Housing and Property Chamber
First-tier Tribunal for Scotland

Decision

Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/21/1798

Re: 2/1,287 Onslow Drive, Dennistoun, Glasgow, G31 2QG ("the Property")

The Parties:

Ms Clare Darlaston, 2/1,287 Onslow Drive, Dennistoun, Glasgow, G31 2QG ("the Applicant")

James Gibb Property Management Ltd, 65 Greendyke Street, Glasgow, G1 5PX ("the Respondent")

Tribunal Members:
Martin J. McAllister, Solicitor, (Legal Member)
Elizabeth Dickson, (Ordinary Member)
(the "tribunal")

Background

1. This is an application by Ms Darlaston in relation to the Respondent's actings as a property factor of the Property. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with Section 3 and Sections 2.5, 4.1, 5.2, 6.4 and 7.2 of the 2012 version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code"). It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the 2011 Act. The application was dated 20th July 2021 and was accepted by the Tribunal for determination on 22nd December 2021. The application was accompanied by a number of documents.

2. At the conclusion of the Hearing on 8th November 2022, the Applicant stated that she was content to withdraw that part of her application relating to alleged breach of the property factor's duties. She agreed that the alleged breaches of the Code covered the issues which she had concerns about and that she therefore did not require the tribunal to consider breach of the property factor's duties.

3. The Respondent had raised an action against the Applicant in Glasgow Sheriff Court for a payment order and this had been paused because the Sheriff had determined that the Applicant should make an application to the Tribunal if she considered that her property factor had failed to comply with the Code or the property factor's duties.

4. The Property is in a tenement of eight flats.

5. A case management discussion was held on 2nd March 2022. Both parties participated and consideration of the application was adjourned to a Hearing on 12th May 2022 at the Glasgow Tribunal Centre.

6. Subsequent to the case management discussion, parties submitted hard copy productions which were paginated. Representations were also submitted.

The Hearing on 12th May 2022

7. A Hearing was held at Glasgow Tribunal Centre on 12th May 2022. The Applicant was present. The Respondent was represented by Ms Lorraine Stead, Mr Steven McAllister and Mr Alasdair Wallace.

Preliminary Matter

8. The Applicant referred to a submission which she had made in relation to a possible breach of the Code which occurred after the inception of the 2021 version of the Code and the tribunal indicated that, in due course, it would consider whether or not the application could be amended to include this matter.

Evidence

9. The tribunal heard evidence in respect to a possible breach of Section 2.5 of the Code and had heard some evidence in relation to Section 3 of the Code. At the conclusion of a short adjournment there was a suggestion that there might be merit in parties having discussions to ascertain if any matters could be resolved. The Applicant said that she had been seeking this. Ms Stead said that her understanding was that such an offer had been made to the Applicant. After a further short adjournment, parties indicated that they would favour pausing proceedings to allow such discussions taking place. The tribunal determined that determination of the application would be adjourned to a Hearing to be held on a future date and at a time to be intimated to parties.

The Hearing on 8th November 2022

10. A Hearing was held at Glasgow Tribunal Centre on 8th November 2022. The Applicant was present. The Respondent was represented by Ms Lorraine Stead, Mr Steven McAllister and Mr Alasdair Wallace. Mr Wallace was present until 1pm.

Preliminary Matters

11. Mr McAllister said that there had been two meetings with the Applicant and that some financial issues had been resolved. He said that some sums being previously sought by the Respondent had been written off which would reduce the amount being sought in the Sheriff Court action. Mr McAllister said that a formal offer of settlement had been made to the Applicant. He said that this related to the court action at the Sheriff Court which is currently paused

12. The Applicant said that the meetings had been productive but that she was not yet in a position to accept the offer made by the Respondent and had some questions around some of the figures. She said that any settlement of the court action did not affect the historic position regarding what she considered to be failings of the Respondent and the subject of the application.

13. The Applicant had raised the possibility of the tribunal considering a possible breach of the 2021 version of the Code. The tribunal determined that it would not be appropriate to consider that. Such an alleged breach of the 2021 Code would require to be submitted in a separate application.

14. It was agreed that, because of passage of time since the last Hearing and the fact that so little evidence was heard on that date, it would be appropriate to effectively "start again" with the evidence.

Evidence

15. Evidence was heard in relation to the alleged failure to comply with each paragraph of the Code.

Paragraph 2.5

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.

16. The Applicant referred to a letter from the Respondent to her dated 12th November 2020 (Applicant Document 1). She said that this was sent to her in response to a number of communications seeking an explanation on issues with regard to the level of the float prior to the Respondent's request that it be increased and also information on the property insurance for the tenement. She said that the letter did not address the issues which she had raised and, instead, provided an explanation on the reason for a float and general information on the insurance market.

17. The Applicant referred to a letter which she had sent to the Respondent on 14th March 2022 (Applicant Document 5) and which referred to a query she had with regard to the existing float and that she was still awaiting an explanation of the mistake in the insurance premium. This letter referred to a previous letter sent on 14th March 2020 and contains the following: *"I have written twice and phoned twice*

proposing a close meeting to discuss these various outstanding items, but have received no replies."

18. The Applicant referred to the letter which she had sent to the Respondent on 30th September 2019 (Applicant Document 8). She said that this was the letter referred to in her letter to the Respondent dated 14th March 2022. It states: *"I note that there seems to be a lack of clarity about the insurance charges on previous accounts."*

19. The Applicant said that, in September 2020, she had received a telephone call from a representative of the Respondent who tried to address the issues which she had raised. She had told him that she required a response in writing and she said that his response was that he was working from home and could not respond in writing because he would have to buy a stamp.

20. The Applicant referred to a letter from her to the Respondent dated 29th September 2022 (Applicant Document 6) wherein she states that she still awaits a response to her queries about the float and the insurance correction despite three written requests. The letter also refers to the telephone call from the Respondent's representative and states that he insisted that she had to receive communications by email which the letter states to be "nonsense" as she did not have access to email at home.

21. Ms Stead said that what had to be put in context was the situation the Respondent found itself in during the pandemic. She said that lockdown meant that the office was closed and that, during that period, mail would not have been responded to.

22. Ms Stead said that the Respondent received many communications about the necessity to increase the level of the float. She said that the Respondent wrote to homeowners about the increase in the float in January 2019 and sent a follow up letter on 20th February 2019.

23. Ms Stead referred to a letter which had been sent to the Applicant on 20th February 2022 (Respondent App1,1of 1) which stated *"We now write to advise that we have completed the review and, accordingly, we will require to increase your float to £170. The charge for the float top up will appear in your regular quarterly invoice to be issued just after the end of February 2019*."

24. Ms Stead referred to an invoice sent to the Applicant for the period from 28th November 2018 to 27th February 2019 which had an entry: *"Float Amount £95."*

25. Ms Stead said that the Respondent's members of staff had difficulty responding to queries of the Applicant because it was not always clear what information was being asked for. She said that the issue of the float was an example of this. The letter to the Applicant of 20th February 2022 stated that the float required to be £170 and the invoice issued soon after that stated that the sum which had to be paid for the float was £95. She said that she considered it to be clear that the existing float for the Applicant was therefore £75.

26. Ms Stead said that it was difficult to know what further information or clarification could be provided. The tribunal noted the terms of the letter from the Applicant to the Respondent dated 26th June 2020 (Applicant Document 4) which asked what the full amount of the float would be when the £95 was paid.

27. The Applicant said that she had been confused about the float and that, once the matter had eventually been explained, her concerns had been satisfied.

28. The Applicant said that there had been a change in insurance provider and that she was seeking information on this which was not forthcoming.

29. Ms Stead said that an annual tendering exercise is carried out for the insurance provider. She said that owners are advised if there are particular issues with regard to the property insurance and that the result of the tendering exercise is detailed in "The Address" which is the Respondent's quarterly publication which is sent out in hard copy form to each homeowner.

30. Ms Stead said that the Applicant was advised of an error which had been made with regard to the insurance and she referred to a letter which the Respondent had sent to the Applicant on 13th August 2019 (Respondent's Documents App 2,1 of 4): *"I can confirm on your recent quarterly invoice (28/02/2019 to 27/05/2019) that there was an error regarding the insurance and this will be rectified in the next invoice. This was a system error on James Gibb's part and we apologise for any inconvenience this has caused as the next sum requested for insurance will be significantly more than the last amount of £11.88."*

31. The Applicant said that she found it difficult to get clear answers from the Respondent with regard to queries which she put in relation to insurance. She referred to a letter which she had sent to the Respondent on 26th June 2020 (Applicant Document 4) where she referred to a previous letter where she had asked for information which had not been provided: "*I also asked for a full explanation of the mistake in the insurance premium, dating from last year, but never fully set out."* The letter goes on to ask if the insurance premium is the best that the Respondent is able to obtain.

32. The Applicant also referred to a further letter which she had sent on 29th September 2020 in which she referred to still awaiting *"a simple explanation of the insurance correction."*

33. Ms Stead referred to an invoice sent to the Applicant and which is dated 27th August 2019 (Applicant Document 12A). She said that the invoice clearly shows two credits of £11.88 which, she said, links up with the information provided to the Applicant in the letter which had been sent to her on 13th August 2019.

34. Ms Stead referred to a letter sent to the Applicant by Mr Mark Powell of the Respondent dated 12th September 2019 (Respondent's Document APP2, 2 of 4): "*For the last three quarters there was an error in insurance with each flat only being charged £11.88 per quarter. These three charges £11.88 have been credited back and the correct amounts back dated on this invoice. I have informed income recovery that this month's invoice will be an excessive amount of money to pay up*

front so have asked them to phone each of you and agree an amount which is reasonable."

35. Ms Stead said that she considered that the Applicant had been provided with the necessary information in relation to the property insurance and that she did not see what more could be done. The Applicant said that what she needed to know was why there was a shortfall in the insurance premium due to error.

SECTION 3: FINANCIAL OBLIGATIONS

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.

36. The Applicant said that the dispute she has with the Respondent, in respect of which she is a defender in a Sheriff Court action, arises from the Respondent not being clear with regard to the invoicing. She said that, to understand her position, the "historic" position needs to be understood.

37. The Applicant said that the invoice dated 30th November 2006 (Applicant Document 9) is an example. She said that the invoice is neither accurate nor clear. She said that the Respondent had been in correspondence with her solicitor and had been pursuing a total sum despite some of the debt having prescribed and a failure to explain migrated balances which had been transferred from a previous property factor.

38. The Applicant said that the issues with insurance which she had previously referred to demonstrated that the Respondent had not employed accurate and clear accounting. The Applicant said that she had made her position clear to the Respondent and she referred to a letter which she had sent to the Respondent on 19th March 2019 (Applicant Document 15): *"As I do not acknowledge your claim for various unexplained sums, and as you have been unable to explain them despite various requests so to do you will appreciate that I am not going to pay your costs with Alexander Anderson."* The Applicant explained that the reference to Alexander Anderson was wrong and it should have been Alexander Adamson which is a debt collection agency.

39. The Applicant said that a letter which had been sent to her by the Respondent on 29th March 2019 (Applicant Document 14) demonstrated a failure to be transparent in accounting matters. The Applicant said that there had been subsequent correspondence and that, on 15th July 2019, she had written to the Respondent (Applicant Document 13): *"You will be aware that the sum you claim is not agreed by me, and that the reasons why I do not agree to the sum claimed by you were set out in detail in a letter to you of March 2016- also that there are arithmetical errors in a later letter…. Furthermore, I understand that there is some confusion with the most recent account and we await further clarification on this issue as well, which is likely to affect the sum you claim."*

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

40. The Applicant said that the Respondent instructed Alex. Adamson to recover a debt from her which she did not accept was owed.

41. The Applicant said that one of the matters included in the funds being sought from her was the cost of a Notice of Potential Liability and that she did not know what such a thing was. Mr McAllister of the Respondent said that reference to this is contained in the debt recovery provisions of the written statement of services. He referred to the document which he said each homeowner had: "Income Recovery/Distribution of Debt/Legal Costs etc. (Respondent Document APP 4). The Applicant said that she did not consider that action in relation to a Notice of Potential Liability was justified.

42. The Applicant said that she did not dispute that the Respondent could make charges for late payment but she said that, in some instances in relation to her, they were applied too soon. She said that, on more than one occasion, such a charge would be applied within two weeks of the payment being due. Mr McAllister of the Respondent said that this was not the case and that such charges would only be applied after the process set out in the debt recovery process when matters had reached Stage 2. He said that, if any matter in an invoice was challenged, a late payment charge would not be applied until a full process had been gone through.

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

43. The Applicant said that she was not given information with regard to the property insurance. In particular, she said that the insurance provider changed in May 2021 and that she was not provided with the information on this until the Respondent provided it on 28th September 2021.

44. Ms Stead said that a tendering process for insurance was conducted each year and that the result of this is reported to homeowners. She said that the Respondent sends a hard copy of "The Address" to each homeowner at the end of each quarter- February, May, August and November- when invoices are rendered. She said that the edition of May 2021 would contain general information on the insurance provider for the next year and that the invoice each homeowner received would contain specific detail of the cost for that homeowner.

45. The Applicant was asked if she had received the edition of “The Address” in May 2021 and she replied “possibly.”

46. Ms Stead said that the insurance information was always in “The Address” and that, if the invoice was received, then the publication would also have been received.

6.4 *If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.*

47. Ms Stead said that the core service supplied to the Applicant and other homeowners in the tenement includes arranging contractors to clean, do gardening work, carry out repairs, deal with the common lighting and insurance and for the designated property manager to undertake property inspections twice a year.

48. Ms Stead said that she was satisfied that such inspections had been done and that the Respondent’s office systems confirmed this. She explained that, since 2020, the Respondent has a more sophisticated system where the property managers have an App based tool called InspectApp where they require to record each inspection and details of it.

49. The Applicant said that she had no proof that such inspections were carried out. She said that there has been a long running problem with a leaking gutter and growth in the gutters. She said that, if there had been inspections twice a year, such issues would have been picked up and dealt with.

50. Ms Stead said that no programme of works is prepared in respect of the tenement but that, if any matter requires repair, an appropriate proposal will be put to the homeowners who then decide if works are to be undertaken.

51. The Applicant said that homeowners get no feedback after any inspections. She said that she has previously suggested that close meetings be held so that the homeowners have an opportunity to interact with the Respondent in relation to repairs and maintenance.

52. Ms Stead said that the InspectApp system which has been in use since 2020, involves the property manager completing an inspection report which runs to ten pages. She said that homeowners can access information on the inspections by using the client portal but that no hard copies of the report are sent to homeowners because of the cost of doing so for the fifty thousand clients which they have. She said that homeowners would be contacted if the property manager identified works that is considered necessary. Ms Stead said that property managers are not surveyors.

53. The Applicant said that she had written many times about the gutter issue and she would have thought that, having knowledge of this, the property manager carrying out the inspections would look at the issue. She said that a surveyor is not needed to observe the problem with the gutter which is apparent even when it is dry because of the staining and consequent spalling of stonework.

SECTION 7: COMPLAINTS RESOLUTION

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 First- tier Tribunal for Scotland.

54. The Applicant said that she complained in 2016 about dampproof works and the matter was only finally dealt with because of her efforts.

55. The Applicant said that she had not made any formal complaint as such to the Respondent. She said that she would rather try and get a resolution of matters from the Respondent than go through its complaints process and tries to avoid complaints. The Applicant conceded that she had not made an official complaint to the Respondent.

56. The Applicant said that the Respondent had not made her aware of the possibility of making an application to the First-tier Tribunal and that she had only become aware of this during the Sheriff Court action.

57. Ms Stead said that the complaints procedure contained within the written statement of services refers to homeowners' right to make an application to the First-tier Tribunal for Scotland and that the Applicant was not specifically advised of this because she had not made a formal complaint which had progressed to a final stage when such information would be provided in addition to it having been provided in the written statement of services.

Submissions

58. The Applicant said that she was withdrawing that part of her application relating to property factor's duties because she considered that the alleged breaches of the Code covered the issues which she had concerns about.

59. The Applicant said that what runs through all the failures to comply with the sections of the Code is the Respondent's lack of communication and that, if it had communicated better with her, the application would not have been necessary.

60. Ms Stead said that she considered that the Respondent had communicated effectively with the Applicant. She said that sometimes such communication in written form had not been understood by the Applicant. She said that the Respondent had shown a willingness to work with the Applicant and had hopefully resolved a lot of the issues around the subject matter of the court case.

61. Ms Stead said that, in terms of each alleged non- compliance with sections of the Code, the Respondent had communicated properly and had complied fully. She said that the Applicant's complaints about failure to be provided with information were often not justified and that, where there had been queries from the Applicant, appropriate responses had been provided.

Findings in Fact.

I. The Respondent is the property factor of the tenement where the Property is situated.

II. The Respondent, as part of the core services provided to the Applicant and other homeowners, carries out property inspections twice a year.

III. The Respondent has not prepared programmes of work in respect of the Property.

IV. The Respondent provided information on the change of insurance provider by including it in the quarterly publication which it sent to homeowners.

V. The Respondent received the quarterly publication which included information on the change of insurance provider.

VI. The Respondent provided information to the Applicant on the increase of the float

VII. The Respondent provided information to the Applicant in relation to the mistake which had been made in the insurance premium and the steps which were being taken to rectify the matter.

VIII. The Applicant made no formal complaint to the Respondent in respect of its actings as property factor.

IX. Any late payment charges which may have been applied to the Homeowner had not been applied inappropriately.

Findings in Fact and Law.

I. In respect of the matters before the tribunal, the Respondent has complied with Sections 2.5,4.1,5.2 and 7.2 of the Code.

II. In respect of the matters before the tribunal, the Respondent has not complied with Section 6.4 of the Code.

Discussion and Reasons

62. The tribunal considered the written representations of the parties, the oral evidence and the submissions. It required, on the balance of probability to determine whether or not, in relation to the alleged breaches of the Code referred to in the application, the Respondent had complied.

2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.

63. The respective position of the parties was clear. The Applicant considered that she had made reasonable requests for information which had not been responded to. The Respondent considered that it had responded positively to requests for information and that, in some instances it could not understand what information was being sought because it had provided the information which the Applicant appeared to be seeking. Parties provided oral evidence and documentation in relation to two particular matters: the increase of the float and the mistake in the insurance premium and the consequent financial arrangements.

64. The Respondent decided that the float lodged by each homeowner required to be increased to £170. It intimated this to the Applicant and, in the same letter, indicated that the charge for the increase would appear in the next invoice. The invoice for the period ended 27th February had an entry "Float Amount £95." It appeared to the tribunal that anyone considering the terms of the letter and the invoice would reasonably come to the conclusion that the existing float, prior to the increase, was £75.

65. Ms Stead that she thought it difficult to know what further information could be provided and the tribunal agreed with this.

66. The Applicant sought information with regard to the insurance premium which had been wrongly charged. The Respondent had written to homeowners, including the Applicant, and advised that there had been a charge made in error, that it would be rectified in the next invoice and the appropriate premium charged. The tribunal considered the documentary evidence of the written information provided to the Applicant which she accepted that she had received. The tribunal also had copies of requests for information made by the Applicant and considered that the Respondent had tried to provide the information requested but agreed with the Respondent's position that it was not clear what further information could be provided.

67. It was noted that at times the Respondent was slow to respond but the tribunal accepted the particular difficulties with communications during the pandemic lockdown when the Respondent's offices were closed.

68. The tribunal accepted the evidence of the Applicant in relation to the telephone call which she received from a representative of the Respondent. Ms Stead did not seek to challenge the Applicant's evidence in this regard. The tribunal considered, on balance, not to make any finding against the Respondent on that matter. There could be no excuse for the manner in which the Applicant was treated but, in considering the matter, the tribunal took into account that the call occurred when the particular employee was working from home during the pandemic when there were extremely difficult circumstances for businesses and individuals.

69. The tribunal accepted that the applicant genuinely did not understand some matters which had been communicated to her but considered that the Respondent had provided her with the information and had attempted to resolve queries which she had.

70. The tribunal determined that, in respect of this section of the Code, the Respondent had not failed to comply.

SECTION 3: FINANCIAL OBLIGATIONS

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.

71. The Applicant referred to an invoice from 2006. The tribunal acknowledged that the parties have been in dispute about what might be termed as historic balances and that some of these issues are part of the Sheriff Court Action. The tribunal can consider no matters before the 2011 Act came into force and the 2006 invoice was not something which it could be taken into account in relation to any determination.

72. It was clear from evidence that part of the Applicant's difficulty in understanding the accounting position is that she paid invoices under deduction and then could not reconcile this with future invoices. She accepted that she dealt in "items" rather than cumulative cash balances and that this meant that she had difficulty in tracking what she had paid for and what was unpaid. This difficulty was as a consequence of the Applicant making deductions from invoices and the Respondent's standard accounting practice of applying credit balances to a homeowner's account rather than to specific matter items. The tribunal saw nothing untoward in the Respondent's approach.

73. It is clear that some financial issues will be determined by the Sheriff or are in the process of being agreed between the parties.

74. The tribunal determined that, in respect of this section of the Code, the Respondent had not failed to comply.

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

75. The Applicant accepted that late payment charges could be made by the Respondent. She said that some of these charges were applied after a few weeks. She submitted no evidence that any charges had been applied inappropriately and the tribunal accepted the evidence of Mr McAllister in this regard.

76. The Applicant raised the issue about late payment charges being applied which could, if found to be proven, be a failure to comply with paragraph 4.3 of the Code but the Applicant had not included breach of that paragraph in the application. In any event, the tribunal did not find that any such charges had been made unreasonably or were excessive.

77. The Applicant alluded to the court action being unnecessary and inappropriate which could potentially have been considered to be a failure to comply with paragraph 4.8 of the Code but this had not been included in her application form and she did not press this matter in her evidence or submissions.

78. The tribunal did not accept that it had evidence that late payment charges had been applied inappropriately.

79. The tribunal determined that, in respect of this section of the Code, the Respondent had not failed to comply.

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

80. The tribunal accepted the evidence of Ms Stead that the Respondent's publication which was sent to homeowners, including the Applicant, contained information about the result of the tendering exercise and the identity of the provider for the period.

81. The Applicant's position that she was not provided with insurance information. The Applicant said that she had possibly received the quarterly publication of the Respondent.

82. The Applicant's position was not accepted by the tribunal which preferred the evidence of the Respondent. The tribunal accepted that the relevant information had been provided to the Applicant.

83. The tribunal determined that, in respect of this section of the Code, the Respondent had not failed to comply.

6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

84. The Applicant's position was that she did not know if property inspections were carried out. She said that no feedback on inspections was received and that any inspection should have picked up the issue with the gutter and affected stonework.

85. The Respondent's position was that inspections were carried out twice a year and it accepted that this was part of the core service provided to the owners of properties in the tenement. The tribunal, on balance, accepted that such inspections were carried out but it had some sympathy with the position of the Applicant in as much as it

accepted her evidence that she had reported the gutter defect to the Respondent on many occasions and it was a reasonable expectation of her that property inspections would have resulted in some proactive approach by the Respondent.

86. The section of the Code is unequivocal in its terms. Where the core service includes periodic property inspections "***you must prepare a programme of works"***.

87. It is a matter for each property factor to develop processes to ensure compliance with the Code and to provide a good service to homeowners but it seemed to the tribunal that property inspections are an opportunity for checks to be made to ascertain if works are required and that reports from homeowners that there are possible issues would be useful when the inspections are carried out.

88. No programme of works was prepared and, in this regard the Respondent has not complied with the Code.

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 First- tier Tribunal for Scotland.

89. The tribunal's consideration of this alleged breach of the section of the Code was straightforward.

90. The Applicant conceded that she had not made a formal complaint.

91. The tribunal determined that, in respect of this section of the Code, the Respondent had not failed to comply.

Disposal

92. The tribunal considered what the appropriate disposal should be.

The Law

Property Factors (Scotland) Act 2011

Section 19 Determination by the First-tier Tribunal
(1) The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide—

(a) whether the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) if so, whether to make a property factor enforcement order.

(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

93. Since the tribunal had found that the Respondent had failed to comply with the Code, it required to consider whether to make a property factor enforcement order.

94. The tribunal considered whether it would be appropriate to make an order requiring that, in future, programmes of work are prepared but it considered that it was not for the tribunal to ensure ongoing compliance. It considered that, as a responsible property factor which will have regard to the determination of the application, the tribunal could rely on the Respondent ensuring that it takes appropriate action to ensure future compliance with the Code.

95. There had been non- compliance with the Code and the tribunal proposes to make a property factor enforcement order requiring that the Respondent pays the sum of £200 to the Applicant as compensation in respect of its non- compliance. It resolved to issue a proposed property factor enforcement order which would be sent to the parties.

96. It was clear to the tribunal that both the Applicant and the representatives of the Respondent who gave evidence had respect for each other and had made efforts to resolve the matters of dispute. The Respondent had made proposals to the Applicant to resolve the outstanding court action and the tribunal hoped that an appropriate settlement can be agreed.

97. It was evident to the tribunal that there was some truth in the Applicant's assertion that, if there had been better communication, issues may not have arisen. Whilst the tribunal considered that any failure to communicate may have fallen short of a failure to comply with the Code, it noted that the Respondent was often reliant on its internet portal to communicate with homeowners The Applicant did not have access to information which was provided online. It is perfectly understandable for property factors to use such methods and indeed, in most situations, it fosters better communication with homeowners. It is to be hoped that the Respondent, in future, seeks to find effective ways to ensure that homeowners who are not able to readily access the portal are not prejudiced in relation to provision of information.

Martin J. McAllister
Legal Member

23rd November 2022