Decision and Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/17/0147

129/10 Gylemuir Road, Corstorphine, Edinburgh EH12 7DL ("the Property")

The Parties:-

Philip Cannon,129/10 Gylemuir Road, Corstorphine, Edinburgh EH12 7DL ("the Homeowner")

Newton Property Management Limited, 87 Port Dundas Road, Glsgow G4 OHF ("the Factor")

Tribunal Members :

Joan Devine – Chairing and Legal Member
Ann MacDonald – Ordinary Member (Housing)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor has failed to comply with the Code of Conduct for Property Factors as required by section 14 of the 2011 Act in that it did not comply with section 2.5 of the Code. The Tribunal unanimously determined that the Factor has not failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. In all the circumstances the Tribunal proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached section 19(2) Notice.

The Tribunal make the following findings in fact:

1. The Homeowner is the owner of 129/10 Gylemuir Road, Corstorphine, Edinburgh EH12 7DL ("the Property")
2. The Property is a flat within a block of 12 at Gylemuir Road, Corstorphine, Edinburgh. ("the Development").
3. The Factor performed the role of the property factor of the Development from November 2015 having acquired the business of the previous factor, Greenhome Property Management Limited ("Greenhome").
4. The Factor sent to the Homeowner a copy of its Written Statement of Services ("WSS") in February 2016.
5. The WSS sets out the timescales within which the Factor aims to report both urgent and non-urgent repairs to the contractor.
6. The WSS sets out the timescales within which the Factor aims to respond to telephone calls, emails and written correspondence.

7. The WSS states that the Factor will issue a flat rate quarterly management fee on each common charge invoice.
8. The WSS sets out the debt recovery procedures that the Factor will follow.
9. The WSS sets out the key facts about insurance.
10. The Homeowner received invoices from the Factor which detailed the amount of the quarterly management fee.
11. The Factor wrote to the Homeowner on 4 and 18 April seeking payment of an outstanding balance of £365.58.
12. Gordon & Noble Collections wrote to the Homeowner on 19 April 2016 seeking payment of an outstanding balance of £365.58.
13. The outstanding balance of £365.58 included the sum of £166.37 in respect of a "migrated balance". This is shown on an invoice from the Factor to the Homeowner dated 16/02/16.
14. The Homeowner did not understand the makeup of the migrated balance from Greenhome of £166.37.
15. The Factor did not explain to the Homeowner the makeup of the migrated balance of £166.37.
16. The Factor sent to the Homeowner a document detailing their debt recovery procedures on 19 June 2017.
17. The Homeowner signed a document dated 17/9/14 in which he agreed to apportionment of common charges on the basis of 1/36th share and to pay common charges apportioned in that way.

Introduction

1. 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 2016 are referred to as "the Rules"

2. The Factor became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

3. Following on from the Homeowner's application to the Tribunal which comprised documents received in the period 19 to 26 April 2017 ("the Application"), the Convener, with delegated powers under section 96 of the Housing (Scotland) Act 2014, referred the Application to the Tribunal on 2 May 2017. The Tribunal had available to it, and gave consideration to, the Application, Inventory of Productions provided by the Homeowner, written representations submitted by the Factor, productions provided by the Factor and the oral submissions made by both parties at the hearing.

Hearing

4. A hearing took place at George House, 126 George Street, Edinburgh EH2 4HH on 12 September 2017. The Applicant attended on his own behalf. The Factor was represented by Derek McDonald, director and Scott Cochrane, senior property manager and tribunal compliance officer.

Basis of the Application

5. The Homeowner complained of non compliance with sections 1, 1A, 1B, 1C(e), 1C(k), 2.1, 2.2, 2.5, 4, 5.2 and 5.3 of the Code. The Homeowner also considered that the Factor had failed to comply with the property factor's duties.

Summary of Submissions

Background

6. Mr Cannon explained that he had acquired the flat in October 1997. At that point, the property was newly built. He explained that there were 12 flats in each block.

7. Mr McDonald explained that Greenhome had been appointed as property factors by the owners of the development in 2014. The Factor acquired Greenhome towards the end of 2015. All contracts being undertaken by Greenhome transferred to the Factor. Mr McDonald explained that this was a full asset purchase.

The Code

8. Section 1: Written Statement of Services

Mr Cannon said that he had only received the WSS which he had lodged with his productions as item 1. The Tribunal noted that the Factor had produced a further version of the WSS as attachment 1.1 in their inventory. The Tribunal asked Mr McDonald to clarify which document was in operation at the time relevant to the issues raised by the Homeowner. Mr McDonald explained that he had had a previous Tribunal case that had picked up issues as regards the WSS. The Factor had therefore been working on a more legible version of the WSS. He explained that attachment 1.1 to the Factor's submission is the latest version issued February 2017. He explained that it contains the same information as the earlier version, but in a different format. He explained that the Factor issues a copy of the WSS annually with the accounts. This happens in February. Mr Cannon said that he had not seen the WSS produced as attachment 1.1 to the Factor's submission. Mr McDonald said that a lot of information was sent out each February, and attachment 1.1 would have been sent to Mr Cannon. Mr Cannon said that he had received updated invoices, but not the updated WSS. Mr McDonald explained that the new version of the WSS (attachment 1.1) also tightened up the explanation of the authority of the Factor to act.

9. Mr Cannon said that the issue raised in his application was that the WSS should be provided within 4 weeks or one year of the new Factor agreeing to provide services. He had requested a copy of the WSS in December 2015, but did not receive it until January 2016. He also said that there were certain matters missing from the WSS. He said that he did not understand the

authority to act, as explained by the Factor. This was not covered in the WSS. Mr Cannon said that the Factor did not have agreement from the majority of the homeowners to their appointment.

10. The Tribunal noted that the WSS in operation at the relevant time for the application was as item 1 in the Homeowner's inventory of productions. References hereafter are to that version of the WSS.

11. The Code says that the Factor is to provide a WSS to any new homeowners within 4 weeks of agreeing to provide services. The Code requires the Factor to issue the WSS to existing home owners within one year of being appointed Mr McDonald explained that the Factor purchased the factoring business of Greenhome in November 2015. He explained that the Factor did issue the WSS to Mr Cannon, after a request from him in December 2015, in late January 2016 a little over the 4 weeks. They also issued to all homeowners the same WSS in February 2016 along with the accounts. This was just over one year since they had taken over Greenhome's business. He said that the same Terms & Conditions upon which Greenhome had engaged were operated until February 2016. He explained that the Factor was carrying out the same duties as Greenhome. Greenhome had a substantial client base, and the Factor undertook a lot of work to standardise everything before changing over to their written statement of services.

12. Mr McDonald said that in November 2015, the Factor issued an introductory letter to all homeowners explaining that Greenhome had been purchased by the Factor, and the Factor was proposing to continue as normal. The Factor provided their contact email details to homeowners and this was used to issue the documents

13. As regards authority to act, Mr McDonald referred to the paragraph in the WSS which appears on page 1 at the top of the page below "*Definitions*". This says, 'NPM has the authority to act in terms of their appointment as First Manager in terms of the Deed of Conditions or via appointment by majority of homeowners or any other quorate voting requirement contained in the Deed of Conditions' Mr McDonald said that this was their generic basis of authority, He had taken part in a Tribunal case where the Tribunal had asked that the Factor clarify the explanation of authority to act and this had been done in the new WSS issued February 2017.

14. Mr Cannon said that there were other items missing from the WSS. In particular, it did not state target times for responding to homeowners in terms of Section 1B of the Code, and it did not explain the management fee charged in terms of Section 1C(e) of the Code, nor did it explain the method by which payment could be made in terms of Section 1C(k) of the Code.

15. Mr McDonald referred to page 2 of the WSS, paragraph 9, which refers to timescales for instructing repairs and also states that the Factor will endeavour to respond to telephone calls by the next working day, emails within 5 working days, and written correspondence within 21 days. He also referred to page 1 of the WSS, paragraph 25, which explained that the Factor

would issue a flat quarterly management fee on each common charge invoice. Mr Cannon said that as regards the Factor's management fee, he wanted to be told the sum that will be charged in pounds and pence.

16. Mr McDonald referred to the new version of the WSS, which includes a schedule which shows the amount that will be charged for the management fee. He also explained that the WSS was issued with the common charges invoice that would show the fee being charged. Mr Cannon said that he did not receive any invoices from the Factor for the first 8 months after their appointment.

17. As regards Section 1C(k) of the Code, Mr McDonald referred to page 2 of the WSS, paragraph 2, which sets out the procedures that will be followed by the Factor in order to collect payments. Mr Cannon said that his concern was that the method of payment was not detailed. The Tribunal asked Mr Cannon if this had caused him difficulty. He said that invoices detailed the methods for payment. Once the invoice was received, it was simple to determine how to make payment.

Section 2: Communication and Consultation

18. Mr Cannon said that his concern under this section related to paragraphs 2.1, 2.2 and 2.5.

19. Paragraph 2.1 – Mr Cannon explained that his complaint under this heading is that the Factor sent an email to him on 20 January 2017 which said that it enclosed the debt recovery procedures, but it did not. This was therefore misleading and false. Mr McDonald said that the email did attach a copy of the WSS. He referred to paragraph 2 on page 2 of the WSS, which detailed the debt recovery procedures. He explained that there is a further document available which specifically deals with debt recovery procedures. He recognised that this had not been given to Mr Cannon. This was sent to Mr Cannon on 19 June 2017 with an apology. A copy of the letter and the debt recovery procedure was produced by the Factor as attachment 1.5. Mr Cannon confirmed that he did receive the letter of 19 June 2017.

20. Paragraph 2.2 – Mr Cannon explained that the difficulty here arises because the Factor used the wrong email address. In August 2015, he had a burst pipe and was in contact with Greenhome about it. By November 2015, the Factor had taken over, but the issue with the leak had not been resolved. He had emailed Mr McDonald. He had responded and the issue had been resolved. Mr Cannon referred to the letters which comprise numbers 3 and 4 of his Inventory of Productions being letters from the Factor to the Homeowner dated 4 and 18 April 2016. These were letters in which the Factor sought payment of an outstanding balance of £365.58. Mr Cannon said that when he received these letters, it was the first he had been aware that there was a sum outstanding. He found the letters highly threatening. He said that he understood that he had not received previous requests for payment, as the wrong email address was being used. The letter of 18 April 2016 referred to the possibility of the matter being escalated for collection

procedure with a third party if the Factor did not hear from Mr Cannon within 7 days. However, he then received the letter of 19 April 2016 from Gordon & Noble. It therefore seemed that the Factor had not waited for 7 days before instructing a third party agency. Mr Cannon had contacted Newton and explained he had not received earlier invoices and before paying the invoice he needed an explanation of the amount as he did not understand the balance that was being demanded.

21. Mr Cochrane referred to attachment 1.3 to the Factor's submission. This was an email from Mr Cochrane to Mr Cannon dated 31 May 2016. In this, he sought to explain the outstanding balance. Mr Cochrane explained that he reviewed the charges by Greenhome. The matter was not straightforward. He accepted that invoices had been sent to the wrong email address. Mr Cannon accepted that he did at one stage receive the invoice dated 16/02/16 which shows an outstanding balance of £365.58, which is attachment 1.4 to the Factor's submission. The Tribunal noted that the first item on the invoice is described as "*migrated balance 3072/10/1 - £166.37*". Thereafter, the invoice details specific charges. Mr Cannon told the Tribunal that he understood the detailed charges. He did not understand the makeup of the migrated balance figure of £166.37. Mr Cochrane explained that after sending his email to Mr Cannon of 31 May 2016, which is attachment 1.3 to the Factor's submission, he did not hear further from Mr Cannon. The Tribunal asked Mr Cochrane if he understood the makeup of the migrated balance of £166.37. He said that he did not analyse the individual charges as he had thought the problem was the overall figure. He had removed all fees relating to the debt collection and offered to organise for the Finance Director to speak with him. Mr Cannon had not taken up this offer. The Tribunal asked Mr McDonald if he would have the information that would explain the balance. Mr McDonald said that the information would be held on file.

22. Mr Cannon said that he did receive the invoice of 16 February 2016. He thought it had been attached to an email around 26 April 2016. He said that he did understand the charges on the invoice, other than the migrated balance of £166.37. He said that the total due in terms of the invoice of £365.58 was still outstanding. He had not paid any element of the invoice, as he had not understood the migrated balance.

23. Paragraph 2.5 – Mr Cannon explained that his concern in terms of this paragraph is that response times are not fully set out in the WSS. He said that it would be nice to know what to expect as regards response times. Mr McDonald referred the Tribunal to page 2 of the WSS, paragraph 9, which says "*Notwithstanding the foregoing, NPM will endeavour to respond to telephone calls by the next working day, emails within 5 working days and written correspondence within 21 days*". Mr Cannon said that he thought that that paragraph referred only to repairs. Mr McDonald said that, in his view, that sentence referred to general response times. He also noted that the communication which had been referred to as regards the outstanding invoices demonstrated that the Factor was replying to Mr Cannon promptly.

Section 4 of the Code: Debt Recovery

24. Mr Cannon explained that his concern under this paragraph was that he did not receive the debt recovery procedure. He had emailed the Factor on 9 December 2016, and they had replied on 10 January 2017, copies of which constituted his productions 2 and 5. He said that he had specifically asked for the debt recovery procedure, but did not receive it until June 2017. He said that the Code states that the Factor is required to have a debt recovery procedure.

25. Mr McDonald apologised for the failure to provide a separate debt recovery procedure, but explained that it had been provided in June 2017. He also noted that paragraph 2 of page 2 of the WSS provides a summary of the debt recovery procedure.

Section 5 of the Code: Insurance

26. Mr Cannon said that he required all of the information which is set out in paragraphs 5.2 and 5.3 of the Code.

27. Mr McDonald explained that in February of each year, the building insurance is renewed. The Factor issues the insurance documents to homeowners in February of each year. The Factor sends to homeowners a summary of the cover. He also referred to the WSS, page 2, and the information provided under the heading "*Key Facts about your Insurance Services*" which details the commission the Factor receives. The WSS had been sent to Mr Cannon with the email of 10 January 2017. The email also attached the common charge apportionment schedule, which shows the management fee of £17.50 per quarter. Mr Cannon said that he did not receive the third page of the email which was the common charge apportionment. Mr Cannon said that he did not receive the information regarding insurance in February 2016 or February 2017. He had, however, received invoices. Mr McDonald undertook to send to Mr Cannon the documentation regarding the insurance.

Breach of Duty

28. The Tribunal asked Mr Cannon to explain how it is he came to the view that the Factor had breached their duties. Mr Cannon referred to the Deed of Conditions. He said that somehow the blocks referred to as being part of the Development had become separated, but nothing had been changed in the Deed of Conditions which provided for payment of common charges on the basis of a 1/70th share. Mr Cannon referred to the document produced as attachment 1.7 with the Factor's submission. This was described as "*apportionment mandate for common charges, Gylemuir Road, Edinburgh*". In terms of this document, homeowners at the Development agreed that their share of common charges would be on the basis of 1/36th per homeowner. Mr Cannon accepted that he had signed the document on 17 September 2014 on page 2. He said that he did not know what he was signing. He had not seen the document before being asked to sign it. There had been no

discussion about apportionment of charges in advance of the document being signed. The homeowners met in a stairwell to sign the document. He said that he clearly remembered this, as it was the night before the independence referendum. The homeowners met in the stairwell and the lighting was very poor. He said that Greenhome produced the document. His view was that this document could not change the Deed of Conditions, which provides that common charges are to be paid on the basis of 1/70th per homeowner. His view was that the Factor should have pointed out this discrepancy to the homeowners.

29. Mr McDonald explained that the situation was imperfect, but required to be dealt with in a practical way. The other two blocks were owned by one proprietor. They did not wish to use the services of the Factor. They made their own arrangements. They would not therefore agree to a variation of the Deed of Conditions as regards the apportionment of charges. He said that there was a real danger that if a common sense view was not taken, then the homeowners may have no factor. He described what was happening as a "*make do and mend*" situation to manage what was actually happening in practical terms. He said that a Deed of Variation to alter the Deed of Conditions would require 51% of residents to agree. As the proprietor of the other two blocks owned nearly 50%, when that was combined with inertia from individual homeowners, it would be extremely difficult to achieve 51% consent.

30. Mr Cannon explained that he had always paid common charges on the basis of 1/36th since he had acquired the property 20 years ago. Charges had never been apportioned on the basis of 1/70th.

31. Mr Cannon said that it was his view that this was a breach of duty on the part of the Factor. They should have investigated the situation and raised awareness with homeowners. He appreciated that it may not be possible to do anything about the situation, but it would be nice to have known about the situation.

32. Mr Cannon said that in his view, the way the outstanding invoice was handled was also a breach of duty. His complaint in that regard related to the use of the wrong email address. In his view, the Factor should have tried harder to contact him.

33. Mr Cannon then made reference to his written submission in which he said that, in his view, the Factor showed contempt for the development in Edinburgh. In his view, the Factor did not want to manage a development in Edinburgh. They had supplied contact details for contractors, but they were all in cities other than Edinburgh.

34. Mr McDonald explained that the Factor manages properties all over Scotland, in Ayrshire, the Borders, Dundee, Perth, Fort William and other locations. When the website refers to a geographic location for a contractor, that does not mean only owners in those locations can contact those numbers.

35. Mr Cannon said that he did not understand that that was the case. He thought that if there was no emergency contact number provided for Edinburgh, then there was no number for Edinburgh residents to contact.

36. Mr McDonald explained that on the reverse of each invoice, details of emergency contractors are provided. Mr Cannon said that if he contacted a Glasgow number, that would mean a premium was charged as the contractor would have to travel. Mr McDonald explained that the Factor uses a core of 3/4 contractors which are principally based in Glasgow. One has a branch in Edinburgh. He would appoint whoever was able to attend most quickly in the case of emergency. For general maintenance, a number of Edinburgh contractors are used.

Remedy Sought

37. The Tribunal asked Mr Cannon what he wished to see happen as a result of his application. He said that he wished to see a better level of communication. He would like to be notified in advance of site visits. He said that it would be nice for all of the residents to be brought up-to-date as regards the apportionment of charges. Mr Cannon said that he would like to be provided with appropriate contact numbers in Edinburgh. He said that given the way the Factor had approached the debt recovery process, that needed to be looked at. He said that he also wished clarification of the migrated balance of £166.37 from Greenhome.

38. Mr Cochrane said that he accepted there had been communication difficulties at the outset. He said that the Factor did not regard Edinburgh clients any differently to others. He said that clients were happy with the service being provided by the Factor. He said that the Factor visits properties as frequently as possible, and then follows up with an email or letter to homeowners saying that they have visited.

39. The Tribunal asked Mr McDonald whether he wished to insist upon the claim for expenses against Mr Cannon which had been referred to in their submission. Mr McDonald said that he did not

Tribunal Findings and Reasons for Decision

Section 1: Written Statement of Services

40. "You *must provide each homeowner with a written statement setting out, in a simple* and *transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of Section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code."*

41. The Tribunal found that there had been no breach of the Code. As the Homeowner was not a new owner there was no requirement for the Code to be sent to him within 4 weeks. An introductory letter had been sent to the Homeowner and the WSS had also been sent out with the February 2016 account.

Section 1A

42. "Section *1A: Authority to Act*

(a) a statement of the basis of any authority you have to act on behalf of all the homeowners in the group;
(b) where applicable a statement of any level of delegated authority for example financial thresholds for instructing works, and situations in which you may act without further consultation."

43. The Tribunal found that there had been no breach of the Code. The lack of clarity around authority to act had now been corrected in the new WSS issued by the Factor. As the Homeowner had received an introductory letter he would have understood the appointment of the Factor.

Section 1B

44. "*the core services that you will provide. This will include the target times for taking* action *in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service);"*

45. The Tribunal found that there had been no breach of the Code. The Code requires the Factor to include in the WSS target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections. Target times for these were set out in the WSS.

Section 1C(e)

46. **"***(e) the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee."*

47. The **Tribunal** found that there had been no breach of the Code. The Homeowner had said that he wanted to know in pounds and pence what was being charged with regards the management fee. Although that was not shown in the WSS, it was shown on the schedule which was now issued to homeowners. It also appears on each invoice.

Section 1C(k)

48. *"(k) how you will collect* **payments**, *including timescales and methods (stating any choices available). any charges relating to late payment, stating the*

period of time after which these would be applicable (see section 4: Debt recovery)

49. The Tribunal found that there had been no breach of the Code. The method by which payment can be made was not explained in the WSS. However it is explained on invoices and it did not cause the Homeowner a problem in this case. The Factor may wish to consider introducing in the next version of the WSS an explanation as to the method by which homeowners can make payment out outstanding sums.

Section 2: Communication and Consultation

50. *Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:*

2.1 You must not provide information which is misleading or false.

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).

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 time should be confirmed in the written statement (Section 1 refers).

Paragraph 2.1

51. The Tribunal found that there had been no breach of the Code. There had been a misunderstanding on the part of Mr Cochrane that what Mr Cannon was looking for was the full debt recovery procedure in a separate document. Instead he had sent to the Homeowner the WSS which did summarise the debt recovery procedure. The information provided was not misleading or false.

Paragraph 2.2

52. The Tribunal *found* that there was no breach of the Code. The letters issued seeking payment were of a standard type. The Tribunal did however appreciate that in light of the difficulties with the email address and the Homeowner not receiving invoices in the months prior to the letters being issued, the letters could have caused distress. However this was not a breach of the Code. It was however noted that the letter of 18 April 2016 makes reference to escalation within 7 days but the matter was in fact escalated the next day. That was unfortunate however it was noted that all charges in relation to the debt procedure process had been removed.

Paragraph 2.5

53. The Tribunal found that there was no breach of the Code as regards response times. The WSS did set out response times. It should be noted however that paragraph 2.5 requires the Factor to deal with enquiries and complaints as quickly and as fully as possible. The Tribunal found that the Factor did not deal with the Homeowner's query as regards the migrated balance of £166.37 as fully as possible. The Tribunal determined that this did constitute a breach of the Code and determined to make a Property Factor Enforcement Order in that regard.

Section 4: Debt Recovery

54. *4.1 You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.*

The Tribunal found that there was no breach of the Code The Code requires that the Factor should have a clear written procedure for debt recovery. The Factor does have such a procedure. It is set out in the WSS and also in a separate document.

Section 5: Insurance

55. *5.2 You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.*

5.3 You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance.

56. The Tribunal found that there was no breach of the Code. The Tribunal were of the view that it was clear that paragraphs 5.2 and 5.3 of the Code had been complied with. The information is provided in the WSS for 5.3 and as a matter of course the information was sent out annually by the factor. Further, although the Homeowner said that he had not received the insurance information in February 2016 or 2017, the Factor had undertaken to provide the relevant information now.

Breach of Factor's Duties

57. Having considered all of the information placed before it including the written and oral submission regarding breach of factor's duties, the Tribunal determined that the issues complained of did not constitute a breach of duty. It may be that the Factor considers explaining the difference in apportionment from the Deed in their next annual communication in relation to the WSS since it varies in practise from the Deed and is applied with the agreement of owners.

Proposed Property Factor Enforcement Order

58. 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

59. **In terms of section 46 of the Tribunals (Scotland) Act 2014 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.**

Joan Devine

25.9.17

Signed
Joan Devine, Legal Member and Chair

Date