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

STATEMENT OF DECISION: Property Factors (Scotland) Act 2011, section 19(1)(a).

Case Reference Number: FTS/HPC/PF/17/0381

The Property:

26 Jenning Gardens, Kilbirnie, North Ayrshire, KA25 7BF

The Parties:-

Marc Miller, 26 Jenning Gardens, Kilbirnie, North Ayrshire, KA25 7BF

("the Homeowner")

and

Cunninghame Housing Association Ltd

("the Factors")

Tribunal Members:

Adrian Stalker (Chairman)

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Factors had complied with the Code of Conduct for Property Factors ("the Code"), determined that the Factors had failed to comply with the Code. The Tribunal proposes to make a property factor enforcement order, in the following terms:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by the Tribunal:-

1. To issue to the Homeowner an accurate and comprehensive Statement of Services, in writing, which complies with section 1.1b of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Deed of Declaration of Conditions ("the Deed of Conditions"), registered on 30 September 2009, by the Factors, as owners of the development of which the property forms part, which Statement of

Services describes the Property Factor's responsibilities and duties, and accurately sets out, in particular, any arrangements for funds for specific projects or cyclical maintenance in relation to the prospective costs for renewal or replacement of the CCTV system and Play Area, or any other part of the "Development Common Parts", confirming the amount, payment and repayment of charges (at change of ownership or termination of service), all in accordance with the detailed terms of section 1 of the Code.

2. To arrange for an interest-bearing account or accounting structure to be put in place, for each group of homeowners paying charges in respect of the prospective costs for renewal or replacement of the CCTV system and Play Area, all in accordance with paragraph 3.6b of the Code.

3. To make arrangements to ensure that the next factoring invoice issued to the Homeowner, and any further invoices in the future, set out the correct proportion, being one fiftieth, expressed as a percentage or fraction, of the management fees and charges for common works and services for which the Homeowner is responsible.

4. To provide to the Homeowner a detailed financial breakdown of the charges made in the Factors' latest invoice rendered to him, and a description of the activities and works carried out which are charged for, all in accordance with paragraph 3.3 of the Code.

5. To make a payment of £250 to the Homeowner.

Background

1. By an application to the First-tier tribunal for Scotland (Housing and Property Chamber) ("the Chamber") received on 9 October 2017, the Homeowner sought a determination of whether the Factors had failed under section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act"), to comply with the Code. On 8 January 2018, a Convener having delegated powers under section 18A of the Act made a decision, under section 18(1)(a), to refer the application to a First-tier tribunal.

2. The Homeowner's property 26 Jenning Gardens is the eastmost ground floor flat of the block 22, 24, 26 and 28 Jennings Gardens, Kilbirnie. It is part of a development completed on or about 2009 which comprises 50 homes. A copy of the Title Sheet for the property was made available to the Tribunal prior to the hearing. This indicates that the development is subject to a Deed of Declaration of Conditions ("the Deed of Conditions"), registered on 30 September 2009, by the Factors, as owners of the development. The Factors own 36 of the 50 homes, which they let to tenants under Scottish secure tenancies.

3. The Homeowner's application comprised a completed application form, to which was attached: "Appendix A: Details of My Complaint" (a statement of the reasons for the Homeowner's complaint); and Appendix B: "Correspondence", which contains copies of letters that the Homeowner wrote to the factors on 16 April, 11 July and 1 September 2016, and 29 May 2017.

4. The complaints made in the application are fairly straightforward. The Homeowner's letter of 16 April 2016 was prompted by his receipt of an invoice from the Factors. That letter raises questions and concerns about charges appearing in the invoice for: "Communal Area Maintenance", "Play Area Maintenance", "Play Area Replacement" and "CCTV". The letter questions the basis of the charges and the manner in which they are being apportioned between homeowners. In essence, the Homeowner considers that most of the questions raised in his letter have never been adequately answered.

5. The Homeowner's complaint is further specified in a letter to the Factors dated 25 October 2017. This begins by specifying the sections of the Code said to have been breached by the Factors, being:

    - 1.1b (Written Statement of Services), paragraphs C(d, f & g) and D(k)
    - 2.5 (Communications and Consultation)
    - 3.3, 3.4 and 3.5b (Financial Obligations)
    - 6.4 (Carrying out repairs and maintenance); and
    - 7.2 (Complaints resolution).

6. The letter of 25 October 2017 goes on to specify six bases on which the Homeowner believes that the Factors have failed to comply with the code. These are set out at paragraph 28 below. Attached to the letter are two further appendices C and D. Appendix C is the relevant correspondence received by the Homeowner from the Factors. Appendix D comprises two documents: (a) an extract from clause 16 of the Deed of Conditions; and (b) an invoice dated 11 October 2016, in respect of the period from 1 July to 30 September. This invoice is further discussed at paragraphs 16 to 26 below.

7. Together, appendices A and C comprise the correspondence between the parties in relation to the issues initially raised by the Homeowner in the letter of 16 April 2016. The Factors initially responded by letter dated 25 April 2016. The Homeowner replied by letter of 11 July 2016. In that letter, he accepts the explanation given by the Factors for the charge under the heading "Play Area Replacement". However, he continues to question the other three charges mentioned in his first letter. The Factors responded by letter dated 11 August 2016. The Homeowner's response of 1 September 2016 then indicates that he will not pay the Factor's latest invoice until he is provided with a copy of the Factor's Statement of Services under part 1 of the Code of Conduct. A Statement of Services was then forwarded to the Homeowner under cover of the Factor's letter of 10 October 2016. That was followed by the Homeowner's letter of 29 May 2017, which appears to have been prompted by the Factor's latest invoice, of 19 May 2017. In this letter, the Homeowner states: "Unfortunately the balance of my account remains in dispute as the information that I initially requested on the 16th of April 2016 has not been forthcoming. My reason for requesting this information is because your invoice does not sufficiently detail the services provided nor the proportion of the charges that relate to the provision of future services." As is described below (at paragraph 33), the Homeowner did not receive a response to the letter of 29 May 2017.

Hearing

8. By letters dated 16 January 2018, the Chamber notified the parties that a hearing would take place in relation to the application on 6 March 2018. They were further advised that any written representations on the application must be returned to the Chamber by 6 February 2018. No written representations were submitted to the Chamber in advance of the hearing. No response was given to the Homeowner by the Factors, in relation to his letter of 25 October 2017. Accordingly, neither the Homeowner nor the Tribunal was aware of the Factors' position in relation to the application, as at the commencement of the hearing.

9. The hearing took place on 6 March 2018, at Russell House, King Street, Ayr. The Homeowner, Mr Miller, was present. Mr Stephen Good, the Factors' Director of Property Services, represented the factors. He was accompanied by Mr Stuart Ross, a Factoring Officer employed by the Factors. Mr Ross assisted in the clarification of Factors' position, where necessary.

10. The Tribunal members for the hearing were to be Adrian Stalker (Chairman) and Andrew McFarlane (Ordinary Member). Unfortunately, Mr McFarlane was severely delayed by the closure of the M77 on the morning of the hearing. The hearing was due to commence at 10.00am. Mr Stalker, Mr Miller, Mr Ross, Mr Good and the Tribunal's clerk were all present at that time. However, as at 10:10am Mr McFarlane was, at best, still at least an hour away from arrival. In these circumstances, and with the agreement of the parties, the Chairman decided to conduct the hearing alone, under regulation 33 of the The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

> **33. Absence of a member of the First-tier Tribunal**
> If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the chairing member is absent, the hearing may be conducted by the chairing member sitting alone or alongside another member and in that event the hearing will be deemed to be properly constituted.

Preliminary issues (1): whether part 1.1a or 1.1b of the Code applies

11. At the beginning of the hearing, the Chairman sought clarification from the parties of certain issues arising from the papers.

12. As indicated at paragraph 4 above, the Homeowner's complaint related to Factors' charges in respect of "Communal Area Maintenance", "Play Area Maintenance", "Play Area Replacement" and "CCTV". That being so, the definition of "Development Common Parts" in the Deed of Conditions is relevant. It states:

> the term "Development Common Parts" means and includes the access roads, lanes, pavements, pathways, parking spaces (except to the extent specifically allocated to a Flat or Unit), play areas, (including boundary walls and fences) and play equipment, (if any)

> retaining walls, walls and fences, hedges, security system (if any), Fire fighting equipment (if any), grit bin (if any), CCTV system, (if any) satellite television system (if any) unadopted lighting system (if any), amenity ground, landscaped and amenity areas and all growing plants, shrubs and trees thereon and all amenity furniture, signs or other such erections throughout the Development and including, without prejudice to the foregoing, the areas shaded green, brown and purple on the plan all within the Development but in the case of any such retaining walls, walls and fences or hedges which are mutual with adjoining properties to the extent only of one half thereof.

13. Mr Good was able to confirm that the Development Common Parts are owned by the Factors. This is consistent with the Title Sheet for 26 Jenning Gardens, in terms of which the Homeowner owns that flat, and a right of common property with the proprietors of 22, 24 and 28 Jennings Gardens in and to the "Flat Common Parts"; but does not own any part of the Development Common Parts.

14. As charges are being imposed in respect of the Development Common Parts, and those are not owned by the group of homeowners, it follows that part 1.1b of the Code of Conduct ("Alternative Standards for situations where the land is owned by a land maintenance company or a party other than the group of homeowners") is applicable, rather than part 1.1a ("For situations where the land is owned by the group of homeowners").

15. This is significant, because the letter of 10 October 2016 from the Factors to the HO, to which the Statement of Services is attached, states: "This written statement of services…has been prepared in accordance with section 1.1a of the Code". Mr Good stated that the Statement of Services had been drafted on the basis of advice received from the Factors' solicitors. However, he accepted that part 1.1b of the Code was applicable. He indicated that the Factors would review the content of the Statement of Services in light of this point.

Preliminary issues (2): the Invoice dated 11 October 2016

16. The invoice of 11 October 2016 contains nine separate charges. For present purposes, the following charges are relevant:

CCTV	8.89
Communal Area Maintenance	22.97
MR0025491 CCTV Box across from number 27 renew hasp & staple…	1.12
CCTV	13.81
Play Area Maintenance	20.84
Play Area Replacement	5.05

17. To the left of these charges on the invoice, there is a column showing the "Charge Type". The charge type of "MR0025491 CCTV Box across from number 27 - renew hasp & staple…" is "Repair". For all of the other charges above, the type is "Fixed." To the right of these charges on the invoice there is another

column showing “Share %”. The figure for “MR0025491 CCTV Box across from number 27 - renew hasp & staple…” is “2.00”. For all of the other charges above, the “Share %” is “100.00”.

18. Several issues arise from the form and content of the invoice. Firstly, clause 16.3 of the Deed of Conditions provides:

> 16.3 The owner or owners of each unit in the Development shall each be liable for payment as hereinbefore provided of the Common Charges arising in respect of maintenance, renewal and improvement of the Development Common Parts in the proportion of a one fiftieth share in respect of each unit.

19. Given this clause, the Homeowner’s share for each of the above charges should be 2% (being one fiftieth). That corresponds to the “2.00” shown on the invoice for the “repair” to the CCTV box across from number 27. That being so, Mr Good was asked why the percentage share shown for the fixed charges was “100.00”. He explained that this was due to the idiosyncrasies of the software system that produces the Factors’ invoices. Where charges are fixed, and therefore appear on every invoice issued to a homeowner, they are treated as individual charges applicable to each of the 50 houses in the development, for which each is 100% liable.

20. However, Mr Good assured the Tribunal, and the Homeowner, that in the case of 26 Jennings Gardens, these fixed charges are one fiftieth of the total amount charged to the owners in the development. The Tribunal notes that paragraph 3.2 of the Statement of Services attached to the letter of 10 October 2016 states: “Homeowners shall therefore be liable for a 1/50th share of any costs incurred by the Association (as factor) in the provision of services relative to the common amenities.” As the Factors are themselves the owners of 36 of the properties, they pay 72% of the total charged. However, Mr Good was constrained to accept that the form of the invoices was less than ideal, because the percentage figures given in the invoices for fixed charges were misleading.

21. The next issue in relation to the invoice was the fact that two charges are made in respect of “CCTV”. Mr Good explained that one of these charges was for maintenance of the system, and one of the charges was to pay for its eventual replacement, when it requires to be renewed. The same distinction is applicable to the charges: “Play Area Maintenance” and “Play Area Replacement”.

22. Mr Good candidly accepted that by imposing the “replacement” charges, the Factors are, in effect, requiring homeowners in the development to pay into a sinking fund. The Factors plan to replace the CCTV system and renew the play area every ten years. The cost of carrying out that work has been estimated in advance. The money that is being charged to the homeowners in the development for “Play Area Replacement”, and in respect of one of the CCTV charges, is intended to meet that estimated cost.

23. Unfortunately, Mr Good did not appear to appreciate that the creation of a sinking fund is subject to certain rules under the Code of Conduct. In particular, under

part 1.1b, paragraph C(g), the factor is obliged to set out, in the Statement of Services, "any arrangements for funds for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service)". Paragraph 3.6b states that: "In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account or accounting structure must be used for each separate group of homeowners."

24. It was apparent that the Factors have not complied with either of these requirements. In the Statement of Services attached to the letter of 10 October 2016, there is no indication that the Factors are applying charges which are intended to fund future replacement and renewal costs. Mr Good indicated that, as far as he is aware, there are no arrangements to place the funds collected by these charges in an interest-bearing account.

25. Mr Good was at pains to explain the reasons why the Factors had decided to create sinking funds in order to meet these anticipated renewal costs. It seemed to the Tribunal that this measure was indeed quite sensible. The Homeowner also accepted that there were good reasons for preparing for the cost of renewal of the CCTV and play area in this way. However, that is not the issue. The Homeowner complains that the basis for the charging is not properly explained in the invoices, or in the other material that is given to homeowners in the development. As Mr Good was again constrained to accept, that complaint is justified.

26. Furthermore, there is no warrant for creation of a sinking fund in the Deed of Conditions, and no reference to such a fund in the Statement of Services. Consequently, there is no clear legal basis on which, by agreement with the homeowners or otherwise, the Factors are legally entitled to impose the "Play Area Replacement" and "CCTV (Replacement)" charges. This point is further discussed at the end of this decision, at paragraphs 51-54.

27. These preliminary matters having been clarified, the Tribunal moved on to the six specific complaints listed in the Homeowner's letter of 25 October 2017.

The reasons for complaint made in the letter of 25 October 2017

28. The letter of 25 October 2017 sets out the Homeowner's six reasons for believing that the Factors have not complied with the Code of Conduct. These are:

> 1. Despite my repeated requests you have not provided material that demonstrates the number of properties contributing to the maintenance costs of the communal areas, play area, CCTV system, etc.
> 2. Despite my repeated requests you have not provided any details of the balance of any floating fund for cyclical/future programmed works nor have you explained how the costs for future works have been devised or provided a programme of works.
> 3. Your correspondence did not state, at any time, that unresolved complaints may be referred to the Homeowner Housing Panel.

> 4. I received no response to my letter of the 29th of May 2017.
> 5. Despite my requests, I have received no supporting documentation that demonstrates that the cost of factoring the development costs approximately £28,000 (based on a quarterly invoice of £138.39 and assuming 50 contributing properties).
> 6. The erection of a fence that encloses part of the common area was undertaken without any consultation.

29. As regards the first point, paragraph 2.5 of the Code states:

> 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.

The first paragraph of section 3 of the Code ("Financial Obligations") is also relevant. It states:

> While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

30. During the course of the hearing, Mr Good provided an explanation for the misleading percentage figures given in the Factors' invoices. The Tribunal understood Mr Miller to accept that explanation. However, he had to wait until the hearing for it to be provided. Consequently, the Tribunal found that the Factors had failed to respond to his enquiries on this matter promptly, and as quickly and fully as possible. That amounts to a breach of paragraph 2.5, and a failure to observe the principles set out at the beginning of section 3 of the Code.

31. As regards the second point in paragraph 28, the Tribunal had already found that, in respect of the sinking fund for renewal of the play area and CCTV system, the Factors are in breach of part 1.1b, paragraph C(g), and paragraph 3.6b of the Code.

32. As regards the third point, paragraph 7.2 of the Code states:

> 7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

In the view of the Tribunal, the Homeowner's point 3 does not correctly identify the Factors' failure under paragraph 7.2. The need to notify a homeowner of the right to make a complaint to the homeowner housing panel (now the First-tier Tribunal) does not arise until the factor's own complaints procedure has been

exhausted. Here, the Factors do not appear to initiated their complaints procedure at all.

33. As regards point four: Mr Good accepted that the Homeowner had never received any response from the Factors to his letter of 29 May 2017. He unreservedly apologised for that failure. He did not offer any particular explanation or mitigation.

34. Paragraph 4.2 of the Statement of Services attached to the Factors' letter of 10 October 2016 is headed "Complaints". It refers to the Factors having a "complaints handling procedure", and "timescales for dealing with complaints" are given. The "complaints handling procedure" is not further described in the Statement of Services, but the reader is advised that details are available on the Factors' website.

35. In the view of the Tribunal, the Homeowner's letter of 29 May 2017 is very clearly a complaint. It expressly states: "As it has been over a year since I first raised a complaint about Cunninghame Housing Association's invoicing process…and given that I have not received a satisfactory response, I will be referring this matter to the Scottish Public Services Ombudsman…" The Factors never responded to that letter, until the representations made by Mr Good on their behalf, at the hearing before the Tribunal on 6 March 2018.

36. That lack of a response, and the Factors' failure to make written representations to the Tribunal in advance of the hearing, are regrettable.

37. It was evident, during the course of the hearing, that the Homeowner was prepared to accept some of the Factors' explanations, once they were given. During the hearing, both parties were, largely, able to adopt a reasonable and conciliatory approach. That tends to indicate that the Factors could have saved themselves some time and trouble by addressing, and perhaps resolving, the Homeowner's complaints at an earlier stage. As is stated in the opening paragraph of section 2 of the Code ("Communication and Consultation"): "Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes."

38. The Tribunal considers that the Factors ought to have initiated their own complaints procedure, in response to the Homeowner's letter of 29 May 2017 (at the latest). Their failure to do so amounts to a breach of paragraphs 2.5 and 7.2 of the Code.

39. As regards the fifth point in paragraph 28, paragraph 3.3 of the Code is relevant:

> 3.3 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 works 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.

40. During the course of hearing, parties discussed the basis on which information on these matters might be provided to the Homeowner, individually. However, the Tribunal did not understand it to be the Factors' position that they had, in the past, complied with the first sentence of paragraph 3.3, by providing a detailed financial breakdown of charges to homeowners on an annual basis. Accordingly, this amounts to another breach of the Code.

41. As regards the sixth point in paragraph 28 above, some background explanation is necessary. On or about 2015, the Factors, in their capacity as owners of the Development Common Parts, decided for certain reasons to dispone an area of ground, of approximately 10 square metres, to the owners of 13 Jenning Gardens, such that the area became part of the garden of that property.

42. The Homeowner had two complaints arising from this change. Firstly, he complained that the land was transferred to the owners of number 13 without the other homeowners being informed or consulted. He was not aware of the change until he saw the fencing around the area being altered. Secondly, he complained that the reduction in the area to be maintained by the Factors should have resulted in a reduction to the charge for "Communal Area Maintenance".

43. Mr Good explained that a reduction in the garden ground did not necessarily translate to a reduced charge for "Communal Area Maintenance". The Factors engaged contractors to carry out gardening work, on contractual terms that were already agreed. They could not therefore insist on a reduction of the amount paid to the contractors. Even if the contractors were prepared to renegotiate, the extent of the ground transferred would not be such as to lead to a reduction which would be worth the time and effort involved in renegotiation.

44. In the Tribunal's view, this aspect of the Homeowner's complaint does not readily fit any particular paragraph of the Code. However, it considers that the Homeowner's first complaint was justified. When it decided to transfer an area of the Development Common Parts to the owners of number 13, the Factors ought, at least, to have advised the other owners of that decision, and of any consequences that it might have for them. That is in keeping with the need for good communication (see paragraph 37 above).

45. The Tribunal accepted the Factors' explanation as to why a reduction in the garden ground did not necessarily translate to a reduced charge for "Communal Area Maintenance". However, it also observes (again), that the Homeowner had to wait until the hearing before the Tribunal to be provided with that explanation, in response to his complaint. In the circumstances, that again amounts to a breach of paragraph 2.5 of the Code.

Disposal under section 19, appeal, etc

46. The Tribunal proposes to make an Order requiring the Factors to issue a Written Statement of Services which complies with Part 1 of the Code of Conduct. In

particular, that Statement should set out the matters specified in part 1.1b of the Code, including those paragraphs which are relevant to the creation of a sinking fund.

47. The Tribunal also proposes to make an Order requiring the Factors to comply with the first sentence of paragraph 3.3 of the Code, by providing the Homeowner with a detailed financial breakdown of the fixed charges made in its invoices, and a description of the activities and works carried out which are charged for. Thereafter, it will be for the Factors to comply with paragraph 3.3 by issuing such a statement, at least once a year.

48. The Tribunal considers that it is unsatisfactory that misleading information is provided in the Factors' invoices, regarding the percentage share due by each homeowner for fixed charges. It has ordered the Factors to change the invoices to reflect the correct percentage share.

49. The Tribunal also decided to order the Factors to pay to the Homeowner the sum of £250 in respect of its breaches of the Code, and the Homeowner's time and effort in pursuing complaints, which ought to have been addressed earlier by the Factors.

50. The Tribunal has accordingly issued a separate Proposed Property Factor Enforcement Order, to which reference is made.

51. Finally, the Tribunal returns to the issue raised in paragraph 26 above, regarding the charging of sums for a sinking fund for in relation to the renewal and replacement of the CCTV system and the play area. Clause 16.3.2 of the Deed of Conditions states:

> Each owner of the units 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26 and 28 Jennings Gardens…will deposit with the Manager on taking entry to their units the sum of …£150.00…or such other higher sum as may be agreed from time to time between the Manager and a majority of the owners of the units in the course of a meeting in terms of Clause 22 hereof. This sum will be deposited immediately upon acquisition by the owner of a unit as a contribution to finance the cost of Common Charges. The deposit will be returned when the owner of the relevant units ceases to own the unit under deduction of any sums due by the owner in terms of this Deed of Conditions.

52. The Tribunal understood Mr Good's evidence to indicate that, by the imposition of charges for a sinking fund in relation to the renewal and replacement of the CCTV system and the play area, the Factors envisage that all, or nearly all, of the anticipated cost will have been recovered from the homeowners by the time the work is due to take place. However, clause 3.5 of the Statement of Services attached to the letter of 10 October 2016 indicates that: "Where the Association undertakes or instructs works for specific planned/improvement or cyclical maintenance projects, these will be invoiced by means of the owners quarterly factoring accounts." This clause goes on to say: "…we will ask you to pay 50% of your share of the estimated costs before the work starts with the remaining 50%

being due when the works are completed." This is not the arrangement that is actually in operation.

53. Accordingly, neither the Deed of Conditions nor the Statement of Services permits the Factors to make charges in respect of a sinking fund, and the Statement of Services sets out a different system for the collection of the costs for specific planned projects.

54. The Homeowner's complaint is under the Code of Conduct. The Tribunal did not understand him to object to the Factors imposing charges in respect of a sinking fund, provided those charges are properly explained. Other owners may take a different view. As the imposition of the charge is not the subject of a complaint by the Homeowner, the Tribunal makes no finding in this respect. However, it suggests that the Factors may wish to seek legal advice on the basis on which it is imposing sinking fund charges, and whether it is entitled to do so.

55. **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.**

56. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Adrian Stalker

Signed

Date 7 April 2018

Chairman