Housing and Property Chamber
First-tier Tribunal for Scotland

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

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 (Rules of Procedure) Amendment Regulations 2017

Chamber Ref: FTS/HPC/PF/17/0447

Re: Flat 3/1, 9 Dover Street, Glasgow, G3 7BG ("the Property")

The Parties:-

Mr Gordon Orr, Flat 3/1, 9 Dover Street, Glasgow, G3 7BG ("the Homeowner")

Glasgow West Enterprises Limited, 5 Royal Crescent, Glasgow, G3 7SL ("the Factor")

Tribunal Members

Ms Helen Forbes (Legal Member)

Ms Ann MacDonald (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 from 30th November 2017 to 10th April 2018 ("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 Section 2.4 of the Code.

2. Details of the alleged failures were outlined in the Homeowner's application and associated documents including correspondence to and from the Factor, the Written Statement of Services, complaint correspondence, photographs,

Carillion Services Procedure document, and the Title Sheet for the Property. The failures outlined by the Homeowner related to the cosmetic effect of the installation of gas pipework on behalf of the Factor in respect of three properties owned by Glasgow West Housing Association situated within the Homeowner's block of flats. The gas pipework was installed externally at the rear of the building, before entering the communal areas. The Factor did not consult with the private homeowners in the block of flats prior to undertaking the work.

3. On 18th December 2017, the Homeowner served notice on the Factor of breaches of sections 1.1a A and 2.5 of the Code.

4. On 22nd January 2018, the Homeowner informed the Tribunal that he was not making a complaint under section 2.4 of the Code.

5. By Minute of Decision dated 18th April 2018 a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.

6. On 9th May 2018, Notice of Referral and Hearing was sent to the Parties. A hearing was set for 29th June 2018.

7. By letter dated 30th May 2018, the Factor's representative lodged written representations and requested a postponement of the hearing due to staff unavailability.

8. On 8th June 2018, the Homeowner confirmed that he had no objection to the postponement of the hearing. A hearing was set for 21st August 2018.

9. On 13th August 2018 the Factor's representative lodged a list of witnesses and productions comprising technical information, email and written correspondence, written statement of services and photographs.

Hearing

10. A hearing took place at 10.00 on 21st August 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The Homeowner was present. The Factor was represented by Ms Claire Mullen of TC Young Solicitors. Elaine Travers, Services Director, and Daniel Wedge, Property Services Manager, were present on behalf of the Factor.

Preliminary Matters

11. There was discussion about whether the Factor's witnesses were to be led in evidence. Ms Mullen said that Ms Travers was there as an observer, and Mr Wedge as the Factor's representative. As the homeowner had no objection, it was agreed that both employees of the Factor would sit in for the hearing.

12. A preliminary point was raised by the Homeowner in relation to the external stonework of the block of flats at 9 Dover Street, Glasgow. He referred to a survey carried out by Punch Consultants that stated that the external pipework installed by Carillion could impede future repairs to the sandstone. Ms Mullen

objected to this new issue as it had not formed part of the Homeowner's complaint or application and she had, therefore, not had an opportunity to discuss this matter. The Tribunal agreed that it would not be appropriate to consider this matter

13. The Legal Member asked for clarification regarding the Factor's organisational structure. Ms Mullen said that Glasgow West Housing Association ("GWHA") is the parent company, and Glasgow West Enterprises Limited ("GWEn") is a subsidiary factoring service.

Evidence and Representations

14. The Tribunal then dealt with each of the Homeowner's complaints in turn.

Failure to comply with section 1.1a A of the Code

15. Section 1.1a A states: [The written statement should set out] *a statement of the basis of any authority you have to act on behalf of all the homeowners in the group*

The Homeowner said that, although he had not incurred any charges during the work carried out on behalf of the Factor to install new boilers in three of the properties in his block of flats, the Factor should have considered the homeowners before the work went ahead. The Factor should have intervened and made the homeowners aware that the work was being carried out. The Homeowner referred to paragraph 3.2 of the Factor's Written Statement of Services and said that he felt it was very confusing as to which body was responsible for carrying out the installation work.

On behalf of the Factor, Ms Mullen said she would adopt her written representations on this matter. This particular section of the Code is simply a reference to the requirement to provide a written statement of services and to what should be contained therein. Section 3 of the Factor's written statement sets out various ways in which the Factor might be appointed. There had been no breach of that section of the Code. Ms Mullen said that the Factor accepts the position that they ought not to have acted without consulting the homeowners.

Responding to questions from the Tribunal as to whether the Factor's written statement did, in fact, comply with the Code, given the requirement in the Code to be more specific (footnote 3 on page 5), Ms Mullen submitted that the Factor's written statement is sufficient to clarify the basis of the Factor's authority. Ms Mullen accepted that the way it is worded may make it difficult for a homeowner to understand, but she said that the homeowner has access to their title deeds and could look to those for clarification.

Failure to comply with section 2.5 of the Code

16. 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)

The Homeowner said he had lodged a complaint with the Factor and he had accepted that it would take some time to address the issues; however, he had continually had to ask the Factor for updates. No particular timescale was agreed. It was inconvenient to have to continually be proactive to get progress and it was for a very long period..

The Homeowner explained that the gas meters for the properties within the block of flats are situated in the basement of the property. The pipework for his gas boiler runs from the basement through a service riser, which is an internal void in the building. New boilers were installed on behalf of the Factor in respect of three properties within the block owned by GWHA. Rather than installing the gas pipework in the internal riser, as before, the pipework was installed externally at the rear of the building, before entering the communal stair and landings. He said he was told by three gas consultants that they could not see why the pipework had to be re-routed. Gas Safe had told him that this type of external pipework would not usually be allowed unless the property was 'freehold' or privately owned. They commented that the external method of installation was easiest, least disruptive and cheapest. Responding to questions from the Ordinary Member, the Homeowner said the advice was given over the phone. He had been unable to get this advice in writing, despite trying. He was told that running the pipework through the service risers would comply with BS 6891, the specification for the installation and maintenance of low pressure gas installation pipework.

The Homeowner said he was eventually told by the Factor that the original pipework situated in the internal service risers could not be reinstated, as the original pipework was not sufficient for the operating pressure of the new boilers, but it took some time before this information was provided. He referred to the Factor's letter dated 18th September 2017 (Factor's production 2), which outlined the final response from the Factor to his complaint. This was almost two years after his complaint had been made. The letter stated that utilising former internal service risers is not considered appropriate or best practice to meet current regulations.

Responding to questions from the Legal Member as to the Homeowner's concerns about the suggestion that the pipework might be painted or boxed in to mitigate its effect in the common stairway, he said that the pipework would still be there, and it would still be ugly and obtrusive.

The Homeowner said that a further part of his complaint had been the damage to the stonework, and the debris left by the contractors. There were marks on the internal walls, writing in dust, handprints, and empty rubbish left in the back courtyard. He had to chase this matter up with the Factor before the rubbish and debris was removed. It was a week or two before this was done. Although he accepted that there was no long delay in respect of this matter, he said some

dust from drilling is still evident, and there are still marks on the wall and the stonework is still damaged.

The Homeowner had been unhappy with the removal of the louvre ventilation cover on the basement window. It had been covered up with plywood. Following his complaints, a louvre cover was reinstated in April 2016.

The Homeowner said he was prepared for the matter to take some time to be investigated, but did not expect it to take almost two years. That was excessive.

The Homeowner pointed out that Carillion's Services Procedures, which he had lodged with his application, at paragraph 5.4 mentions installation of pipework through purpose provided riser shafts.

On behalf of the Factor, Ms Mullen said that the Factor's position was that the Factor had acted in compliance with section 2.5 of the Code. The Factor accepted that it took almost two years to reach a final resolution, but the records show a significant amount of correspondence. It was an extensive investigation and the Factor had tried to get a resolution. It had been accepted some time ago that the work had been carried out without the authority of homeowners within the block of flats. Ms Mullen referred to the Homeowner's letter of 10th December 2015 which was answered by Mr Wedge on behalf of the Factor on 20th January 2016. In that letter, Mr Wedge apologised for the lack of consultation. There are many emails back and fore between the parties. Mr Wedge was not always in a position to get direct answers to the questions asked. He took advice from several contractors on technical matters, as the Homeowner had provided some contradictory technical information. In the period between 20th December 2015 and 16th February 2016, there were 9 email exchanges and 6 of those were instigated by the Factor. Between 16th February 2016 and 18th September 2017, there were 52 emails between the parties. There were 27 initial emails and 12 proactive emails from the Factor.

In response to questions from the Legal Member regarding the target times within the Factor's written statement, and whether an extension to the period allowed for resolution of the complaint had been agreed, as mentioned therein, Ms Mullen said that it was not possible to agree an extension, as the Factor was dependent on third party contractors for information. The issue with the debris had been rectified timeously. Ms Mullen said the Homeowner had accepted that this matter went beyond the standard timescales for response. The Factor has been incredibly thorough in trying to explain this matter and ought not to be penalised considering the proactive emails and prompt responses.

In response to questions from the Ordinary Member regarding periods where there was no contact from the Factor for two months, such as the period between 12th May and 10th July 2017, Ms Mullen said that the Factor's staff were on leave; this was not a purposeful delay.

On behalf of the Factor, Mr Wedge said that the work to the gas boilers in the three tenanted properties came towards the end of some mixed works. The

boilers had come to the end of life. It was not expected that the pipework would have to be replaced, but there was a drop in the operating pressure and the pipework did not meet BS6981. The Factor did not accept this fact lightly, and they were keen that the contractor justify why this was required. The contractor confirmed (Production 4) that the upgrade works were required in order to comply with current legislation. The Homeowner had provided information from Scottish Gas to say that there was no problem with operating pressure in respect of his boiler. The Factor understood that the Homeowner's boiler and pipework met with requirements at the date it was installed and also advised that each particular boiler had to be considered on its own requirements.

With regard to the possibility of removing the new pipework after installation, and reinstalling it using the service risers, due to the Homeowner's complaints, the Factor consulted with several contractors and consultants in this regard. As one question was answered, another would arise. It was not until late in the process that they felt they had sufficient answers. The reason they could not use the service risers was 1) the pipework needed to be accessible; 2) sufficient ventilation was required; 3) the pipework would have to be routed through private properties and this could have meant considerable redecoration works, if, indeed, private owners were agreeable; 4) there was no certainty that the pipework would enable sufficient pressure until it was completed and then tested. Mr Wedge said that, in hindsight, if there had been a consultation in advance of carrying out the works, they could have had these discussions with private homeowners. If they had discussed re-routing the pipework through service risers, and homeowners were not in agreement, they would have had to install electric wet systems in the tenanted properties. It was their position that such systems would be inefficient and less cost efficient, as well as failing to meet the SHQS and Energy Efficiency Standard for Social Housing and would not be acceptable to their tenants having previously had gas boilers.

Responding to questions from the Legal Member as to whether this had been explained to the Homeowner, Mr Wedge said not all of the information was passed on to the Homeowner. Asked whether quotes had been received for re-routing the pipework, as mentioned in the correspondence to the Homeowner, Mr Wedge said that 'thumbnail' quotes had been received but these did not include matters such as decoration and getting access. Mr Wedge accepted that the matter took a considerable length of time, and said he was frustrated at the delays.

Mr Wedge said that he had been unaware that the sandstone may have been damaged. He had understood that the Homeowner's reference to stonework referred to the debris left by the contractors. He has spoken to Scottish Gas and they have said they would install the pipes in the same way. The Homeowner said that there would be future problems due to the missing sandstone. The Homeowner accepted that this matter had not been discussed with the Landlord, therefore, it would not be discussed further at the hearing.

Ms Mullen said there were other properties in the area where gas pipework had been installed externally, in the same manner as these properties. She accepted that the installation in these cases may have taken place after

consultation with private homeowners. Ms Mullen reiterated the Factor's acceptance that they had failed to consult. The Factor had not initially expected any works that would impact on the common areas. The Factor's investigations had been extensive, and a decision had now been taken that the pipework had been installed in compliance with best practice. The Factor has offered to paint the pipework and offered compensation to the Homeowner. Ms Mullen referred to the First-tier Tribunal for Scotland (Housing and Property Chamber) case FTS/HPC/PF/17/0136, which had been lodged by the Homeowner. It was provided to him by Ms Travers with her letter dated 26th January 2018, to indicate that the tribunal had awarded a similar level of compensation to a homeowner in a case with a similar complaint.

In relation to the matter of the previous case, the Homeowner pointed out that it was in relation to one external pipe. There were three external pipes in his case. He said that the compensation awarded in the previous case was to reflect the excess that the homeowner in that case had to pay to his insurer. Ms Mullen responded that the tribunal in the previous case had made it clear that the compensation did not relate to the insurance excess.

In summary, Ms Mullen submitted that the Tribunal should reject the Homeowner's allegations of a breach of the Code. The Factor had observed the relevant regulations and standards. The Homeowner's proposal to have the piping re-routed would have meant significant disruption with no guarantee that it would meet the standards. A wet heating system would not achieve efficient energy standards, and the pipework had been installed in terms of best practice, as indicated by the other recent works in the area.

Findings in Fact

17.

i. The Homeowner is the heritable proprietor of the Property registered in the Land Register for Scotland under Title Number GLA159478.

ii. The Factor has been a registered property factor since 19th December 2012, with registration number PF000329. The Factor's duty under section 14(5) of the Act to comply with the Code arises from that date.

iii. In July 2015, the Factor upgraded gas pipes to three of the properties owned by GWHA within the block of flats at 9 Dover Street, Glasgow, in which the Property is situated. A pipe runs through the shared stairwell before entering one of the properties owned by GWHA. GWHA did not inform homeowners within the block that this work was taking place or consult in advance with them.

iv. By letter dated 2nd November 2015, the Homeowner complained to the Factor about the lack of notice of the alterations, stating that he was unhappy with the cosmetic effect of the pipework and changes to a ventilation grill. The Homeowner complained that debris was discarded in the rear courtyard and stairwell, chunks of sandstone were discarded,

the plywood covering the ventilation grill was unsightly and interfered with ventilation, and there was paint all over the pipework and surrounding stonework.

v. By letter dated 27th November 2015, the Factor's Property Services Officer, Richard McLean, responded to the complaint and offered to have the pipework painted to 'disguise the look of the pipes'.

vi. By letter dated 10th December 2015, the Homeowner requested that the pipe work be removed and the building returned to its former state.

vii. By email dated 20th January 2016, the Factor's Mr Wedge notified the Homeowner that the complaint had been escalated to the second stage of the Factor's complaints procedure, and that the normal timescale for this was 20 days. A full response was due to the Homeowner by 16th February 2016.

viii. The parties met on site in January 2016 to talk over the Homeowner's complaint.

ix. By email dated 16th February 2016, Mr Wedge summarised the issues discussed and apologised that matters had not progressed as far as they should have since the parties met. He said he was awaiting responses from third parties.

x. The parties corresponded regularly by email regarding this complaint and other factoring matters over a period. The emails from Mr Wedge mention consideration of various options for addressing the Homeowner's concerns.

xi. On 12th July 2016, the Homeowner emailed to chase up a response to his concerns, having last heard from Mr Wedge on 8th June 2016.

xii. On 27th July 2016, the Homeowner emailed Mr Wedge and the Factor's Richard McLean to prompt a response to his previous email. Mr McLean responded and said that Mr Wedge was on annual leave until the following week.

xiii. Mr Wedge responded to the Homeowner by email on 16th August 2016 stating that more information was required from a contractor.

xiv. By email dated 9th September 2016, having been prompted again by the Homeowner, Mr Wedge apologised for the delay and said he would pick up on this directly over the next week and revert with an update as soon as possible.

xv. On 3rd October 2016, the Homeowner emailed Mr Wedge for a response.

xvi. On 11th October 2016, Mr Wedge responded by email to the Homeowner stating that he had 'not made time to investigate' the matter, apologising for the delay.

xvii. On 14th October 2016, Mr Wedge emailed the Homeowner stating that the Factor had been advised that reinstatement of the internal gas pipework connections was feasible.

xviii. On 31st October and 23rd November 2016, the Homeowner prompted Mr Wedge for an update.

xix. On 25th November 2016, Mr Wedge responded to the Homeowner by email stating that he had 'information flow problems' and would seek advice elsewhere.

xx. On 6th December 2016, Mr Wedge informed the Homeowner by email that he had exhausted feedback from contractors and would continue to pursue Gas Safe.

xxi. On 10th February 2017, the Homeowner had to email Mr Wedge to prompt an update.

xxii. By email dated 10th February 2017, Mr Wedge informed the Homeowner that the Factor had received advice from Gas Safe that the new pipework was required and that the install contractors were correct in their processes.

xxiii. On 7th March 2017, the Homeowner had to email Mr Wedge to prompt an update. By return email on that date, Mr Wedge provided the Homeowner with information from Gas Safe, stating that the Factor remained open to consideration of some mitigation relating to the internally exposed gas supply pipe.

xxiv. By email dated 6th April 2017, Mr Wedge informed the Homeowner that matters were 'slowly creeping forward' but there was 'no solution at this time'. He said he would schedule an update for the Homeowner week ending 21/4.

xxv. On 4th May 2017, the Homeowner had to email Mr Wedge to prompt an update. On that date, Mr Wedge responded by email, apologising for not getting back to the Homeowner when promised. Mr Wedge said he was continuing to seek advice on various options.

xxvi. On 12th May 2017, Mr Wedge emailed the Homeowner with an update and said he would arrange to visit the site with a contractor and technical officer week commencing 22/5.

xxvii. On 10th July 2017, the Homeowner had to email Mr Wedge to prompt an update. A response was received from Ali Dowlatshah on behalf of Mr

Wedge on 7th August 2017, apologising for the delay, and stating that options were being considered.

xxviii. On 22nd August 2017, the Homeowner emailed Mr Wedge and Mr Dowlatshah stating that it was now two years since the pipework had been installed and asking how close the Factor was to coming to a conclusion. By response on the same date, Mr Wedge said that investigations were ongoing, but he did not have a collated updated position to provide to the Homeowner. He anticipated that he would be talking the Service Director through the Homeowner's complaint the following week and would respond week beginning 4th September.

xxix. By letter dated 18th September 2017, Mr Wedge wrote to the Homeowner, setting out the findings of the stage 2 complaint, stating that the Homeowner's complaint in relation to the installation of new gas pipes was not upheld as the pipework was upgraded to meet statutory Gas Safe obligations where operating pressure was deemed insufficient. Mr Wedge confirmed that the installation aligns with best practice with respect to ventilation and safety requirements. Mr Wedge confirmed that the Homeowner's complaint in relation to insufficient consultation with homeowners in relation to the gas pipe works was upheld. The Factor offered the Homeowner an *ex gratia* payment of £200 in full and final settlement of all matters.

xxx. By letter dated 26th January 2018, the Factor's Elaine Travers increased the offer of an *ex gracia* payment to the Homeowner to £330. The Homeowner did not take up the offer of the *ex gracia* payment.

Determination and Reasons for Decision

18. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Failure to comply with section 1.1a A of the Code

19. The Tribunal took into account the fact that the Homeowner's complaint in this regard did not appear to be a complaint that the written statement, in itself, was deficient. The Homeowner's complaint related to the Factor's lack of consultation. The Tribunal considered that it may have been more appropriate to have raised this complaint as a breach of Property Factor duties. In the circumstances, the Tribunal found that the Factor had not failed to comply with this section of the Code. The Tribunal, however, observed that the written statement of services could be clearer in response to this section of the Code. The Factor would be advised to reconsider whether the generic statement regarding the basis of the Factor's authority is sufficient. It may be the case that a schedule to the written statement, outlining the basis of the Factor's authority for each particular development, would be in order. Homeowners should not have to consult their title deeds, as suggested, to ascertain the basis of a factor's authority.

Failure to comply with section 2.5 of the Code

20. The Tribunal found that the Factor had breached this section of the Code by failing to respond to the Homeowner's enquiries and complaints within prompt timescales, and failing to deal with the complaint as quickly as possible. The procedure outlined in the Factor's written statement was not followed in this case, and there was no attempt by the Factor to 'agree an extension' to the target timescales. The Tribunal appreciated that Mr Wedge took matters seriously and often apologised unreservedly for delays, which were not always of his making; however, the Homeowner should not have had to proactively chase up the Factor for updates, as he so often had to. Nor should he have had to wait almost two years for a resolution, particularly given the seriousness of the situation. The Factor had failed to consult with homeowners in installing unsightly external pipework on the building and in common areas. The Factor accepted that they had failed to consult with the homeowners. In these circumstances, the Homeowner might have expected matters and investigations to move swiftly. The evidence on behalf of the Factor was that they were dependent on information and advice from a number of contractors, and this delayed matters. Given the seriousness of the situation, it might have been more appropriate for the Factor to have instructed a suitable contractor or expert to investigate and provide answers and solutions within a reasonable timescale agreed with the Homeowner. To keep the Homeowner waiting in this manner was entirely unacceptable and a clear failure to comply with the Code.

Observations

21. The Tribunal observed that it was unfortunate that the Homeowner had not targeted his application towards a failure of the Property Factor's duties in relation to failing to consult with homeowners before making significant alterations to the building. Notwithstanding the Factor's acceptance that they had failed to consult the homeowners, the Tribunal was very concerned at the Factor's actions in allowing considerable and unsightly alterations to be made to a block of flats where there are private homeowners, without first consulting. The Tribunal was also concerned about the conclusion reached by the Factor, after two years, that the only mitigating action it would take would be to paint the pipes.

    Given that no breach of the Property Factor's duties had been alleged by the Homeowner, the Tribunal did not address the issue of whether the compensation offered by the Factor was appropriate or sufficient. For the same reason, the Tribunal did not take into account the facts and circumstances of the case FTS/HPC/PF/17/0136, in reaching its decision.

Proposed Property Factor Enforcement Order ('PFEO')

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

23. The Tribunal proposes to make a PFEO requiring the Factor, within 21 days of intimation of the PFEO, to pay the sum of £500 from their own funds and at no cost to the development homeowners, in order to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor's failure to comply with the Property Factors Code of Conduct.

Right of Appeal

24. 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.

H Forbes

Legal Member and Chairperson

21st August 2018