Housing and Property Chamber
First-tier Tribunal for Scotland

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

AMENDED STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/17/0347

Re: Communal area for flats 23 – 29 Leyton Drive, Inverness

The Parties:-

Ms Yvonne MacDonald, 27 Leyton Drive, Inverness, IV2 4HS ("the Homeowner")

Cairn Housing Association Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the Factor") (represented by Mr Angus Brown, Solicitor)

Tribunal Members

Helen Forbes (Legal Member)
Colin Campbell (Ordinary Member)

Decision

The Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Section 2.5 of the Property Factor Code of Conduct ("the Code"). The decision is unanimous.

Background

1. By application received in the period between 7th and 28th September 2017 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination that the Factor had failed to comply with Sections 2.4 and 3.3 of the Code.

2. Details of the alleged failures to comply were outlined in the Homeowner's application and associated documents comprising 2 emails and 2 letters between the parties, copy invoices issued by the Factor, a type-written summary of correspondence from November 2013 to May 2015, and copies of the Factor's Property Management Policy and Written Statement of Services. The detail of the alleged failures outlined by the Homeowner in the Application form was *'inconsistency in factoring charges, constantly having to chase up for*

replies and condition of communal grounds'. There was some ambiguity in the Application form as to whether the Homeowner was alleging failure to carry out the Property Factor's duties.

3. By Minute of Decision dated 24th October 2017 a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.

4. On 13th November 2017 the Tribunal issued a Notice of Direction to the Homeowner in the following terms:

> 'The Homeowner is required to lodge the following documentation and information with the First-tier Tribunal for Scotland (Housing and Property Chamber) 4th Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB by **4th December 2017**:
>
> 1. Provide examples to support the claims of breaches of sections 2.4 and 3.3 of the Code of Conduct for Property Factors ('the Code').
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> 2. Provide copies of all documentation (whether letter, e-mail or other form) held by the Homeowner in relation to the alleged breaches of sections 2.4 and 3.3 of the Code.
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> 3. Remedy the inconsistency apparent at section 8 of the Application by confirming whether or not a breach of the Property Factor's duties is alleged, and, if so, provide specific examples in support of the alleged breach.
>
> 4. In the event that a breach of the Property Factor's duties is alleged, provide copies of all documentation (whether letter, e-mail or other form) held in relation to the alleged breach of the Property Factor's duties.
>
> 5. Provide a copy of the Title Deed for the Property at 27 Leyton Drive, Inverness, IV2 4HS.'

5. On 14th November 2017, a representative acting for the Factor requested that the Hearing, set down for 22nd December 2017, be rescheduled as it was the last working day before Christmas and the appropriate staff members are unable to attend. It was further stated that the appropriate staff members were Edinburgh based and would have to travel from Edinburgh to give evidence. The Tribunal refused the request due to lack of evidence of any fact or matter relied on in support of the application for an adjournment or postponement, in terms of rule 28.

6. On 28th November 2017, the Factor's representative lodged written representations, a list of witnesses and inventories of productions and authorities.

7. On 29th November 2017, the Homeowner lodged written representations and an inventory of productions. She informed the Tribunal that she did not wish to attend the Hearing. At paragraph 2 of the written representations, it appeared that the Homeowner may be relying on section 2.5 of the Code, rather than section 2.4.

8. On 7th December 2017, the Homeowner emailed the Tribunal stating as follows: '2.4 – Cairn Housing Association do not contact me regarding any work or services and on numerous occasions I have written to Cairn following receipt of an invoice to query items listed for payment and either received no reply at all or have to chase this up and more often than not it has been found to be an error. 3.3 – I do not receive a regular breakdown of charges made with a description of the works carried out. In the past when I have requested this I have not received supporting documentation. I am constantly having to contact Cairn querying charges on factoring invoices, what the charges are for, why there is an inconsistency with items being charged and the charges being requested.'

9. On 13th December 2017 a further Notice of Direction was issued by the Tribunal to the Homeowner in the following terms:

> 'The Homeowner is required to lodge the following clarification with the First-tier Tribunal for Scotland (Housing and Property Chamber) 4th Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB by **18th December 2017**:
>
> At point 2 (headed Section 2.4) of the Homeowner's written representations, there is a focus on the Property Factor's lack of response to enquiries, which appears to be a complaint in terms of Section 2.5 of the Property Factor's Code of Conduct. This is also referred to in the Homeowner's application. Bearing in mind the Tribunal's and the Parties' responsibilities in terms of the overriding objective outlined in rule 2 of the Regulations, the Homeowner is asked to clarify whether she is alleging a breach of section 2.5 of the Code in addition to, or as an alternative to, the alleged breach of section 2.4 of the Code.
>
> In order to clarify the extent and layout of the communal areas, Parties are informed that there will be a site inspection of the communal area for flats 23-29 Leyton Drive, Inverness, at 9am on Friday 22nd December 2017. It would be helpful if parties were present at the inspection.'

10. On 14th December 2017 the Representative for the Factor lodged two affidavits from witnesses that were unable to attend the Hearing, a type-written timeline, and an updated version of the Factor's written representations, addressing the additional alleged breach of section 2.5 of the Code.

11. On 18th December 2017, the Homeowner lodged a further written representation responding to the representations of the Factor.

12. On 21st December 2017, the Homeowner emailed the Tribunal stating: *'I refer to the Hearing tomorrow and confirm I will not be attending as I initially understood this would be an informal procedure but it appears now to be led by court rules which I have found intimidating. I stand by my written representations and hope for transparency and consistency from Cairn Housing Association.'*

Inspection

13. On 22nd December 2017, the Tribunal Members attended at the inspection at 9.00. The Factor's Responsive Repairs Co-ordinator, Mr David Cargill, was present, accompanied by the Factor's representative, Mr Angus Brown, Solicitor. The Homeowner was not present. The Tribunal Members were shown the communal areas; however, it was impossible to ascertain from the Title Sheet lodged by the Homeowner, exactly which areas were shared in common, as the plan accompanying the Title Sheet was in black and white.

Hearing

14. A hearing took place at 10.00 on 22nd December 2017 at The Spectrum Centre, 1 Margaret Street, Inverness, IV1 1LS. The Homeowner was not present. The Factor was represented by Mr Angus Brown, Solicitor. The Factor led evidence from two witnesses, Ms Jacqueline Davidson and Mr David Cargill. The witnesses were not present to hear each other give evidence.

Evidence and Representations

Ms Jacqueline Davidson

15. Ms Davidson is the Factor's Finance Officer – Property Management. She has been employed by the Factor since 2011. Her duties are to deal with financial matters in relation to homeowners, including the provision of invoices. She gave evidence on the following matters:

Written Statement of Services – Ms Davidson said that the Factor took legal advice when the Property Factors (Scotland) Act 2011 came into force, and the Written Statement of Services was drafted by their solicitors, taking into account the various title deeds. All homeowners received a copy of the Written Statement thereafter. The Written Statement has not been changed. Ms Davidson recently undertook factoring training and discovered that the Written Statement could be updated at any time. There is a ballot every five years whereby the homeowners can vote to appoint the factor, and that will take place next year. There is a plan to update the Written Statement at that time.

Core Services – Ms Davidson said these include landscaping, electrics, common repairs, common land, window cleaning and lift repairs, if appropriate.

Homeowners Handbook – This was produced prior to the 2011 Act. Every new homeowner gets an introduction pack which includes an introduction letter, the Written Statement and the Homeowners Handbook, together with a direct debit form. In response to questions from the Ordinary Member, Ms Davidson said that she thinks the Homeowner was issued with this pack in 2012. There will be a record of that in the diary entry notes on the Factor's system. She was asked whether the Written Statement refers to the Homeowners Handbook, and she said no.

Larger repairs – Ms Davidson said these are carried out by the Factor's maintenance team. If the cost of the repairs is likely to be large, homeowner consultation will be carried out before any work is done. She has not been involved in any such consultation but believes there may have been one such consultation before she took up her post. It may have been in relation to the entrance door for the Homeowner's block. In response to questions from the Ordinary Member as to how she would define 'large', Ms Davidson said she thought it would be a cost of over £2000 per property. Further questioning with reference to the Homeowners Handbook determined that the limit for cyclical and planned common works was £2000 per job, rather than per property, and that letters would be sent out to all homeowners. If there was no response, the matter would have to go to a vote.

Complaints – Ms Davidson said the complaints procedure was set out in the Handbook. If a complaint came in by email or letter to the contact centre, it would be logged on the system and given a reference number. A response would be issued in 3-5 working days. Not everyone that contacts the Factor uses that system, however; and if a homeowner emails an individual within the organisation, it can cause delays. The Homeowner in this case tended to email individuals rather than going through the proper channels and this had sometimes led to delays in dealing with her enquiries or complaints, which could be missed, particularly if the person that was emailed was on leave or at training. The Ordinary Member asked whether the Homeowner had been told that she was following the wrong procedure and Ms Davidson said that the Homeowner had received quite a few emails providing the correct number to contact. Previously, the correct number to call would have been the Inverness office, but since around 2014, it was the contact centre. Responding to questions from the Legal Member as to whether it was Ms Davidson's position that delays in this case had been caused by the Homeowner following the wrong procedure, Ms Davidson said yes, that was the case. She agreed that the correspondence showed that she had often dealt with an enquiry in its entirety rather than direct the Homeowner elsewhere, but she said she had often liaised with other appropriate staff members in the office, depending on the nature of the matter. The Legal Member asked how long it would take for Ms Davidson to pass an email from the Homeowner to the correct person, and she said she would do that promptly unless she was on leave or at training. The Legal Member pointed out that the correspondence showed Ms Davidson apologising on several occasions for delays, rather than asking the Homeowner to contact the contact centre. Ms Davison said she would always apologise to the Homeowner and attempt to pass on the complaint or enquiry as soon as

possible. She said she felt the Homeowner was never satisfied with the response, and that led to Ms Davidson apologising frequently.

Additional Repairs and services – The Ordinary Member asked Ms Davidson about the procedure when large repairs were required. She said she thought the matter would go out to consultation. When asked for the cut-off level in terms of cost of large repairs, she was unable to answer. The Legal Member asked why the Written Statement referred at section 3 on page 3 to services outwith the core services 'as set out in Part 2 of the Schedule', when, in fact, part 2 of the Schedule was blank. The Written Statement also mentioned 'part 3 of the Schedule' in respect of the cost of additional works, yet there was no part 3. Mr Brown asked Ms Davidson if it was the case that there were no additional services at the time that the Written Statement was drafted and she confirmed that was the case. As for part 3, Ms Davidson said there was a part 3 which contained lists of addresses in relation to grounds maintenance and common repairs. The Legal Member pointed out that both parties had lodged a copy of the Written Statement, and in both cases, parts 2 and 3 were missing. Ms Davidson said that, as far as she was aware, all homeowners had a copy of the full document.

Communication – Ms Davidson said that the Homeowner tends to get in touch when an invoice is issued. In regard to communication, Ms Davidson felt that the Factor had kept within the timescales in the Handbook when corresponding with the Homeowner, and this was borne out by reference to the document entitled 'Timeline', lodged on behalf of the Factor. In response to questions from the Legal Member as to how the particular document had been compiled, Ms Davidson said her colleague, Mr Derek Adam, had compiled his communications and she had then looked on the diary system and updated the document. The Factor's staff did not all have access to the same system, so it wasn't a matter of printing off a copy from the system – it had to be compiled by hand. When asked if it was definitive in terms of the communications between the parties, Ms Davidson said it was. The Legal Member pointed out that, when compared with the productions lodged by parties, including the Homeowner's timeline, and actual correspondence from and to the Factor, there were omissions from the Factor's timeline. These included, among others, emails dated 12.12.14, a letter from Ms Davidson dated 29.1.15, an email to Ms Davidson dated 31.1.15, and an email from Ms Davidson dated 13.2.15. The Legal Member asked if any of those items had been deliberately omitted from the Factor's timeline. Ms Davidson was adamant that this was not the case. Her difficulties in compiling the timeline were compounded by the number of people involved in dealing with the Homeowner – she said it was difficult to keep track of correspondence.

Billing procedure – Ms Davidson said she was employed to bring the factoring side of the business up to date, as she has a financial background. Previously, all matters relating to homeowners in Inverness were dealt with by the local office. She introduced a more efficient system. Invoices are now sent out twice yearly in April and October. Before the Act came into force, the invoices were not detailed. Since 2015, the invoices contain more detail. The factoring charge is £25 per property, which is one of the lowest among

housing associations. The invoices now list each service provided. If there are common repairs, there is a separate sheet sent out with the invoice. If the homeowner requires further information, copies of electricity bills and contractors' invoices can be provided. The invoices were previously generated by Allpay. Three or four years ago, the Factor introduced an in-house system which was more efficient and less costly. This has seen a reduction in the number of complaints. Most complaints are in relation to payment queries. This is often due to an incorrect reference being given by a homeowner when making a payment. The Ordinary Member referred Ms Davidson to the third invoice in the Homeowner's production 4.1, an invoice dated 20th May 2014, which refers to an item 'A0103197 RHS of main door-Suplly [sic] & fit', asking what this related to. Ms Davidson said this referred to the right hand side of the door and was probably a repair, and that is what she expected a homeowner would assume.

Mr David Cargill

16. Mr Cargill has been the Factor's Responsive Repairs Co-ordinator since 2015. He was previously employed by the Factor as Maintenance Officer (2010) and Homeworks Manager (2014). He is responsible for all repairs maintenance and voids. He manages properties in the north and south and there are almost 10,000 repairs each year, including gas maintenance. He gave evidence on the following matters:

Repairs – Less than 5% of the repairs dealt with pertain to privately owned properties. Repairs can be categorised as emergencies, in which case work is carried out without consultation – this would include a roof leak or lights not working. If optional work is required, consultation with owners is carried out – this might include a broken window that didn't require immediate replacement. The only optional work carried out in the block of properties where the Homeowner lives, has been a repair to the entrance door. The Ordinary Member asked about changes to the rotary driers and whether that would be part of a consultation process. Mr Cargill said it could be consulted upon; if one of the drier provided was to break today, they would go to consultation before replacing it, pointing out that they would have to replace the driers for their tenants, in any event. In 2011, driers were replaced in the block. There was a consultation and 75% of owners agreed to the replacement. In 2014, there was a further replacement, and no consultation took place. Mr Cargill was not responsible for either of those replacements. In response to questions as to the ceiling before consultation would take place, Mr Cargill said it depended on the repair, and that each case was different. He said there was a threshold in the Act. He conceded that there was no ceiling set out in the Written Statement or the Handbook.

Core Services – Mr Cargill said the lighting in the building can be problematic due to the lighting system being dated. If a new system of lighting was proposed, that would go to consultation. However, communal lighting is considered a core service. Mr Cargill said removing fly-tipped items is also a core service. It is treated seriously as it can attract further anti-social behaviour and further fly-tipping. When asked by the Ordinary Member to indicate where fly-tipping was included in the Written Statement as a core

service, Mr Cargill said it was potentially included in landscaping maintenance or in cleansing. Responding to further questions from the Ordinary Member, Mr Cargill said that, if, say, a mattress was dumped in a close, Cairn would investigate to determine the person responsibly, failing which, all properties in the block would be charged. If they were successful in identifying the perpetrator, that person would have to pay the costs. There are investigations that can be undertaken but it can be difficult to identify the perpetrator. The Legal Member asked if fly-tipping was considered an emergency. Mr Cargill said it was, as it could be a trip hazard or a health and safety issue. It could encourage further anti-social behaviour. The Legal Member pointed to an occasion mentioned in the documents lodged by the Homeowner (Production 4.2), when fly-tipped items reported by the Homeowner were not removed for several months. Mr Cargill was unaware of that case and unable to answer why there was a delay. Mr Cargill was also unaware of any particular problem pertaining to fly-tipping from the tenant at number 29 Leyton Drive, as reported by the Homeowner. This has not come up in partnership meetings. If it had come up, Mr Cargill said action would have been taken.

Charges – Mr Cargill said homeowners were previously charged £16 per hour but that was not covering the Factor's costs, so the rate has been increased to £30 per hour. This is charged at a minute rate if the work is done by the Factor, and hourly if done by sub-contractors. Most of the work is done in-house. When asked about the discrepancies pointed out by the Homeowner in charging, Mr Cargill said that some jobs were more complicated than others. Responding to questions from the Ordinary Member as to why rates for homeowners were kept low, Mr Cargill said Cairn Housing is not a business that is looking to make money, but it is not losing money.

Correspondence with Homeowner – Mr Cargill said that Ms Davidson deals with the factoring queries and goes to him if they involve maintenance. He has dealt with the Homeowner several times, when he has emailed her to try to explain queries. He has offered to meet with the Homeowner but she hasn't taken him up on that offer. In response to questions from the Legal Member as to what he expected could be gained from a meeting as opposed to communicating by email or letter, he said a site visit can sometimes establish a better understanding of certain situations. A meeting could save several emails.

Invoice dated 20th May 2014 – The Ordinary Member referred Mr Cargill to the third invoice in the Homeowner's production 4.1, the aforementioned invoice dated 20th May 2014. Mr Cargill said this referred to the right hand side of the door and was probably a repair, and that is what he expected a homeowner would assume. He did not think it was referring to work carried out in relation to rotary driers.

Submissions and Discussion

17. Having given their evidence, the witnesses joined Mr Brown and took part in the discussion.

Section 2.4 of the Code

18. Section 2.4 states: *'You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as emergencies).'*

    Mr Brown said that the reason the Homeowner hadn't been consulted in relation to providing work or services which will incur charges or fees in addition to those relating to the core service was that no such work had been undertaken. There had been a proposal for work to be carried out to the entrance door, and consultation had been carried out, but no action was taken. In response to questions from the Legal Member as to where the necessary level of agreement was contained in the Written Statement, Mr Brown conceded that it could be made clearer. The Ordinary Member pointed out that a figure of £200 for non-emergency repairs had been referred to in the written submission on behalf of the Factor. Mr Brown said that was a nominal figure provided by the Factor. He was unable to say whether it was a set figure that the Homeowner would be aware of. The Ordinary Member pointed out that, in the absence of any written details of the level at which the homeowner could expect to be consulted, it could be confusing for homeowners. Mr Brown said he expected that the Homeowner would have been made aware of the figure at which she would be consulted, but it couldn't be shown that she had been so informed.

Section 2.5 of the Code

19. Section 2.5 states: *'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 (Section 1 refers).'*

    In response to questions from the Legal Member, it was accepted by the witnesses that the response times are not stated in the Factor's Written Statement. It was confirmed that the section of the Handbook entitled 'Enquires and Complaints', although only referring to complaints, is also the procedure for enquiries, and the timescales for enquiries are as set out for complaints. The Written Statement does not refer to the Handbook.

    The Ordinary Member asked about the procedure for dealing with enquiries or complaints. Ms Davidson said the enquiry would go to the contact centre in the first instance, where a reference number would be assigned. It would then be forwarded to the best placed person to deal with it. If the matter had not been dealt with within 5 working days, it would be re-flagged to the line manager.

The Legal Member pointed out that productions lodged by the parties indicated that the queries raised by the Homeowner in 2014 in relation to the rotary driers had taken a year to be addressed. The witnesses were unable to provide any information to the Tribunal as to why this took so long to be addressed. With regard to apparent delays in answering the Homeowner's emails, Ms Davidson said that the responses were delayed because so many people were involved in trying to sort matters out. Ms Davidson said that perhaps emails should have been acknowledged with a message to the effect that the matter was being addressed – she said that this was something to learn from.

Mr Brown stated that much of what had been complained about by the Homeowner was historical. Both witnesses had given evidence that the Factor was trying to put better systems in place. He couldn't say that the response times were within the Written Statement, so he was unable to make a submission to that effect, however, the Factor could look at making changes to the Written Statement in that regard, and in relation to outlining where the Homeowner should go to make complaints and enquiries. In response to questions from the Ordinary Member as to whether the Homeowner had ever asked for a copy of the complaints procedure, Ms Davidson said that she hadn't, and there didn't appear to be any letter referring to an enclosed copy of the complaints procedure. Mr Brown had a copy of the complaints procedure which he confirmed is on the Factor's website.

Section 3.3 of the Code

20. Section 3.3 states: '*You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and work carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.*'

In response to questions from the Legal Member as to why the Factor had written off £412.44 of sums said to be due by the Homeowner in August 2013, as set out in the Homeowner's production 3.1, Ms Davidson said that some invoices may have been processed in error. Sums may have been credited to the wrong account due to a manual error. The Legal Member referred to production 4.9 for the Homeowner, a letter dated 5th November 2014 that refers to a refund due to a lack of consultation and the fact that it was not an emergency, and to further apologies made by the Factor to the Homeowner outlined within the productions. Ms Davidson said she would accept the Homeowner had had some valid complaints over the years.

The Legal Member referred to the Factor's invoices (Homeowner's productions 4.1) some of which did not give the information required in terms of Section 3.3 of the Code. Ms Davidson said that the previous system for

invoicing did not leave enough room for detail to be included; however, a separate backing sheet with full detail would be included. The first invoice at 4.1, dated 5th April 2017, was an example of the current invoices, since the system was changed. These provide more information. Mr Brown pointed out that changes had been made prior to this, and that the invoices with lack of detail dated back some years.

The Legal Member referred to the Homeowner's production 4.2 and an email dated 8th December 2016, where Ms Davidson was apologising for providing the Homeowner with a spreadsheet with repairs pertaining to another block of flats. Ms Davidson acknowledged this was an error.

There was discussion regarding the insurance situation, and the Homeowner's complaint that the Factor had persisted in making charges for home insurance, when she had her own policy in place, and that the Factor had never told her she had to provide a copy of her home insurance policy. In response to questions from the Ordinary Member, Ms Davidson acknowledged that there had been confusion over insurance arrangements but she now has a record of the current insurance situation for all homeowners.

Mr Brown said that evidence had been produced to show that the Factor had complied with Section 3.3. Changes had been made that would bring the Factor into line with the Code. The Factor had endeavoured to make appropriate investigations into the matters raised by the Homeowner. On any occasion that there had been an inadequate response, the Factor would take ownership and bear the costs or give full information to a homeowner.

Findings in Fact

21.

i. The Homeowner is the heritable proprietor of the property at 27 Leyton Drive, Inverness, IV2 4HS.

ii. The Factor provides factoring services in respect of the development at New Hilton, Inverness, which includes the block of flats at 23-29 Leyton Drive.

iii. The Factor has been a registered Property Factor since 7th December 2012, with registration number PF000292.

iv. The Homeowner has been raising issues with the Factor including a lack of detail in invoices, the situation with provision of drying facilities, home insurance and fly-tipping for some years.

v. The Factor has not always responded to enquiries and complaints received from the Homeowner within prompt timescales.

vi. Dealing with fly-tipping is a core service provided by the Factor.

vii. The Factor has a procedure to consult with the group of homeowners to seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service.

viii. The Factor has not demonstrated any agreed level of delegated authority with the group of homeowners to incur costs up to an agreed threshold.

ix. The Factor has changed procedures in relation to accounting and is now providing to homeowners twice yearly a detailed financial breakdown of charges made and a description of the activities and works carried out.

Discussion and Reasons for Decision

The Tribunal took account of all the documentation provided by parties, their written submissions, and the evidence and oral submissions on behalf of the Factor.

Breach of Section 2.4

22. The Tribunal did not find that the Factor had breached this section of the Code. The Homeowner appeared to have founded on a breach of this section in error, as she did not found upon any situation where work or services incurring charges or fees in addition to those relating to the core service had been carried out. No such work formed part of the Homeowner's complaint. The Factor appears to have a procedure in place whereby they would consult with the group of homeowners to seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Although the Factor was unable to demonstrate the existence of an agreed level of delegated authority with the group of homeowners to incur costs up to an agreed threshold, this was not a matter of complaint by the Homeowner. It was observed by the Tribunal that the Factor ought to ensure that, if such a level exists, it is reflected in writing and issued to homeowners. The Homeowner may have considered that dealing with fly-tipping was not a core service; however, it was considered by the Tribunal that this formed part of the core services provided by the Tribunal.

Breach of Section 2.5

23. The Tribunal found that the Factor had breached this section of the Code. The Tribunal noted that there were several examples within the productions lodged by both parties where the Factor appeared to have delayed in responding to enquiries and complaints. The representative and witnesses led on behalf of the Factor accepted that this was the case. A particular example was the Homeowner's enquiries in 2014 regarding the replacement of drying facilities for the block of flats. It appeared that an excessive period of time was taken by the Factor to provide the information requested by the Homeowner. The Tribunal took into account the evidence that the

Homeowner did not always follow the correct procedure or approach the correct person when making enquiries and complaints, and this may have contributed to delays. The Tribunal also took account of the fact that most of the instances of delay were historical, and assurances had been given on behalf of the Factor that procedures had since been tightened up. However, there was a more recent example of delay (Homeowner's production 4.2) where the Homeowner refers to having alerted the Factor to fly-tipped items prior to May 2016. The Factor did not uplift the items, and the email trail indicates that the Homeowner had to remind the Factor on several occasions, before the items were uplifted in or around August 2016. Accordingly, the Tribunal found that the Factor had not responded to enquiries and complaints within prompt timescales.

The Factor's Written Statement of Services does not confirm the response times, in line with the Code, neither does it make any reference to the Homeowners' Handbook. It was not clear from the evidence whether or when the Homeowner had received a copy of the Handbook. The Tribunal noted that the Handbook pre-dated the Written Statement.

Breach of Section 3.3

24. The Tribunal did not find that the Factor had breached this section of the Code. The Tribunal took into account the glaring example of an inadequate description of activities and works carried out in the invoice dated 20th May 2014, which was put to both witnesses. Productions lodged by parties indicated that the description 'A010319 RHS of main door – Suplly [sic] and fit' actually referred to the supply and fitting of new drying facilities on an area to the right hand side of the main door. The Tribunal considered that this was an error on behalf of the Factor, and a possible breach of the Code. However, the Tribunal took into account that it was historical, and accepted the evidence led on behalf of the Factor regarding a new system of invoicing and description of activities and works.

Further consideration and observations

25. The Tribunal considered it unfortunate that the Homeowner did not attend the Hearing as it may have been helpful to have heard the Homeowner's response to the points raised.

The Tribunal considered the Factor's witnesses to be credible and reliable witnesses, in the main, however, Tribunal Members were concerned at the apparent lack of familiarity of the Factor's staff with the Written Statement of Services. The Tribunal Members were also concerned about the information and schedules that were missing from the Written Statement.

The Affidavits lodged on behalf of the Factor were not referred to in oral submissions. Limited weight was given by the Tribunal to the evidence contained within the Affidavits.

The Factor's system in the past in relation to insurance for homeowners whereby the Homeowner was invoiced and then a refund credited when she provided proof of her home insurance policy was not acceptable. The Tribunal noted that the Homeowner had not founded upon this matter as a breach. The Tribunal also noted that the Factor's witnesses accepted that this procedure required to be changed.

The Tribunal made an observation that there may be benefit from the Factor reviewing how it manages and performs its Property Factor duties. The Tribunal has made no finding in this regard, as, despite having been given an opportunity to clarify any alleged failure of Property Factor duties, the Homeowner did not do so

Proposed Property Factor Enforcement Order (PFEO)

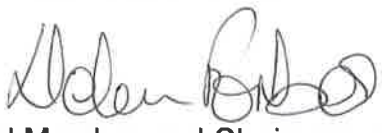
26. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO.

27. The Tribunal proposes to make a PFEO requiring the Factor to:

1) issue to the Applicant, within a period of six weeks from the date of receipt of this correspondence, a Written Statement of Services which meets the requirements of the Property Factors' Code of Conduct;
2) prepare a timetable to ensure that, within 26 weeks from the date of receipt of this correspondence, the Written Statement of Services previously issued to other homeowners within the New Hilton development is reviewed to check on compliance with the Code and, where there is found to be non-compliance, a revised Written Statement of Services is issued;
3) schedule a programme of training for all staff who deal with enquiries and complaints from homeowners which must be completed within eight weeks from the date of receipt of this correspondence; and
4) provide the Tribunal with a letter from a person in authority within the Factor's organisation confirming that 1), 2) and 3) have been complied with.

Right of Appeal

28. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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 Chairperson

5th March 2018