**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 ("the Act") and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, in an application made to the Tribunal under Section 17 of the Act**

**Chamber reference: FTS/HPC/PF/18/2148**

**The Property: 11C Eastern View, Gourock PA19 1RF ('the property")**

**The Parties:**

**Ms Alison Greenhill, 0/1, 95 Albert Road, Gourock PA19 1NN ("the homeowner")**

**And**

**River Clyde Homes, a company limited by guarantee (SC329031), having its Registered Office at Roxburgh House, 102-112 Roxburgh Street, Greenock PA15 4JT ("the property factors")**

**Tribunal Members – George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision by the Housing and Property Chamber of the First-tier Tribunal for Scotland in an application under section 17 of the Property Factors (Scotland) Act 2011('the Act')**

The Tribunal has jurisdiction to deal with the application.

The property factors have failed to comply with their duties in terms of Section 2.5 of the Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). The property factors have not have not failed to carry out the Property Factor's duties.

The Tribunal proposes making a Property Factor Enforcement Order.

The Decision is unanimous.

## Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code of Conduct" or "the Code"; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as "the Tribunal".

The property factors became a Registered Property Factor on 12 December 2012 and their duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it and gave consideration to the application by the homeowner received on 20 August 2018, with supporting documentation and written representations from the property factors, received by e-mail dated 28 November 2018, with later representations from the homeowner dated 18 October 2018, summarisong her complaint.

## Summary of Written Representations

### (a) By the homeowner

The following is a summary of the content of the homeowner's application to the Tribunal:-

The homeowner's aunt, Mrs Helen Watt, had been the owner of the Property in 2009, when major environmental works were carried out. The homeowner held a Power of Attorney for her aunt at that time. The homeowner and her mother purchased the Property from Mrs Watt for full value in June 2012. Mrs Watt died in December 2012. The Property was sold to a sitting tenant in September 2017.

The homeowner understood that the invoice for the 2009 works was sent out in 2013, but she did not receive it. No contact had been made with her regarding the method of payment or a possible payment plan, if such a plan was necessary. She had called the property factors to advise them of the change of ownership, but it appeared that this had never been dealt with properly by the property factors, who had not advised her during the telephone call that such a change needed to be confirmed to them in writing. The homeowner had been advised on several occasions since, that this is referenced in the property factors' written Statement of Services, but she had since discovered that this document was not published or sent until 2013, which was after the homeowner and her mother had purchased the property. She had also been advised by her solicitor that the telephone call should

have sufficed and felt that she could not be held to a rule of which she could have no knowledge.

The homeowner had called the property factors to query a statement received in 2015 with the amount of £9,904 on it and had been told to ignore it. She had subsequently received further statements in 2016 and 2017. She had contacted the property factors and had followed this up with an email confirmation attempting to resolve the issue. She had had no contact from the property factors, but had been advised that it was under query and was with their legal team. The Property Factor acknowledged that their lack of response was totally unacceptable and had apologised.

It was only during the week that the homeowner was selling the Property to her sitting tenant that she had discovered that a Notice of Potential Liability ("NOPL") was in place. She had paid off the sum claimed in the NOPL, in order for the sale to go through, but only on the understanding that she would be appealing it. The homeowner did not feel the property factors had grasped the importance of failing to notify owners that such an action (the NOPL) had been taken on their property. The property factors had confirmed that the NOPL had been placed as part of a larger organisational project and that it did not relate to the homeowner's specific enquiry about the investment cost, but to the fact that there had been a debt due against the Property. They had accepted that, due to the fact that the homeowner had raised an enquiry regarding the invoice, they could have notified her of their intentions on this occasion.

The homeowner's view was that on the above two points alone, she should be fully reimbursed for the NOPL, as it was her aunt's debt and it would have been fully discharged had her aunt been issued with an invoice during the three years that had elapsed since completion of the work.

The homeowner maintained that, although different papers had been provided by the property factors to the Tribunal, she could honestly say she had never been sent any invoices in 2013 or later, when they stated they had been sent. She was also astonished that she and her mother had never been contacted regarding any outstanding debt or debt recovery prior to the NOPL being placed. The only reason she had become aware of the debt had been through the annual statements she had received in 2015, 2016 and 2017. She had queried these, but had received no response, a matter for which the property factors acknowledged fault.

The homeowner concluded by saying that, although the property factors had acknowledged fault, she strongly believed she should be reimbursed the full amount, as she almost felt she was being held to ransom when she only discovered the debt in the week of her sale and, without settling her aunt's debt, she would not have been able to sell the Property.

The homeowner provided, with her application, the outcomes of her second Stage 1 and Stage 2 complaints, a letter confirming the property factors were registered as factors in 2013 and a letter confirming the written Statement of Services had been sent to owners and tenants in 2013.

In the Stage 1 response letter, dated 12 June 2018, the property factors stated that the works had been completed in March 2011. The invoice had been sent to the homeowner in July 2013. After investment works have been completed and signed off, the costs have to be finalised and apportioned to each property. Final costs on large contracts are completed a year after the initial Practical Completion date. This is called a Defects Liability period. Their records showed that the final account had been agreed in March 2012. Once this had been agreed, the property factors had to work with Inverclyde Council to reconcile grant claims and only then could invoices be raised. That process could take a long time to complete, but nonetheless, an invoice had been rendered timeously in July 2013 and a reminder letter had been issued to the homeowner dated 28 July 2014.

Dealing with the change of ownership, in the Stage 1 response letter, the property factors stated that their written Statement of Services provides that homeowners must notify the HOMEfact team through their solicitor when they sell. The purpose of this notification is to allow the property factors to finalise the owner's account and create a new account for the new owner. They had never been advised by a solicitor about the sale of the Property in 2012. Consequently, the invoice and reminder of 2013 and 2014 had been issued to the homeowner in her capacity as the owner's representative.

The property factors accepted that, from their notes on the account and copy emails, the homeowner had contacted them in 2015, 2016 and 2017 to enquire about the outstanding balance on the statement of account. Each time, she had been advised that the enquiry was with the property factors' legal team for resolution. While the enquiry had been passed to the legal team as advised, the legal team had failed to deal with it within a reasonable time. The property factors acknowledged that this was "totally unacceptable" and apologised for the lack of response. The NOPL had been registered against the Property in 2015 as part of a larger organisational project and did not relate to the homeowner's specific enquiry about the investment cost. The property factors registered these notices to try and prevent any financial risk to the business and could do so as property managers, but they did accept that due to the fact that the homeowner had raised an enquiry regarding the invoice, they could have notified her of their intentions on this occasion.

Responding to the complaint that there had been no attempt to make the homeowner's aunt aware of, or to collect the debt between 2009 and 2012, the homeowner and her mother having, therefore, bought the Property in all good faith and at the fair market value in 2012, the property factors referred to their earlier comments in relation to the date of issue of the invoice. They continued that the

outstanding cost would have been highlighted prior to the sale in June 2012 had formal notification of the sale been provided to them by the homeowner's solicitor. The homeowner's contact in 2015-2017 had been treated as an enquiry as opposed to a complaint and, while a response had not been issued, a note had been placed on the account to suspend recovery of the debt as it was considered "in dispute". This would have been evident on the statements of account sent out in 2015, 2016 and 2017.

The property factors, in the Stage 1 response letter, concluded that the homeowner's purported lack of awareness of the debt appeared to have arisen owing to the unusual manner in which the Property had been purchased in that no notification of the sale had been made to the property factors via the solicitor acting for the homeowner and her mother. This had denied the property factors the opportunity to apportion the costs of the account, notify the outstanding sums in connection with the same and create a new account. The property factors did, however, partly uphold the complaint in connection with their failure to respond timeously. This was entirely unacceptable and, with a view to resolving matters, it was being passed to the property factors' Finance and Procurement manager to request that a goodwill gesture payment be made to the homeowner in accordance with the property factors' redress policy.

The Stage 1 response letter informed the homeowner of her right to request a review of her complaint under Stage 2 of the property factors' complaint handling procedures.

On 13 June 2018, the property factors' Finance and Procurement Manager, Mr Steven Duffy wrote to the homeowner offering £250 as a goodwill gesture, recognising that a compensation payment was appropriate due to the length of time it had taken them to resolve the problem.

The Stage 2 response letter was dated 20 July 2018 and was signed by the property factors' Finance and Procurement Manager, Mr Duffy. He noted that it was the homeowner's position that she had been in touch with the property factors by telephone at the time of her aunt's death to advise the Property had changed hands and that her expected outcome from the complaint was to be reimbursed for the Investment Major Works against the Property.

Mr Duffy stated that he had investigated each issue raised by the homeowner. He was satisfied that the explanation of the major works process/invoicing had been covered adequately within the Stage 1 response. The invoice timeframe was entirely in keeping with works of this nature. He had located and enclosed further documentation that had been issued in 2013 together with the major works invoice. He confirmed that the property factors had no record of the homeowner's telephone call reporting the change of ownership during 2012. Had they received notification at the time of the sale, they would have issued a final account, apportioned the charges

to the date of entry and created a new account/reference for the new owner. He had investigated every note attached to the account WATH001 (Mrs Watt's account) back to the earliest record on 4 March 2009 and could confirm that there was no record of any telephone conversation with the homeowner regarding a change of ownership in June 2012. A credit note the homeowner had provided dated 14 November 2012 showed that the property factors still believed that the homeowner was acting as her aunt's representative, as it was still in the name of Mrs Watt. Mr Duffy confirmed that the invoice the homeowner had provided dated 11 April 2013 had Mrs Watt's name removed, but this did not confirm change of ownership and further confirmed, in the property factors' opinion, that there had been no contact prior to the sale. Mr Duffy added that, irrespective of when the written Statement of Services had been issued, the process narrated therein regarding notification of sale had been in place since their inception as property factors.

Mr Duffy concurred with the Stage 1 finding that the property factors had not adhered to their debt recovery policy. He repeated that this was "completely unacceptable" and apologised for the error. The property factors had offered £250 compensation as part of their redress policy, but, on further review of the case, as a goodwill gesture, they would like to increase this offer to £1,000, but Mr Duffy did not uphold the homeowner's complaint about the Stage 1 reponse outcome, advised that the complaint had now reached the end of the property factors' complaints procedure and advised the homeowner of her right to escalate the complaint to the Tribunal.

The homeowner stated in a letter to the property factors dated 28 September 2018 that her application related to her complaint that the property factors had failed to comply with Sections 2.5, 4.1, 4.4 and 4.6 of the Code of Conduct and had failed to carry out the property factor's duties. In her application, she had also referred to Section 1, in respect of the failure of the property factors to issue a written Statement of Services until 2013, so this also was considered by the Tribunal.

**(b)By the property factors**

The following is a summary of the written representations made by the property factors and received by the Tribunal on 28 November 2018:-

The property factors stated, in relation to Section 4.1 of the Code of Conduct, that they had a debt recovery process which had been consistently applied by them and had been followed in regard to the debt for the homeowner's aunt at first and second reminder. They had been aware of the poor health of Mrs Watt and had opted to refrain from taking further action which would result in possible stress and additional costs. They believed that had constituted reasonable action, was sufficient reason not to pursue the debt at the time and was in keeping with the Code of Conduct. As social landlords offering factoring services, they recognised that different action

might have been taken by commercial organisations, but their stance was consistent within their organisation given such unfortunate circumstances.

The billing address for the Property had been changed on 4 March 2009 to that of the homeowner, after confirmation of her status as Attorney for Mrs Watt. Invoices had been issued to the homeowner as Attorney until the sale of the Property by Ms Greenhill, as this was the first time the property factors had been appropriately notified that the homeowner was the owner of the Property and this was shown by the invoices, copies of which accompanied the written representations.

On 2 March 2010, the property factors had been able to achieve grant funding of £7,943 on behalf of Mrs Watt, which highlighted an awareness of both Mrs Watt and the homeowner, as her Attorney, of the costs due.

The homeowner's complaint was that the property factors had not made her aware of the debt at the time she had purchased the Property from Mrs Watt, but the property factors had not been made aware in advance of the purchase completing that the homeowner and her mother were buying the Property. As a result, they had been unable to change their stance on the debt owed by Mrs Watt. The homeowner had been aware that the debt was due by her aunt and, as Attorney, was aware that the debt had not been settled from Mrs Watt's estate.

At no point would verbal notification of a sale have been sufficient for the property factors, nor would it have been typical procedure for any solicitor's office, despite what the homeowner had stated about the advice she had received from her solicitor that verbal notification should be sufficient. The property factors' procedure had always been that intimation of a sale must be in writing from the selling solicitor and this was cemented by inclusion within their written Statement of Services. The property factors had never been provided with evidence to suggest timely notification occurred or to suggest they had failed to act on written advice.

The property factors provided with their written representations copies of e-mail exchanges between their solicitors and the solicitor who represented the homeowner. The property factors stated that these e-mails indicated that the advice to be given to the homeowner was that, in lieu of notification at the time of purchase, and in view of the NOPL, she was due to pay the repair costs and she had benefitted from the betterment and associated increased property value. Soon after that exchange, the homeowner paid for the repairs. The property factors thought it more pertinent for the homeowner to address with her legal representative the failure to appropriately notify the property factors of the sale by Mrs Watt to the homeowner and her mother.

The property factors admitted that they had not recognised, as they might have done, when placing the NOPL that the homeowner and her mother were the owners, but this occurred after the homeowner became part-owner. They had placed the NOPL, which is on the Property and not specific to the owner, on the basis that they

would protect the interest of the property factor in holding the debt and, accordingly, the cost of this process had not been billed to the owner.

The property factors also recognised that the homeowner had contacted them a significant period after becoming part-owner, to query the costs, on the basis that she was not aware of them and they acknowledged that they had not communicated well with the homeowner at that time, but their error would not have changed the fact that the debt would be due by her and her mother as owners of the Property. In recognition of their missed opportunities and poor communication, the property factors had offered significant compensation, but the homeowner had refused offers of £250, £500 and £1,000.

In relation to Sections 4.4 and 4.6 of the Code of Conduct, the view of the property factors was that they were designed to address the situation where a factor might vary provision due to bad debt or might choose to spread bad debt amongst fellow proprietors. The property factors had always shouldered the burden of costs associated with carrying debt and of placing Notices of Potential Liability and had never had a policy of spreading bad debt to the other owners. They would also not reduce service as a consequence and they regularly funded works in advance, giving owners significant periods to pay monies back. Consequently, the written Statement of Services was silent in this matter. As a social landlord, the property factors considered they played a bigger role in society than that of a typical commercial agent. No such costs had ever been attributed to the Property, either when the homeowner was part-owner or when she had acted as Attorney for her aunt. This was evidenced by copies of the service charge invoices sent to the homeowner, which accompanied the written representations.

## The Hearing

A hearing took place at Glasgow Tribunals Centre, 20 York Street, Glasgow on the morning of 5 December 2018. The homeowner was not present or represented at the hearing, Ms Greenhill had emailed the Tribunal on 19th November to confirm she would not be attending and would rely on her written submission. The property factors were represented by Mr Richard Orr, their Senior Project Manager.

## Summary of Oral Evidence

The chairman told the property factors' representative that he could assume that the Tribunal members had read and were completely familiar with all of the written submissions and the documents which accompanied them.

Mr Orr advised the Tribunal that there were more than 50 flats in the block of which the Property forms part and that the property factors owned approximately 70% of

them. The works had been effectively completed in 2011. There had then been a one-year "snagging" period, so the costs were not signed off until mid-2012 and invoices were not sent out until 2013. A pro-forma letter, included with their written representations and headed "Dear Mrs Watt" was undated, but Mr Orr had established that the pro forma had last been edited on their system in 2011. It was the letter with which the Invoice for the works had been sent out and the Invoice attached to it showed the total cost , the share attributable to the Property, the grant paid by Inverclyde Council and the amount due by Mrs Watt (£9,904.11). A copy of the letter from Inverclde Council, confirming the grant based on estimated costs, dated 2 March 2010 had been delivered to the Property. The homeowner (as Attorney) and her aunt, Mrs Watt had both been there.

By the time the invoice was sent out in 2013, the homeowner and her mother had bought the Property, but the property factors had not been properly notified of the change of ownership. The amount due had to be secured by a NOPL, as there was no float on the factoring account and the property factors had already paid the bill for the repairs. The owners were in effect being asked to replenish the account. The Yearly Statement would be sent out where any balances, debit or credit, existed.

Mr Orr told the Tribunal that it was standard practice for selling solicitors to write to factors, asking about any outstanding repairs which had been billed or were in contemplation, asking for details of common insurance costs and requesting the factors to update their records. The property factors in this case had been unaware of the change of ownership until the homeowner contacted them in 2015, when she received the Yearly Statement showing the balance outstanding for the repairs works. She had, however, been aware, having had a Power of Attorney for Mrs Watt, that the money was due.

The property factors took a softer view than many would in relation to credit control, recognising that an owner who required an Attorney to look after her affairs might be vulnerable, but the annual statements would still have gone out, setting out the debt.

Mr Orr advised the Tribunal that the property factors had a record of a telephone call in 2016 (not 2015) from the homeowner saying this was the first she had heard of the debt. The property factors had by then passed the matter to their legal team, who, he recognised, had taken too long to deal with it. They had missed an opportunity to put it right, so had offered compensation. The note of the call suggested that the person who had taken the call in 2016 had not understood fully what the homeowner was saying, as the records already had the homeowner's name and address on them, so it did not appear that anything had changed. The records showed the homeowner acting as Attorney and the person taking the call had not picked up that the homeowner was calling in a different capacity, namely as a part-owner.

The NOPL had been registered in 2013 and Mr Orr accepted that owners had not been told in advance.

Mr Orr considered that the compensation figure offered had been reasonable in the whole circumstances of the matter, as the homeowner must have been aware that the debt remained outstanding, as she had been Mrs Watt's Attorney.

Mr Orr told the Tribunal that the written Statement of Services had gone out in 2013 and that the property factors had only started charging a management fee in 2015. He also confirmed that the debt had been satisfied at the time of the sale by the homeowner.

Mr Orr then left the hearing and the Tribunal members considered the evidence that they had heard, along with the written representations and all other documentation before them.

**Findings of Fact**

The Tribunal makes the following findings of fact:

- The homeowner is a former joint-owner of the property.
- The property forms part of a development of flatted dwellinghouses.
- The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- The date of Registration of the property factors was 12 December 2012.
- The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- The homeowner made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") dated 19 August 2018 under Section 17(1) of the Act. The application was received by the Tribunal on 20 Augsus 2018.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- On 12 October 2018, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a tribunal for determination.

**Reasons for the Decision**

**Section 1 of the Code of Conduct includes a requirement for property factors to provide each homeowner with a written Statement of Services to existing homeowners within one year of initial registration as a property factor.**

The homeowner had complained that the property factors had not issued the written Statement of Services until mid-2013. **The Tribunal did not uphold the complaint under Section 1 of the Code of Conduct**, as the property factors had met their legal obligation. Having registered as property factors on 1 October 2012, they had 1 year from that date to provide owners with the written Statement of Service.

**Section 2.5 of the Code of Conduct provides that property factors must respond to enquiries and complaints received by letter or email within prompt timescales. Overall their aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if they require additional time to respond.**

The homeowner had said in her written representations that she had telephoned the property factors to query the 2015 statement. The property factors had stated at the hearing that they had no record of a communication before the telephone call in 2016, although this was at odds with their statement at the hearing that the homeowner had contacted them when she received the 2015 Statement. The Tribunal did not have information as to when that would have been sent out and acknowledged that it might not have been issued until early in 2016 . Their Stage 1 response letter referred to "notes on the account and copy e-mails that you did contact us in 2015, 2016 and 2017 to enquire about the outstanding balance on the statement of account". Irrespective, however, of which date was correct, the property factors had acknowledged that they had not communicated well with the homeowner and that this had led to delay. Accordingly, **the Tribunal upheld the homeowner's complaint under Section 2.5 of the Code of Conduct.**

The property factors had told the Tribunal that they had no record of a conversation in 2012 regarding change of ownership of the Property and that their position would always have been to require confirmation by way of a solicitor's letter. The homeowner's version of events suggested she was completely unaware of the liability until she received a Statement in 2015, but the property factors provided the Tribunal with evidence of a letter from Inverclyde Council dated 2 March 2010, intimating the approved cost and award of grant. The Tribunal held that, as her aunt's Attorney, the homeowner must have been fully aware that there would be a bill to be paid at some point.

The Tribunal noted that, in their written representations, the property factors stated that the problem would have been resolved if the solicitors acting for the homeowner and her mother had intimated in writing the change of ownership, but at the hearing, Mr Orr suggested that intimation would normally have been made by the solicitor for

the seller (in this case, the solicitor for Mrs Watt). The Tribunal's view was that it would normally be the seller's solicitor who dealt with the intimation of change of ownership, but the apparent inconsistency did not affect the Tribunal's view that it accepted the view of the property factors that verbal intimation would not normally suffice and that they would not have acted on that alone. Typically, such a letter would provide details of the new owner and the date of entry, would ask for bills to be apportioned as at that date and would seek confirmation that there were no works carried out but not yet billed and no major repairs agreed but not yet carried out. The Tribunal accepted that, had such a letter been sent by Mrs Watt's solicitors at that time, the matter of the outstanding unbilled repair works would have to have been resolved between the parties to the sale and purchase. The Tribunal noted that the work was not billed to owners until 2013, but by mid-2012, when the homeowner and her mother purchased the Property, the property factors would have been able to give a clearer indication of the likely cost, but more importantly confirm that there was an outstanding debt. The Tribunal's view was that, in any event, the homeowner knew from the Inverclyde Council's letter of 2 March 2010, which, according to the property factors' evidence at the hearing, had been delivered to Mrs Watt in the presence of the homeowner, that a significant sum would be due. The property factors had provided the Tribunal with copies of the normal factoring invoices from 20 February 2009 to 16 January 2015, all of which bore the customer reference WATH001 and all of which had been addressed to the homeowner at her home address.

The Tribunal did not make a finding as to whether the homeowner had telephoned the property factors to intimate the change of ownership as she had said she had done. The property factors stated categorically that they would have told her that a telephone call was not sufficient and that a solicitor's letter would be required before they would record a change of ownership.

**Accordingly, the Tribunal did not uphold this element of the homeowner's complaint.**

**Section 4.1 of the Code of Conduct provides that property factors must have a clear written procedure for debt recovery which outlines a series of steps which they will follow unless thare is a reason not to, This procedure must be clearly, consistently and reasonably applied and it is essential that it sets out how the property factor will deal with disputed debts.**The Tribunal had seen the written Statement of Services and was satisfied that it contained a Debt Recovery Procedure, which included section on Disputed Debts. It did not include any provisions for spreading the unpaid bills of any homeowner (as bad debts) across the remaining owners, but the Tribunal accepted the evidence given by the property factors at the hearing that this was because they had never had a policy to spread debt in this way.

The homeowner had stated in her written representations that she had been unaware of a debt until she came to sell the Property in 2017, but the Tribunal was satisfied that she must have been aware that there was a debt that had not been settled by her as her aunt's Attorney. The Tribunal noted the property factors' explanation at the hearing of their "softly, softly" approach to debt recovery, recognising the relatively low value of flats in high-rise blocks and the potentially limited means of those who had exercised their right to buy. The Tribunal considered that, given this approach, it was not inappropriate for the property factors to seek to protect their position by registering a Notice of Potential Liability, when they were reluctant to actively pursue Mrs Watt because of her ill-health and because she might be vulnerable. The Tribunal held that the Debt Recovery Procedure had been reasonable applied. **Accordingly, the Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 4.1 of the Code of Conduct.**

**Section 4.4 of the Code of Conduct states that factors must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations.** The Tribunal was satisfied from the evidence given by Mr Orr at the hearing that there would be no impact on service delivery and charges in such a situation. **Accordingly, the Tribunal did not uphold the homeowner's complaint under Section 4.4 of the Code of Conduct.**

**Section 4.6 of the Code of Conduct requires factors to keep homeonwers informed of any debt recovery problems of other homeowners which could have implications for them.** For the reasons given in relation to the complaints under Sections 4.1 and 4.4, namely that the property factors stated in evidence that debt recovery problems of a homeowner would have no implications for the remaining individual owners in the block, **the Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 4.6 of the Code of Conduct.**

The homeowner had also complained that the property factors had failled to comply with the property factor's duties. The homeowner did not provide any evidence specific to this element of the complaint, but the Tribunal was satisfied that all the matters complained of had been dealt with under the various Sections of the Code of Conduct.

**Decision**

The Tribunal decided that the property factors had failed to comply with Section 2.5 of the Code of Conduct, but did not uphold any other element of the homeowner's complaint. The Tribunal noted that the property factors had recognised their failure to comply and had offered compensation of £250, increased it to £1,000 at the Stage 2 response stage, but subsequently reduced it to £500, following the homeowner

lodging her application with the Tribunal. The property factors had stated in their written representations that the offer of £1,000 reflected what they understood to be the maximum award the Tribunal had ever made. TheTribunal was not, however, prepared to make an award of this amount. The Tribunal had held that the homeowner had known , albeit in her capacity as her aunt's Attorney, that a debt had arisen, as major works had been carried out, and that it had not been settled by the time of her purchase in 2012. It appeared that the solicitors involved had not followed the customary practice of intimating changes of ownership, so the property factors were unaware that the Property had changed hands in 2012. The property factors had still been unaware of it when they sent out the Invoice and when they registered the NOPL and were not to blame for the consequential impact on the homeowner. However the Tribunal did note that the issue of the outstanding debt may have been resolved earlier if the property factor had informed the homeowner prior to registering the NOPL.

**Property Factor Enforcement Order**

**The Tribunal proposes to make a Property Factor Enforcement Order, as detailed in the accompanying Section 19(2)(a) Notice.**

**Appeals**

**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.**

Signature of Legal Chair . Date 5 December 2018

George Clark