

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/LM/20/1662

The Parties:-

John Aitchison Cameron, 19 Regis Court, Edinburgh, EH4 6RG ("the Homeowner")

Charles White LTD, City Point, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the Property Factor")

The Tribunal:-

Melanie Barbour (Legal Member)

John Blackwood (Ordinary Member)

DECISION

The Factor did not fail to comply Section 1 of the Property Factor's Code of Conduct; the Factor did breach its Property Factor duties, namely, to discuss with any owner's association proposed changes to the fee with the association, for approval prior to letters being issued to owners (see Written Statement of Services 1 January 2018 page 9 section 3 A third paragraph). The decision is unanimous.

INTRODUCTION

1. In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"
2. The Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that registration.

BACKGROUND

3. By application dated 31 July 2020 the Homeowner complained to the Tribunal that the Property Factor was in breach of Sections 1, 2 and 7 of the Code of Conduct and had failed to carry out its Property Factor's duties.
4. By Notice of Acceptance dated 12 November 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned to take place on 8 January 2021. Written representations were to be submitted by 15 December 2020. The hearing was postponed until 17 February 2021. Both the Homeowner and Property Factor attended the hearing on that date, which proceeded as a case management discussion by telephone. Sarah Wilson appeared for the Property Factor. Reference is made to the terms of that case management discussion note. During the case management discussion, the Tribunal noted that the Homeowner sought two outcomes in order to resolve his complaint:
 - a. *That the Property Factor withdraws the February 2019 WSOS and issues in its place the August 2019 WSOS; and*
 - b. *That the Property Factor confirms that all of their invoicing from January 2019 to the current time has been in compliance with the terms of the August 2019 WSOS.*
5. In relation to the second issue, the Homeowner advised that the February 2019 WSOS contains various matters which incur charges; services to general maintenance and also, services to residential owners; the Homeowner advised that he did not know if invoices were in line with the services set out in the August 2019 WSOS or not. He advised that he did not have information about what was charged to other people. The Property Factor advised that they were not able to provide financial details of what was charged to other individual proprietors. However, she submitted that the fees set out in the February 2019 WSOS are in accordance with the August 2019 WSOS. She advised that the Property Factor could provide evidence of this to the Homeowner, and this would demonstrate that the same charges apply in both WSOSs.
6. Parties agreed that the second resolution outcome namely "b. *That the Property Factor confirms that all of their invoicing from January 2019 to the current time are in*

compliance with the August 2019 WSOS” was now addressed and no further procedure was required by the tribunal.

7. The hearing proceeded on 17 March 2021. It was part heard on that date and adjourned in order that the parties could meet to discuss the terms of the written statement of services; they agree to meet to try and agree the terms of the WSOS; parties were to update the Tribunal within 8 weeks of that date. While the parties did meet, they were however unable to agree all terms of the WSOS. Parties advised the Tribunal that matters remained outstanding and the hearing was reconvened on 11 June 2021.
8. On 11 June 2021 oral submissions were concluded. A procedure note was issued seeking further information to clarify certain matters. Both parties responded to the terms of that procedure note.

DISCUSSION

9. The Homeowner’s position was that there had been a breach of the Property Factor’s Code of Conduct; and also, the Property Factor’s duties. He advised that notice of the breaches were set out in his letters to the Property Factor dated 22 and 26 September 2020.
10. The Homeowner referred to the terms of his letter of 22 September 2020 which referred to a breach of section 1 of the Code of Conduct: written statement. He submitted that the Property Factor had breached section 1 as the Property Factor had failed to do the following,

“You must provide each Homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangements in place between you and the Homeowner. ... You must provide the written statement to existing Homeowners within one year of initial registration as a Property Factor. However, you must supply the full written statement before that time if you are requested to do so by a Homeowner (within four weeks of the request) ...;
11. The Homeowner submitted that the Property Factor had issued a Written Statement of Services (“WSOS”) in February 2019 which had not been agreed by the Homeowners. Further, the Property Factor had then failed to issue the WSOS which

had been agreed between the Dunvegan Association Committee and the Property Factor in August 2019. The Homeowner had made repeated attempts to get the Property Factor to issue the August 2019 WSOS, however the Property Factor had failed or refused to do so.

12. In the Homeowner's letter of 22 September 2020, the Homeowner stated,

"You sent all the proprietors in the Dunvegan Estate a letter dated 19 February 2019 enclosing a copy of your revised WSOS, with a retrospective applicable date of 01 January 2019. This WSOS being subject to a fee revision after one year (clause 11.3). As this WSOS had not been discussed with, or approved by the DAC or any of the proprietors in compliance with Clause 11.3, I consider this action in sending the WSOS without proprietor discussion and approval to be a breach of your duties as a Property Factor as contained in the Property Factor (Scotland) Act 2011 in:

- 1. Section 14 (5) Code of Conduct; and*
- 2. Section 17 (1) (a) and (b) application and referral clause; and*

additionally, as stated in clause 11.3 of your January 2019 WSOS"

The letter went on,

"You failed to comply with the provisions continued in your WSOS to discuss and have your WSOS approved by the Dunvegan Association Committee (DAC) or the proprietors prior to your formal issue. These provisions were not only included in your issued WSOS but additionally have been contained in all of your previous WSOS' to date, since your first issue, dated June 2013, which was distributed to all proprietors in a letter dated 1 July 2013.

"Page 9 of your WSOS under clause 11.3 states that "fees are reviewed annually relative market value rate comparisons for similar developments with similar services provided. Unless otherwise stated the review is carried out in November of each year and where any changes are operative, this is communicated to clients in December to become effective from January the following year. Where there is an owner's association proposed changes to the fee will be discussed with the association for approval prior to letters being issued to owners."

13. The Homeowner's letter went on to set out that the February 2019 WSOS had not been agreed, and he had raised the issue when the February WSOS had been issued to him. He noted that this had led to a meeting taking place between the Property Factor and DAC. He advised that matters had culminated in his writing to the Property Factor on 8 August 2019 confirming DAC's agreement to a revised final draft WSOS. The Homeowner states that the final WSOS was signed by the Property Factors on 13 August 2019 and by the Homeowner representing DAC on 17 August 2019. Thereafter, however the signed August 2019 WSOS was not issued by the Property Factor. Further the Property Factor refused to withdraw the February 2019 WSOS.

14. The Homeowner considered that the Property Factor had failed to comply with the terms of the Code of Conduct : section 1 as they had not issued the agreed August 2019 WSOS; and they had failed to withdraw the February 2019 WSOS. He submitted that as of 22 September 2020 the proprietors of Dunvegan Estate were unaware that the February 2019 WSOS was void and had been replaced by the August 2019 WSOS.

15. The Homeowner submitted that the Property Factor had later issued a revised draft WSOS in November 2019 for discussion. The Property Factor indicated that they wished to replace the WSOS with this further version. The Homeowner reviewed this new version however was unhappy as that draft was based on the pre-August 2019 WSOS. He considered that the August WSOS should be the basis for negotiating the WSOS and not an earlier version.

16. The Homeowner referred to the response which he had received from the Property Factor dated 15 May 2020 which advised that

"...The WSOS signed by us in 2019 should not have been done as we cannot agree to the changes you have requested as we had previously thought. As I have previously stated this is a CWL document which we have to send to all of our clients as laid out in the Property (Factors (Scotland) Act 2011. We must have certain sections included in the WSOS.

"I note that you have stated that you will send the August 2019 statement to the owners next week, however this would be incorrect information. This is not the WSOS CWL would send to clients.

CWL are keen to have this resolved and the clients at Dunvegan Estate and I still think having a meeting to go through this would be advantageous for all involved to have this matter resolved and we can discuss this. I am more than happy to hold this meeting via Zoom with yourself or by telephone conversation.”

17. The Homeowner considered that the breach of the Property Factor's duties related to fact that the Property Factor had issued the February 2019 WSOS to Homeowners; the February 2019 WSOS had not been discussed with or approved by the Dunvegan Association Committee or the Homeowners; and this was in contravention of Clause 11.3 of the WSOS. The act of issuing the February 2019 WSOS before it was approved by both parties was therefore a breach of the Property Factor's duties.
18. The Homeowner advised that the Property Factor's duties arose from the title deeds which he had lodged and also, the WSOS. He advised that the Property Factor had a duty to provide the WSOS for review and negotiation, and he referred to Clause 11.3 in support for this position. He submitted that the WSOS was a contract between the parties and there had to be *consensus in idem*. The contract that the Property Factor had issued had not been agreed and there was no consensus.
19. The Homeowner advised that the WSOS which had been agreed in August 2019 was the correct contract, as both parties had agreed to it. It was this August 2019 WSOS which had not been issued to Homeowners.
20. The Homeowner advised that he considered that the WSOS in force for the properties at the present time was the August 2019 WSOS. However, he noted that Homeowners had been issued with the February 2019 WSOS; and the Dunvegan Association Committee issued with the August 2019 WSOS. He suggested that therefore there was a lack of clarity and confusion as to which contract was in force at the present time.
21. The Homeowner advised that Clause 11.3 of the February 2019 WSOS; was Clause 10.3 of the August 2019 WSOS.
22. The Property Factor confirmed that that they disputed both alleged breaches of the Code of Conduct and the Property Factor duties. They advised that their position was set out in their letter of 14 December 2020. The Property Factor advised that they

had been approached by the Dunvegan Association Committee, as the WSOS had been in place for a number of years, it was agreed to amend/update it. She confirmed that the August 2019 WSOS had been discussed between the parties and the terms agreed, however this had been prior to it being internally reviewed by the Property Factor. When the Property Factor reviewed it, they noted that it was not in terms acceptable to them, they could not therefore agree it. The Property Factor therefore issued the February 2019 WSOS to proprietors. It was the February 2019 WSOS which was and remains in place. The Property Factor confirmed that they had issued the February 2019 WSOS. They did not therefore consider that they were in breach of the Code of Conduct section 1.

23. Having regard to the alleged breach of the Property Factor's duties in terms of Clause 11.3 of the WSOS, again they did not consider that there had been any breach. They also submitted that the complaints procedure had not been exhausted by the Homeowner.
24. At the reconvened hearing the Homeowner considered that the narrative and grammar of the WSOS was not of a good standard. He thought that there was confusion of terms relating to "we" and "us". It could have been better written. He advised however that his principle argument was that the Property Factor had failed to issue Homeowners with the WSOS dated August 2019. He considered that they had indicated that they would do so, and they were therefore bound to do this. As far as he was concerned the Homeowners still did not have a WSOS and this was a breach of the code and the Property Factor's duties.
25. He considered that the Homeowners and the Property Factor had to go through the WSOS and resolve all matters and come to an agreement on its terms. There had been a meeting with the Property Factors and a version 3 had been prepared. He submitted that there had been no attempt to negotiate it by the Property Factor and they were back to where they started. His concerns were set out in his letter of 23 April 2021. He submitted that the principal changes referred to in version 3 related to fees. He advised that Clause 19.4 had been agreed and then deleted it had dealt with the £30 provision regarding commercial charges. He referred to the clause detailing the minutes of AGM, the Property Factors wanted £30 to take the minutes, he advised that the Homeowners had negotiated that it could be part of the overall fee which had been agreed, however in the new version the Property Factor had inserted a fee of £50.

26. He advised that the Property Factor had accepted the spelling and grammatical changes. The Property Factor had indicated that they had made a big concession in doing this. The Homeowner did not agree. He did not consider that the Property Factor was looking to resolve the dispute they were looking for a total renegotiation.
27. The Property Factor was asked if it had proposed a new set of standards and services which they thought complied with the code. They advised that this was correct. The Property Factor advised that as far as the factor was concerned, they had negotiated as far as they could in order to remain in compliance with the Code of Conduct, the deed of conditions, and the 2011 Act. She advised that Clause 11 is for owners; it appears that there is no right to a *proprietors' association committee* set out in the deed of conditions and this was therefore why the Property Factor could not accept those terms. The terms of the WSOS had to meet the terms of the Code of Conduct and the title deeds
28. She advised that the Property Factor had negotiated the terms of the WSOS with the proprietor's association committee however they should not have agreed the terms that they did. They were unable to do so. She advised that the Property Factor had however been prepared to agree to a lot of changes suggested by the Homeowner even though they did not agree all of the spelling and grammar issues raised by him.
29. She advised that it was the February 2019 WSOS which was still in place and being used. The August 2019 WSOS was not agreed and not in use. The Property Factor had sent out a further draft "version 3" based on the February 2019 version. She considered that the February 2019 version followed the general requirements of the code. The February WSOS provided at clause 11.3. any fee change will be proposed at a quorate AGM. If the committee are present at the AGM, and if quorate the fees can be discussed and changed then. Any change can be recorded in the minute. The Property Factor advised that the terms of clause 11.3 are generic. The Property Factor will normally issue an addendum to the WSOS every year setting out any changes.
30. The AGM for Dunvegan Estate takes place in November. There may be a discussion about amending fees at the AGM. Every year there would be an assessment of fees. If changes were not needed then discussion on fees would not be raised.

31. The Homeowner did not agree to the changes to the fees in the February 2019 WSOS. He advised that changes to the fees were not in the minute of the AGM held in November 2018. The Tribunal asked when the changes to the £50 fee and the cancellation fee were made known to the Homeowner, the Homeowner advised that he had not received notice of this. No changes in the fees had been proposed in the previous year's AGM.
32. The Tribunal noted that clause 11.3 refers to *proposed changes*, and if there were no proposed changes, there would be no need to discuss fees.
33. The Homeowner submitted that although there had been no discussion about changes to the fees, changes to the fees had been inserted into the February 2019 WSOS. He referred to the February 2019 attachment 2, page 9 clause 11.3. He also referred to clause 11.8 and advised that they did not have parking permits or bays; and this was not previously in the WSOS. The Property Factor advised that they have gone through the changes with the Homeowner, some of these changes were part of the generic WSOS. The Property Factor considered that they were included as it was a generic clause, however they were prepared to remove it. They also noted if there were no parking permits, etc there would be no charges for this.
34. The Homeowner also made reference to another proposed charge at page 16 clause 7.8 where £50 will be charged to the development if minutes were taken at the AGM by the Property Factor. This had not previously been done. The Property Factor advised that this fee was also a generic charge. It was a statement of service provided and in fact they had never applied it to the Dunvegan Estate. She was not sure if the Property Factor had previously prepared the minutes for the Dunvegan Estate. The Homeowner advised that the Property Factor had previously done so.
35. The Homeowner then referred to clause 11.8. The Property Factor advised that keys and parking bays were generic clauses. She advised that the Property Factor was prepared to remove reference to these matters. She noted that Regus is a block of flats and if they needed keys to get into the block of flats then they would charge for that service.
36. The Homeowner referred to clause 11 in relation to the management fee, he advised that the only reference to a management fee in that section is a follow on from clause 11.2. The Homeowner advised that in June 2013, section 3 : final charging arrangement : management and service fee. It covered all fees and it had always

done so. He advised that the Property Factor had sent out a newsletter in December 2018 advised that the management fee was increasing by £0.50p.

37. A direction was issued seeking copies of the WSOS issued in 2018 and copies of previous AGM minutes.

FINDINGS IN FACT AND LAW

38. The Tribunal made the following findings in fact and law:

- a. The Property Factor's Code of conduct section 1 : includes the following terms:

"You must provide each Homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the Homeowner. ...

You must provide the written statement :

...

To any Homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.

- b. Clause 12 of the title deeds for the Homeowner states that there shall be appointed a factor who will be responsible for instructing and supervising the common repairs and maintenance of the whole of the common parts of the subjects and for apportioning the costs thereof among the several proprietors in accordance with the provisions of these presents.
- c. The Property Factor issued a WSOS updated on 1 January 2018.
- d. The Property Factor issued a revised WSOS in February 2019.
- e. The WSOS in place for the Dunvegan Estate as of September 2020 was the February 2019 WSOS.

- f. The Property Factor's February 2019 WSOS clause 11.3 states: *"Clause 11.3 fees are reviewed annually relative to market rate comparisons for similar developments with similar services provided. Unless otherwise stated the review is carried out in November of each year and where any changes are operative this is communicated to clients in December to become effective from January the following year. Where there is an Owner's Association proposed changes to the fee will be discussed with the Association for approval prior to letters being issued to owners."*
- g. The Property Factor's January 2018 WSOS Section 3 A at paragraph 3 states: *Fees are reviewed annually relative to market rate comparisons for similar developments with similar services provided. Unless otherwise stated the review is carried out in November of each year and where any changes are operative this is communicated to clients in December to become effective from January the following year. Where there is an Owner's Association proposed changes to the fee will be discussed with the Association for approval prior to letters being issued to owners."*
- h. Changes to fees for the Dunvegan Estate were set out in the February 2019 WSOS.
- i. The minute of the AGM Dunvegan Residents Association dated 1 November 2018 makes no reference to amendment to any proposed fees.

DECISION

- 39. First, the Tribunal would note that the application dated 31 July 2020 referred to breaches of Sections 1, 2 and 7 of the Code of Conduct. However, clarification as what these breaches were was requested from the Homeowner. The Tribunal was referred to the letter of 22 September 2020. In that correspondence the only section of the Code of Conduct referred to was Section 1 : Written Statement of Services. The Tribunal has therefore restricted its assessment of the application and alleged breaches to section 1 only.
- 40. The Code of Conduct section 1 written statement of service provides that a Property Factor must provide each Homeowner with a written statement setting out, in a simple and transparent way, terms and service delivery standards of the arrangements in place between the Property Factor and the Homeowner. Section 1

goes on to provide detail on further information a WSOS should contain, it includes :-
A statement on the basis of any authority to act; ...; The core services you will provide ... e. the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee;

41. This alleged breach of section 1 of the code, in simple terms, can be said to be whether or not a WSOS has been issued by the Property Factor. We consider that it is apparent that a WSOS has been issued to the homeowners. It appears to us that a WSOS exists for the Dunvegan Estate, and there has been a WSOS since at least 2013. It has been amended in part over the years, but it appears that there has always been a WSOS for the estate.
42. As we understand it, the complaint made by the Homeowner is that a new WSOS had been negotiated between the parties, and this new WSOS should dictate the services provided by the Property Factor. He asserted that it was the August 2019 WSOS which should be issued, and the failure to issue it was a breach of the Code of Conduct. His submission being that August WSOS should be issued and the February one withdrawn. The Property Factor disagrees and submitted that a revised WSOS was issued in February 2019.
43. Stepping back and looking at the position in place before the August or February 2019 WSOSs existed, it appears that the WSOS derives from a WSOS from around January 2014 and last updated on 1 January 2018. That appeared to be the most recent “agreed” or unchallenged WSOS relied on by parties. It appeared that the Property Factor had issued the WSOS in around 2014 and updated it yearly thereafter.
44. We consider it relevant that the Code of Conduct states that the Property Factor “*has to provide each Homeowner with a written statement setting out, .. the terms and service delivery standards and the arrangements in place between you and the Homeowner.*” We consider therefore that it is the Property Factor who has to prepare the WSOS. The WSOS has to provide a homeowner with a list of the services that the Property Factor will provide to the homeowner.
45. The code requires the Property Factor is to issue a WSOS. It is apparent that they had done so. We found that this is in fact accepted by the Homeowner as part of his complaint was that he wanted the February 2019 WSOS to be withdrawn. We

considered that that request in itself points to an acknowledgement that a WSOS had been issued.

46. What was however really in dispute was the terms of WSOS. The code refers to the *terms ... in place between you and the homeowner*. It does appear therefore that there has to be some agreement between the parties. If however a homeowner does not agree with the terms, they can raise the issue with the Property Factor, and failing any subsequent agreement, they are entitled to terminate the contract.
47. Considering further the question of contract. The title deeds allow for the instruction of a Property Factor. CWL act as management agents and they are therefore instructed to act as Property Factors. Given this there must be a contractual arrangement between the parties. It has been in place since at least 2013. It appears to have consisted of a WSOS since at least 2013. The WSOS provides the Property Factor with their authority to act. The Property Factor considered that the terms of the February 2019 WSOS is in compliance with the Property Factors (Scotland) Act 2011 and the Code of Conduct, and in line with their generic style which they issued for all of their developments setting out the basis on which they will provide services to developments.
48. It appears to the Tribunal that this forms a contractual arrangement in as much as it sets out the services provided. If either party however does not wish to accept those services on those terms, they can try and agree new terms or they can terminate the agreement if agreement. Termination provisions are provided for in all of the WSOSs which have been issued by the Property Factor.
49. Turning to the August 2019 WSOS the Property Factor issued a WSOS dated January 2019 (and issued in February 2019). It is a matter of agreement between the parties that the Property Factor has not issued the August 2019 WSOS. It is unfortunate that the Property Factor entered into negotiations with the Homeowner to the extent of allowing the Homeowner to believe that they were in a position to negotiate revised terms of the written statement of services. The Homeowner acted in good faith in doing so and has every right to feel aggrieved by the changed position of the Property Factor, that said however, we do not consider that the Tribunal is in a position to insist that the Property Factor issue a WSOS which they say they are not able to agree to. We think that the negotiation of contractual terms is a matter for the parties to determine and not the tribunal.

50. The Property Factor was clear that they have other developments that they operate, and they have standard and generic templates for their WSOS which can be “tweaked” in line with particular developments, but not revised on a wholesale basis. They considered that this WSOS complies with the deed of conditions and Code of Conduct and the 2011 Act. This does not appear to us to be an unreasonable approach for them to have adopted all be it, it would have been better if they had been clear about this before they discussed and appeared to agree the August 2019 WSOS.
51. As the Property Factor need to be able to comply with the terms of the WSOS it is sensible that they ensure that they can meet those terms. They would be open to criticism and potential breach of the provisions otherwise. We consider therefore that the Property Factor is entitled to set out the services they will offer, and those terms should be clearly set out in their WSOS, variations to it can be agreed with homeowners, however if the Property Factors do not consider that they can meet the terms proposed by the homeowners, we do not consider that they should be forced to do so. If the homeowners are not satisfied with the services proposed they would be entitled to terminate any existing agreement and instruct other factors.
52. The Tribunal does not consider that it has the authority to order the Property Factor to issue the August 2019 WSOS. We consider that they have issued the February 2019 WSOS. The code requires them to provide a WSOS. They complied with this requirement of the code. We do not therefore find that they are in breach of section 1 of the Code of Conduct.

Breach of the Property Factors Duties

53. The breach of the Property Factor duty complained of was, was in relation to the duties set out in terms of clause 11.3 of the February 2019 WSOS. The Homeowner advised that it had not been discharged in accordance with the terms of that clause.
54. We do not find that there had been a breach of clause 11.3 given that this clause was only effective from January 2019 and as we read that clause it relates to proposed changes to fees from that date, i.e., in the future. Read strictly we do not consider that clause has breached the Property Factor’s duties.

55. That said, we do not consider that such a strict reading would be appropriate, and such a conclusion would be to take a very narrow approach to the complaint being made by the Homeowner. We considered that the actual complaint being made by the Homeowner was that the Property Factor had not agreed any fee changes with the owners before imposing them. Such discussion is not only required in terms of the February 2019 WSOS, but it was also required in the 1 January 2018 WSOS (section 3 page 9) the wording in that section follows the same wording as that in the February 2019 WSOS. That being so we considered the terms of the AGM minute of 1 November 2018, and we could see no record of the changes to any of the fees being discussed at the AGM. We note that the Property Factors' newsletter of December 2018 makes reference to a management fee increase, but there is no reference to any other proposed fee charges in it. We consider that the 2018 WSOS advised that proposed fees would be discussed at any owner's association, and we consider that there should have been a discussion about proposed changes to the fees at the November AGM. We consider that there was therefore a breach of the Property Factor's duties in relation to the Property Factor's failure to discuss the proposed fee changes before implementing them in the February 2019 WSOS.

REMEDY

56. While we consider that there has been a breach of the Property Factor's duties to discuss the proposed fee changes with the owners' association, we nonetheless consider that the Property Factor would have been entitled to change the fee. It was the failure to discuss the proposed changes which they did not do. We note that the Property Factor has apologised for agreeing the August 2019 WSOS, it does not appear however that they have acknowledged the breach regarding their failure to discuss the proposed fee changes or apologised for it. We consider that they should issue an apology to the Homeowner for this breach. We also find that they should pay the Homeowner compensation of £200 for inconvenience caused by this breach.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

57. The Tribunal proposes to make a Property Factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A Home owner or Property Factor 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.

Melanie Barbour Legal Member and Chair

October 2021 Date