearing assigned for 18 January 2019 and gave notice to the Applicant that the application did not include any stage 1 or fresh complaints made to the Respondents after 31 August 2018 and allowed the Applicant further time to lodge written representations by 9 January 2019.
8. By letter dated 20 December 2018 the Applicant responded to the Tribunal's directions.
9. By email dated 4 January 2019 the first Respondent's representative, David Adams, Senior Solicitor, Wheatley Group submitted a response to the previous Tribunal's Direction No 1.
10. By Direction No 3 dated 14 January 2019 the previous Tribunal issued directions to the Respondents to provide full copies of both the first

Respondent's complaints policy and leaflet referred to on page 14 of their document headed "Our factoring services everything you need to know".

11. By email dated 16 January 2019 Mr Adams provided documents in response to Direction No 3.
12. A hearing was held at Glasgow Tribunals Centre on 18 January 2019. The Tribunal adjourned the hearing as the Applicant had not received the Respondents written representations. The Tribunal issued a further Direction No 4 in light of the First Respondents written representations being incomplete and their submissions that they were not the factors of the tenement of which the property forms part despite having provided a written statement of services to the Applicant.
13. A further hearing was assigned to take place on 19 March 2019.
14. By letter dated 11 February 2019 the First Respondents submitted further written representations and a further Inventory of Productions in response to direction no 4.
15. A hearing was held on 19 March 2019 before the previous Tribunal. The hearing was adjourned after allowing the application to be amended to add the Second Respondents as the party against whom the complaint and remedies in the application are sought by the Applicant. The first Respondents were absolved from the complaint but reserved any possible claim for expenses against them. The Applicant was excluded from presenting submissions or questioning witnesses in person at any future hearing.
16. The previous Tribunal issued a further direction to the Respondents requesting they provide written authorisation for Mr Adams and Susan Mackie to represent them at the hearing.
17. By letters dated 10 April 2019 the Applicant stated he wished to appeal the previous Tribunal's decision of 19 March 2019 on the grounds it was unfair.
18. By letter dated 15 April 2019 the Respondents submitted written authorisation in compliance with Direction No 5.
19. By decision dated 9 May 2019 the previous Tribunal refused the Applicant permission to appeal to the Upper Tribunal.
20. By direction No 6 dated 8 July 2019 the previous Tribunal directed the Respondents to provide further written authorisation.
21. A further hearing was assigned to take place on 4 September 2019.
22. By email dated 29 July 2019 the Respondents submitted a response to direction No 6.

23. By letters dated 31 July 2019 the Applicant sought an extension of time for appealing the Tribunal's decision of 19 March 2019.
24. By letter dated 20 August 2019 the Respondents advised the previous Tribunal that they understood the Applicant had not obtained representation and as he was excluded from the proceedings they were content to rely on their written submissions and did not intend to attend the hearing on 4 September 2019.
25. By letter dated 20 August 2019 the Homeowner requested a postponement of the hearing assigned for 4 September 2019.
26. By email dated 28 August 2019 the Respondents advised they had no objection to the hearing being postponed.
27. By its decision dated 2 September the previous Tribunal postponed the hearing assigned for 4 September 2019 and a further hearing was assigned to take place on 4 November 2019.
28. By letter received on 11 October 2019 the Applicant requested that at any future hearing the Chairperson of the Tribunal be changed.
29. By application dated 8 October 2019 the Applicant requested the hearing assigned for 4 November 2019 be postponed.
30. By application dated 17 October 2019 the Applicant submitted an application to the Upper Tribunal for permission to appeal the previous Tribunal's decision of 19 March 2019.
31. By Direction No 7 dated 28 October 2019 the previous Tribunal postponed the hearing assigned for 4 November 2019 to await the decision of the Upper Tribunal.
32. By decision dated 6 December 2019 the Upper Tribunal refused the Applicants application for permission to appeal.
33. The Applicant subsequently requested the Upper Tribunal reconsider its decision and an oral hearing was assigned to take place on 3 March 2020. The Upper Tribunal granted permission to appeal.
34. By its decision of 8 September 2020, the Upper Tribunal set aside the decision of the previous Tribunal and remitted the case back to the First-tier Tribunal to hear the case before a differently constituted Tribunal.
35. A hearing assigned for 30 October 2020 was adjourned at the request of the Applicant in his letter of 15 October 2020.
36. The Tribunal issued directions to the Applicant dated 12 November 2020.

37. The Applicant by letter dated 19 January 2021 submitted a response to the Tribunal's direction of 12 November 2020.
38. By letter dated 25 January 2021 the Applicant requested a postponement of the hearing assigned for 26 February 2021 and the request was granted by the Tribunal.
39. A further hearing assigned for 26 February 2021 was also postponed at the request of the Applicant.
40. Subsequent hearings proposed to take place by video link were postponed at the request of the Applicant who wished to wait until in-person hearings could take place following the Covid pandemic.
41. An in-person hearing assigned for 27 June 2022 was postponed as the Applicant was ill.
42. By email dated 23 June the Respondents submitted further written representations with regard to the status of the First Respondents.
43. By letters dated 27 and 28 June 2022 the Applicant submitted further written representations to the Tribunal.
44. By email dated 29 July 2022 the Respondents submitted further written representations to the Tribunal.
45. The hearing scheduled to take place on 19 September 2022 was postponed due to the funeral of H.M. Queen Elizabeth II. A further hearing was assigned to take place on 25 November 2022.
46. The Applicant submitted further productions on 1 and 17 November 2022

Hearing

47. A hearing was held at Glasgow Tribunals Centre on 25 November 2022. The Applicant attended in person supported by his brother, John Hamilton who was also a witness. The Respondents were represented by Mr David Adams and Mrs Vicky Aitken who was also a witness.
48. By way of a preliminary matter the Tribunal sought to clarify the position of the status of the First Respondent. Mr Adams suggested that they had been absolved of any responsibility by the previous Tribunal however as the Upper Tribunal had set aside the decision of the previous Tribunal the Tribunal considered it should make a fresh determination of the matter. The Tribunal noted that YourPlace Property Management Limited ("YPPM") was no longer trading and would have been dissolved and struck off the Register of Companies but for the present application. The Tribunal also noted that as had been previously submitted YPPM was the agent of the Factor who had previously been The Glasgow Housing Association Limited ("GHA") but had

by resolution changed its name to Wheatley Homes Glasgow Limited. Mr Adams referred the Tribunal to the Respondents Productions number 11 and to the note at the foot of the Common Charge Account addressed to the Applicant and dated 01/01/201A. Mr Adams submitted that this showed that YPPM carried out factoring management services for The Glasgow Housing Association who were the Applicant's actual factors. YPPM were therefore acting for a disclosed principal under the Law of Agency. For his part the Applicant explained that he was a lay person and did not understand the law but that YPPM had held themselves out as being his Factor.

49. There was some discussion as to how GHA had been appointed as Factor and Mr Adams referred the Tribunal to the Respondents Production 15/1 which was a Deed of Appointment by Glasgow City Council appointing GHA as factor over a number of properties including the Applicant's. The Applicant and his brother expressed their concern about the way in which the GHA and associated companies could change their name and they said use their charitable status for data protection enquiries.
50. Having considered the preliminary point the Tribunal was satisfied that although it was understandable that the Applicant would have thought that YPPM was indeed the Factor they were in fact acting as agents for what was then The Glasgow Housing Association Limited and is now by virtue of a resolution to change its name Wheatley Homes Glasgow Limited. The Tribunal therefore allowed the First Respondents to be absolved from the Applicant's claim.
51. The Tribunal then considered a second preliminary matter as the Applicant had submitted a substantial amount of documentation that related to complaints against the Respondent's conduct occurring after the date of the application.
52. The Tribunal explained to the Applicant that it only had jurisdiction to deal with the matters specifically raised in the application dated 19 November 2018 and could not look at matters beyond that. The Applicant queried if that meant he would have to make a further application to the Housing and Property Chamber and the Tribunal explained that would be a matter for him to decide.

Summary of submissions

Section 1 of the Code

53. The Applicant submitted that he had never been provided with Written Statement of Services until March 2019. He disputed Mrs Aitken's suggestion that he would have been sent a copy following his purchase of the property in 2014. However, after some further discussion the Applicant agreed to withdraw his complaints as regards the breaches of Section 1 of the Code.

Section 2.1 of the Code

54. The Applicant referred the Tribunal to the documents supporting his application. He submitted that despite the assurances provided by the Respondents that stair cleaning services had been carried out it remained his position that the cleaning had frequently not been done when it had been said to be done and that on occasion when it had been done it had not been done to an acceptable standard. The Applicant also made reference to there being a lack of cyclical maintenance with gutters being blocked and nothing being done about it. The Tribunal queried how this fell into providing false or misleading information and the submission may be more relevant in respect of another alleged breach of the Code. The Applicant went on to say that he was disputing payment of the Respondents management fee as he did not consider they were doing any management.
55. For the Respondents Mrs Mackie confirmed that the stair cleaning was carried out by in-house cleaners. They were all GHA employees. She went on to say that the Applicant's complaints had been investigated by Susan Mackie and it had been confirmed that the stair cleaning had been done. She said that each time the Applicant had made a complaint it was investigated. She said a business adviser would contact the environmental team. She said occasionally there may have been weather issues and the cleaning would have been done the following day. She explained that the close cleaning staff sign off once the cleaning has been completed and a team leader checks that the work has been done. She said that no issues with the cleaning at the Applicant's block had been identified but if there had been the Applicant would have received a credit back to his account.
56. Mr Adams queried with Mrs Aitken if enquiries were made with the Applicant's neighbours and Mrs Aitken confirmed that no written complaints had been received from any neighbours. The Applicant said that tenants in the block had complained to the Respondents.

Section 2.2 of the Code

57. For the Applicant Mr John Hamilton submitted that the cleaners did not use water to clean the stairs just brushes and that following any complaints about the service being made the cleaners would bang their brushes on the Applicant's door and walls. Mr Hamilton said he was scared of the cleaners. The Applicant confirmed that this behaviour had occurred and he had complained to the Respondents. For the Respondent Mrs Aitken said that a colleague Ian Black had investigated and interviewed the employees and had apologised for any disturbance caused. Mrs Aitken referred to the response dated 18 October 201 (Respondents Production 3).

Section 2.5 of the Code

58. Mrs Aitken said that there had been 12 stage one complaints by the Applicant all of which had been escalated to stage 2. There had also been a further 21 enquiries. She acknowledged that not all enquiries had been complied with

within the five-day timescale but that all complaints had been dealt with within the timescales allowed. The Applicant did not dispute this to any significant extent. He emphasised that his issue with the Respondents was with regards to their failure to carry out the stair cleaning whilst continuing to charge him for the service.

Section 3.3 of the Code

59. Mrs Aitken advised the Tribunal that all owners were issued with quarterly charges statements and also quarterly with any common repair accounts. In addition, owners were provided annually with an estimate of expenditure for the year. Mrs Aitken referred the Tribunal to the Respondents Productions No 12, 13 and 14. The Applicant did not dispute that this was the case.

Section 4.1 of the Code

60. The Applicant explained that he had withheld payments as he was not satisfied with the services being carried out by the Respondents particularly with regards to the stair cleaning. As a result, he had been threatened with debt recovery procedures. He was of the view that the Respondents ought not to have taken debt recovery action against him when they were aware that the debt was disputed. He said he had been unaware of the Respondents written procedures and had not been provided with these. For the Respondents, Mrs Aitken said that the procedures were available on the website. She said that after a bill was issued a reminder was sent if it remained unpaid after 30 days. If it was still unpaid after a further 7 days a second reminder was sent and if still unpaid the owner received a debt recovery call from an agent before the debt was referred for court procedure. Mrs Aitken referred the Tribunal to the Respondents Written Statement of Services at page 25.

Section 4.3 of the Code

61. Mrs Aitken said that as at 1 January 2018 the Applicant's account had a debit balance of £963.74. She went on to say that the Respondents did not apply late payment charges or interest to unpaid accounts.

Section 4.5 of the Code

62. Mrs Aitken reiterated the procedures that were in place for monitoring payments from homeowners.

Section 4.6 of the Code

63. Mrs Aitken confirmed that the Respondents did not distribute debts across other properties.

Section 4.7 of the Code

64. Mrs Aitken confirmed the Respondents do not pursue other owners for unpaid debts.

Section 4.8 of the Code

65. Mrs Aitken said that the Applicant's complaints had been investigated and no adjustment had been made to the outstanding debt before court proceedings had been raised against the Applicant. The Tribunal queried the position with regards to the back court maintenance. Mrs Aitken said that as far as she was aware this had not been raised by the Applicant until after the court action had been raised and once it was established that the Applicant should not have been charged for the service his account had been credited and the sum claimed amended. Mr Adams confirmed this was the case. For his part the Applicant submitted that he had already made an application to the Tribunal before the court proceedings were raised and that the Respondents were wrong to have pursued him through the court. He said that he had appeared at a Tribunal hearing on 19 March 2018. The Tribunal pointed out that the hearing had in fact taken place on 19 March 2019. Mr Adams confirmed the court proceedings had been raised in February 2018.

Section 4.9 of the Code

66. Mr Hamilton said that he had felt threatened and intimidated by the Respondents employees' behaviour however the Tribunal explained that this section of the Code referred to debt recovery. The Applicant remained of the view that the Respondents ought not to have raised proceedings when they were aware of his complaints and that by doing so it had adversely affected his health as he suffered from anxiety.

Section 7.1 of the Code

67. The Applicant although disputing that he had received a copy of the Written Statement of Services prior to the application being raised accepted that the Respondents did have a written complaints resolution procedure. Mrs Aitken referred the Tribunal to page 27 of the Statement of Services.

Section 7.2 of the Code

68. The Applicant accepted that following his complaints not being upheld by the Respondents he had been advised by them that he could apply to the Tribunal.

Section 7.4 of the Code

69. Mrs Aitken confirmed that the Respondents had retained all correspondence relating to the Applicant's complaints and that all had been released to the Tribunal.

Section 7.5 of the Code

70. Mrs Aitken advised the Tribunal that the Respondents had provided the Tribunal with all the information it had requested. This was challenged by the

Applicant as Mrs Aitken had been unable to provide the Tribunal with documents she had said she would try to locate during the lunchtime adjournment.

Final submissions

71. The Applicant said that he was looking for an apology from the Respondents for the way that he had been treated together with money back for the Respondents failure to properly carry out the stair cleaning and compensation for the stress and adverse effect upon his health as well as the cost he has incurred sending recorded delivery correspondence which he estimated at £200.00. He also wanted the Respondents to deal with cyclical maintenance issues such as the gutters at the block that required attention.
72. For the Respondents, Mr Adams asked the Tribunal to have regard to the Respondents written submissions. He said it was not accepted that the Respondents had failed in its duties or had intimidated the Applicant. The Respondents had investigated the Applicant's complaints on more than one occasion and being aware that the Applicant had made numerous complaints were careful to make sure everything was dealt with as perfectly as it could be. It was accepted that there had been an error with regards to the back court maintenance and as soon as that was discovered the Applicant's account had been credited together with an additional £100.00. However, the Applicant had still not paid any money and was now due £1130.56.

The Tribunal make the following findings in fact:

73. The Homeowner is the owner of the Property.
74. The Property is a flat within a block of six flats forming 29 Eriboll Place, Glasgow G22 6PA (hereinafter "the block").
75. The Second Respondents are the property factor of the block and at the material time employed YPPM as their agents to carry out the role of factor of the block.
76. The second Respondents are liable for the actions of YPPM.
77. YPPM had a Written Statement of Services that complied with the requirements of the Code.
78. The Respondents investigations into the Applicant's complaints with regards to the stair cleaning at the block were inadequate.
79. Employees in the Respondents environmental team have behaved inappropriately towards the Applicant following complaints being made about their standard of service.

80. The Respondents have generally responded to the Applicant's complaints within appropriate timescales.
81. The Respondents have provided the Applicant with appropriate information as regards billing and charges to be made for services and repairs in accordance with the requirement of the Code.
82. The Respondents have complied with the requirements of the Code in respect of its debt recovery procedures.
83. The Respondents have complied with the requirements of the Code in respect of its complaints procedures.

Reasons for Decision

84. In reaching its decision the Tribunal has considered the oral evidence obtained at the hearing together with the parties' written submissions and the productions submitted.
85. The Tribunal for the sake of clarity and given that it has been accepted that the Second Respondents will accept liability for any failings on the part of the First Respondents, simply refer in its reasons to "the Respondents" irrespective of whether this is YPPM or GHA.
86. The Tribunal was not persuaded that over the period from the Applicant's purchase of the property in 2014 until after he raised the application in 2019 that at very least, he would not have been made aware of the existence of the Respondents Written Statement of Services. The Tribunal considers it more likely than not that at some time during that period he would have been sent a copy or had his attention drawn to its availability on the Respondent's website. The Tribunal was also satisfied that the Respondents Written Statement of Services did comply with the various sections of part 1 of the Code and therefore did not find that the Respondents were in breach of this section of the Code.
87. The Applicant could become quite agitated at times during the hearing and the Applicant and indeed his brother clearly had strong views about the Respondents and the way in which they operated. Nevertheless, overall, the Tribunal found them to be credible and reliable witnesses. The Tribunal considered that it would be unlikely that the Applicant would be complaining about stair cleaning either not being carried out or being done to a poor standard if that was not the case. The Tribunal had significant concerns about the way in which the Applicant's complaints had been investigated. In the letter from Mr Roberts to the Applicant dated 18 October 2017 it seemed very much that the same parties who were being complained about were investigating themselves and reporting back to a manager that everything was in order. Although the Tribunal did note that it appeared that other residents in the block had been contacted as had Glasgow Housing Association and that they had confirmed that they were happy with the service the Tribunal could

not help but feel that if an external cleaning company was being employed and a Factor received complaints like those from the Applicant that the matter would have been dealt with somewhat differently. Both the Applicant and his brother spoke of the stairs not showing any signs of being damp after the environmental team had attended yet according to Ms Durnian's letter of 17 October 2018 the stairs and landings are brushed and mopped once a week. The Tribunal accepts that on some occasions the Respondents may have made an effort to carry out a more in-depth investigation but again this was undertaken primarily by members within the environmental team. The Tribunal considered that the close working relationship between the Respondents as factors and as employers of the Environmental Team affected the independence of the Respondents' investigation. Taking everything into account the Tribunal was not satisfied that all that could be done was done and that ultimately the information that was then relayed back to the Applicant was inaccurate and therefore misleading and false. The Respondents were therefore in breach of Section 2.1 of the Code.

88. The Applicant was charged for back court maintenance over a period of some four years before it came to light that this service was not actually provided by the Respondents. However, the error was finally acknowledged by the Respondents in October 2018 in advance of the application being made to the Tribunal and the Respondents credited the Applicants account for all charges made since his purchase of the property together with a further credit of £100.00 by way of compensation. Although it was clearly unacceptable that the Respondents had allowed the charges to be applied for as long as they had the Tribunal accepts that on becoming aware of the error the Respondents took appropriate steps to remedy the situation.
89. Although Mrs Aitken indicated in her evidence that Mr Black had spoken to members of NETS and that he had apologised to the Applicant following the Applicant's complaint of intimidation in reality the apology was to the effect that he was sorry if the Applicant felt intimidated not an acceptance that he had been intimidated. For the reasons given above the Tribunal is not satisfied that the Respondents conducted an appropriate independent investigation into the behaviour of its NETS employees. The Tribunal found the Applicant and his brother to be credible and reliable witnesses in respect of the evidence they provided in this regard and was satisfied that the Applicant had been subjected to inappropriate and intimidating behaviour by members of the Environmental team following complaints being made about the standard of service. The Tribunal therefore finds that the Respondents are in breach of Section 2.2 of the Code.
90. As was largely acknowledged by the Applicant the Respondents did respond within reasonable timescales to the Applicants complaints and mainly dealt with his enquiries timeously with some exception. After taking everything into account the Tribunal did not find the Respondents were in breach of Section 2.5 of the Code.
91. Having considered the oral evidence of the parties together with the written representations and documents the Tribunal was satisfied that the information

provided to the Applicants each quarter and annually was in compliance with Section 3.3 of the Code and that the Respondents were not in breach of this section.

92. Although the Applicant disputed the sums due to the Respondents that in itself would not preclude them from initiating court procedures against the Respondent. The Tribunal was satisfied that the Respondents did have a clear written procedure for debt recovery and this was available on the Respondent's website. The Applicant was given a Notice of Potential Liabilities before proceedings were raised and the proceedings pre-dated the Applicant's application to the Tribunal. The Tribunal is therefore satisfied that the Respondents are not in breach of Section 4.1 of the Code.
93. From the evidence provided by Mrs Aitken and which was not to any material extent disputed by the Applicant the Tribunal was satisfied that the Respondents were not in breach of Sections 4.3, 4.5, 4.6 and 4.7 of the Code.
94. With regards to the alleged breach of Section 4.8 of the Code the Tribunal as indicated above was satisfied that proper intimation of the Respondent's intention to raise proceedings had been given to the Applicant prior to action being taken and that the proceedings were raised before the Applicant made an application to the Tribunal. The fact that the sum claimed was incorrect as it included charges for the back court maintenance would of itself not constitute a breach of this section of the Code. Accordingly, the Tribunal finds that the Respondents were not in breach of Section 4.8 of the Code.
95. The Tribunal was not satisfied from the Applicant's evidence or that of Mr Hamilton that the Respondents had with regards to the debt recovery procedure behaved in a way which was intimidating and therefore the Tribunal does not find that the Respondents are in breach of Section 4.9 of the Code.
96. The Tribunal was satisfied that the Respondents had a clear written complaints resolution procedure and indeed the Applicant had made use of it on a number of occasions. The Tribunal was therefore satisfied that the Respondents were not in breach of Section 7.1 of the Code.
97. The Tribunal was also satisfied from the oral evidence of the parties and from the documents produced that following a final decision being made by the Respondents in the complaints procedure the Applicant had been made aware that he could if not satisfied with the decision make an application to the Housing and Property Chamber. The Tribunal is therefore not satisfied that the Respondents are in breach of Section 7.2 of the Code.
98. The Tribunal was satisfied from the documents submitted and the oral evidence and written submissions that the Respondents had retained all correspondence relating to the Applicant's complaint in accordance with Section 7.4 of the Code and accordingly that the Respondents were not in breach of this section of the Code.

99. The Respondents provided documents in response to a number of directions from the previous Tribunal and the Tribunal is satisfied that the Respondents have complied with Section 7.5 of the Code.
100. It was not at all clear from the Application or from the Applicant's further written representations or his evidence at the hearing what his grounds were for claiming that the Respondents were in breach of its property factor's duties beyond the issues raised under breaches of the various sections of the Code. The Tribunal was satisfied that the Respondents had been properly appointed as factor by Glasgow City Council. Given that the division of owners between Glasgow Housing Association and private owners is equally balanced it seems likely that the status quo as regards the continuing appointment of the Respondents is likely to remain. The Tribunal does not have jurisdiction to interfere in this regard.
101. The Applicant has experienced some mental health issues and these proceedings have caused him a significant amount of stress, worry and inconvenience. Although the Respondents have dealt procedurally with his complaints in an appropriate manner, they have failed to accept the underlying cause of the complaints namely that the service being provided for stair cleaning has not been to the required standard and to make matters worse when the Applicant has complained he has been subjected to inappropriate behaviour on the part of NETS employees.
102. It is therefore appropriate that the Applicant receives a written apology from the Respondents together with some financial recompense.
103. The Applicant has raised issues with regards to cyclical maintenance and gutters requiring attention. This does not form part of the current application but it would be sensible for the Respondents to look into these matters as it will be in the interests of all owners to ensure that the block is being properly maintained.
104. As was made clear to the Applicant at the commencement of the hearing the Tribunal has only considered the issues raised in his application and not any new matters that have arisen since the application was made. It would of course be open to the Applicant to make a further application to the Housing and Property Chamber in the future if any more recent issues could not be resolved through the Respondents complaints procedures. It may be that in light of this decision the parties will be able to resolve any further issues through negotiation or mediation. It should of course be noted that any future Tribunal is not bound by the decision of a previous Tribunal as each application is decided on its own merits.

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) (a) 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.

Legal Member and Chair

5 December 2022 Date