

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref: FTS/HPC/PF/21/3177; FTS/HPC/PF/22/0285; FTS/HPC/PF/22/0287; FTS/HPC/PF/22/0288; FTS/HPC/PF/22/0295; FTS/HPC/PF/22/0296; FTS/HPC/PF/22/0297; FTS/HPC/PF/22/0298; FTS/HPC/PF/22/0299; FTS/HPC/PF/22/0300; FTS/HPC/PF/22/0301; FTS/HPC/PF/22/0302

Shaw Court, Broomhill Gardens, Newton Mearns, Glasgow, G77 5HP ('the Property')

The Parties:

Chamber Ref	Property Address	Homeowner(s)
FTS/HPC/PF/21/3177	37 Shaw Court	James Hind
FTS/HPC/PF/22/0285	7 Shaw Court	John Wilson
FTS/HPC/PF/22/0287	8 Shaw Court	Alan Steven
FTS/HPC/PF/22/0288	4 Shaw Court	Irene Fisher
FTS/HPC/PF/22/0295	10 Shaw Court	James McIvor
FTS/HPC/PF/22/0296	21 Shaw Court	Carolynn Malone
FTS/HPC/PF/22/0297	39 Shaw Court	Dorothy Ockrim
FTS/HPC/PF/22/0298	45 Shaw Court	Beryl Craig
FTS/HPC/PF/22/0299	29 Shaw Court	Joyce Frew
FTS/HPC/PF/22/0300	47 Shaw Court	John Boyd
FTS/HPC/PF/22/0301	35 Shaw Court	Helen Young
FTS/HPC/PF/22/0295	49 Shaw Court	James Maxwell

('the Homeowners')

Mrs Beryl Craig and James Hind ('The Homeowner's Representatives')

Bield Housing and Care ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and John Blackwood (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with sections 2.5, 3.1 and 3.2 of the Code of Conduct.

The decision is unanimous.

Background

1. The Homeowners own the properties noted at the homeowners' addresses above, which properties are all part of the development at Shaw Court, Broomhill Gardens, Newton Mearns, Glasgow, G77 5HP.

2. Bield Housing and Care factored the properties during the Homeowners' period of ownership until 30th April 2021.

3. Bield Housing and Care were first registered as a property factor on 1st November 2012.

4. The Homeowners applied to the Tribunal for a determination that the Factor had failed to comply with the Property Factor's duties and the following sections of the Property Factor Code of Conduct ('The Code'):

- Section 1: Written Statement of Services.
- Section 2: Communications and Consultation.

Sections 2.4 and 2.5

- Section 3: Financial Obligations.

Section 3.1 and 3.2

5. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 28th March 2022, he intimated that he had decided to refer the applications (which application paperwork comprises documents received between 5th December 2021 and 16th March 2022) to a Tribunal.

6. A Case Management Discussion by conference call took place in respect of the application at 10am on 22nd June 2022.

The Homeowners' representatives James Hind and Mrs Beryl Craig attended.

The Factor was represented by David MacInnes, former head of owner services at Bield Housing and Care.

6.1 Background

The parties advised the Tribunal of the following back ground information:

6.1.1 Shaw Court is a retirement housing complex which comprises of thirty properties in four separate blocks. Shaw Court is situated next to another retirement housing complex Homeshaw House which comprises forty three properties.

6.1.2 Bield Housing and Care were factors of Shaw Court until 30th April 2021.

6.1.2 The accounting year is to 31st March each year.

6.1.3 The dispute relates to the fact that (i) the Factor has not provided the Homeowners with copies of the audited accounts for the year 2020/2021 and also for the period 1st April to 30th April 2021 and (ii) the Homeowners do not agree with the total balance figure of £36,504 at the 2020/2021 year end detailed on the Financial Summary provided by the Factor to the Homeowners.

6.2 In relation to the detail of the application the parties advised as follows:

1. Written Statement of Services

Mr Hind explained that he wished to withdraw this part of the application.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

Homeowners' Representatives Representations.

Mr Hind explained that the summary financial position provided by the Property Factor shows that sums in relation to gardening and window cleaning were transferred from sums held by the Property Factor on behalf of the residents of Shaw Court to sums held by the Property Factor on behalf of the residents of Homeshaw House and the owners of Shaw Court were not consulted and they did not authorise the transfer of these funds.

The Property Factor's Representations.

Mr MacInnes explained that grass cutting and window cleaning are part of the core services provided by the Property Factor to the residents of Shaw Court. He does not believe that the Property Factor has breached section 2.4 of the Code in relation to payments for grass cutting and window cleaning.

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 (Section 1 refers).

Homeowners' Representatives Representations.

Mr Hind explained that the Property Factor has not provided all of the financial information that the Homeowners have requested. He acknowledged that the Property Factor had replied to some of the emails listed but they have not provided the information that was being asked for. He referred the Tribunal to the following emails, referred to in the applications and his comments regarding the emails:

Emails sent to David MacInnes:

2nd September 21

23rd September 21 - Confirming the Homeowners are attempting to avoid moving to a complaint with HPC.

25th October 21

15th November 21

On each occasion David MacInnes responded confirming this would be arranged but nothing received until 4 months after the deadline of August 21.

Owners Group - Shaw Court / Homeshaw House & D MacInnes (Bield)

23/11/2021 Initial Email (Owners Group to D MacInnes) Advising contravention of Properties Act section 3.1.

24/11/2021 Response from D MacInnes - Still no final accounts or committed date for delivery.

29/11/2021 Response to D MacInnes Unsatisfactory - Partial Funds Transferred - Still no final accounts or date for delivery. Considerable shortfall in Shaw Court Settlement figure highlighted.

02/12/2021 Response from D MacInnes. Unsatisfactory - Still no final accounts or committed date for delivery.

05/12/2021 Response to D MacInnes. Clear Summation of situation reiterated – Requesting final accounts.

17/12/2021 Response to D MacInnes. Reminder sent with advice that we were submitting complaint.

17/12/2021 Response from D MacInnes Unsatisfactory - Still no final accounts or committed date for delivery.

19/01/2022 Response to D MacInnes. Reminder sent – Remaining funds still not transferred; Final Accounts still not provided.

21/01/2022 Response from D MacInnes. Advised remaining funds transferred to J. Gibb 21/12//01 but still no Final Accounts.

24/01/2022 Response to D MacInnes. We advised that as per his email note. The funds were transferred to the wrong Developments.

25/01/2022 Response from D MacInnes Apologies made by D MacInnes.

25/01/2022 Response to D MacInnes We asked for confirmation that these funds were the Final Funds to be transferred and we queried the revised variances based on the new figures, and still no Final Accounts.

25/01/2022 The Homeowners wrote to the Bield Board directly. Concerns outlined. To date (31/01/2022) No response received.

25/01/2022 Response from D MacInnes. Final Figures confirmed, with a High Level response to the variances.

26/01/2022 Response to D MacInnes. INITIAL response regarding D MacInnes’s explanation of the variances and a number of queries - To date (31/01/2022) No response received.

04/02/2022 Response from D MacInnes. An attempt to explain the discrepancy totalling £12,491.

05/02/2022 Response to D MacInnes. Requested formal audited accounts in standard spread sheet format.

15/02/2022 Response from D MacInnes. Unable to provide formal accounts.

21/02/2022 Response to D MacInnes. Owners do not accept Final Accounts in non standard format with no traceable audit trail for the discrepancies.

The Property Factor’s Representations.

Mr McInnes explained that all emails were responded to within 10 working days as required in terms of the Property Factor’s Written Statement of Services. The

information requested was provided as fully as possible. As the contract with the Homeowners terminated on 30th April 2021 the final accounts involved two financial years. This resulted in delays in providing the final audited accounts for 2020/21 and 1st April 2021 to 30th April 2021. As there was going to be a delay in providing the audited accounts a summary financial position was provided to the Homeowners on 25th January 2022.

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

Homeowners' Representatives Representations.

Mr Hind explained that the audited accounts for 2020/21 and 1st April 2021 to 30th April 2021 have still to be provided to the Homeowners. Also, the final payments due to the Homeowners were paid to the new factors in two payments. The first payments were made in November 2021 and final payments were made in December 2021. They are unable to confirm if the amount of these payments are correct as they have not received the audited accounts.

At the end of every financial year until the financial year 2020/2021 the Homeowners received what he described as a spreadsheet showing the detail of payments and receipts made on behalf of the Homeowners. They have only received a summary financial statement from the Property Factor and require a full breakdown of the figures.

He does not agree with the summary of £36504 for the year 2020/2021 on the summary financial statement. He believes that the figure should be £44,489.00 plus £12168.00 = £56657.

The Property Factor's Representations.

The Property Factor has provided the Homeowners with the financial breakdown for the periods 2020/21 and 1st April 2021 to 30th April 2021. The detailed audited accounts have not been provided as the accounts to 30th April 2021 as still being audited. They were wanting to combine both sets of accounts for the final 13 month period. However, he is now in a position to provide the audited accounts for 2020/2021 and also the final accounts to 30th April 2021 albeit that they have still to be audited. He reflected that with the benefit of hindsight terminating the contract with the homeowners one month into the new financial year was not ideal.

The reason that two payments were made to the new factor is that the new factor was arranging some works and required funds. The first payment was made in November 2021 on the basis that this payment was an interim payment pending finalisation of the accounts. The final payment was made in December 2021.

3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

Homeowners' Representatives Representations.

Mr Hind explained that his complaint is that the Homeowners have still to receive the audited accounts for 2020/2021 and the period 1st April 2021 to 30th April 2021. Also, the final payments made to the new factor were paid in two parts.

The Property Factor's Representations.

Mr MacInnes explained that the funds were transferred to the new factor in November and December 2021. The funds could not be transferred sooner as they were waiting to receive final payments due by homeowners and also final invoices. The Property Factor was unable to pay money to the new factor until the figures had been approved by the auditor. He believes that section 3.2 of the code of conduct applies to the situation where a factor is holding floating funds that have to be reimbursed.

Property Factor Duties

Homeowners' Representatives Representations.

Mr Hind explained that he has no further complaints to make concerning breaches of property factor duties.

6.3 Mr MacInnes confirmed that he would provide the Tribunal with the following documents:

- (i) The Audited Accounts for 2020/2021.
- (ii) The unaudited accounts for the period 1st April 2021 to 30th April 2021.
- (iii) A narrative/ descriptive summary explaining why the surplus figure of £12168 was not added to the end of year balance (2019/2020) of £44489 when detailing the end of year balance as at 31st March 2021.

7. Written Representations

7.1 The Factor provided the Applicants' representatives with a copy of externally verified accounts for the financial years 19/20 and 20/21 and also the period to 30th April 2021. The accounts included a narrative which explained why the surplus figure of £12168 was not added to the end of year balance (2019/2020) of £44489 when detailing the end of year balance as at 31st March 2021 and concluded that an error had been made in the previous accounts with the result that a balance of £19460 was due to the owners of Shaw Court. A copy was provided to the Tribunal on 19th August 2022.

7.2 Mr Hind sent an email to the Tribunal dated 25th August 2022 which acknowledged receipt of the accounts and advised that they are seeking:

- (i) Interest on all funds remitted;
- (ii) A requirement for the Factor to send the final accounts to all owners;
- (iii) A requirement for the Factor to issue an apology;
- (iv) Compensation for the efforts of Mr Hind and Mrs Craig and
- (v) Compensation for all Shaw Court owners.

8. A Hearing by conference call took place in respect of the application at 10am on 28th September 2022.

The Homeowners' representatives James Hind and Mrs Beryl Craig attended.

The Factor was represented by David MacInnes, former head of owner services at Bield Housing and Care.

8.1 Mr MacInnes gave an over view of the accounts that had been provided and provided a summary. He highlighted the following points:

- (i) The balance of £19460 is due to the owners of Shaw Court.
- (ii) The owners of Shaw Court have received a credit of £300 being the cost of the audit fee.
- (iii) The Factor introduced a new budgeting system in 21/22 and the figures that were input at the start were incorrect. The Factor investigated the anomaly after the CMD and produced the amended accounts.
- (iv) The accounts have been examined by an external verifier.

8.2 Mr Hind and Mrs Craig confirmed that the Homeowners' queries regarding the accounts had now been answered by Mr MacInnes.

8.3 In relation to the detail of the application the parties advised as follows:

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

Homeowners' Representatives Representations.

Mr Hind explained again that the summary financial position provided by the Property Factor shows that sums in relation to gardening and window cleaning were transferred from sums held by the Property Factor on behalf of the residents of Shaw Court to sums held by the Property Factor on behalf of the residents of Homeshaw House and the owners of Shaw Court were not consulted and they did not authorise the transfer of these funds.

Mrs Craig explained that the budget surplus of £7985 at the end of 2019/2020 was not carried forward and this where the problems stem from. Also, the Factor had used the contingency funds to pay the gardening and window cleaning costs which resulted in a sizeable surplus remaining in the budget account. She also explained that the funds in the Contingency Account should not have been used without the consent of the owners. The Contingency Account was set up in 2014. The practice had developed that at the end of every year any surplus in the budget account was transferred to the Contingency Account. This did not cause a difficulty until 2020/2021 when the surplus was larger.

The Property Factor's Representations.

Mr MacInnes explained that even although funds in the Contingency Account had been used to pay the gardening and window cleaning accounts the Homeowners were not out of pocket and the same amount of money would be paid to the new

Factor at the end of the day. He confirmed that the contingency fund is held in a separate account with Barclays bank and that a copy of the statements for the account can be provided to the Tribunal.

He also acknowledged that the Written Statement of Services does not refer to the Contingency Fund. He explained that the owners had agreed at a Residents meeting in 2014 that each resident would pay £10 per month to a contingency fund to meet the cost of capital repairs which initially were repairs to the soffits and downpipes.

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 (Section 1 refers).

Homeowners' Representatives Representations.

Mr Hind confirmed that he had nothing further to add in relation to this complaint.

The Property Factor's Representations.

Mr McInnes explained that although Board members had been contacted it was not for the Board members to reply.

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

Homeowners' Representatives Representations.

Mr Hind confirmed that the accounts have now been provided and that the figures detailed in the accounts are what they had expected.

The Property Factor's Representations.

Mr MacInnes explained that production of the final accounts had originally been delayed due to covid. They were also delayed due to the fact that the accounts had to be made up to 30th April 2021 which was one month into the new financial year.

3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

Homeowners' Representatives Representations.

Mr Hind explained that he had nothing to add to this complaint.

The Property Factor's Representations.

Mr MacInnes also confirmed that he had nothing to add to this complaint.

8.4 The Tribunal agreed to adjourn the hearing to allow the Factor to produce the following:

- (i) The Minutes of the Residents meeting when the contingency fund was approved.
- (ii) Copies of the bank statements for the contingency fund bank account from the date that the account was opened to date.
- (iii) Evidence that the accounts submitted to the Tribunal have been externally verified.
- (iv) Evidence of bank interest paid on the homeowners' funds held by the Factor since 30th April 2021 (Note: this point was not discussed at the hearing but is required to enable the Tribunal to consider the Homeowners' Representatives claim for interest).

The hearing was adjourned to a conference call hearing at 10am on 12th December 2022.

9. The Factor provided the following documents:

(i) A copy of a letter dated 8th November 2016 which states, inter alia, '*The first question on the ballot relates to the budget for 2017/18 and it was proposed at the meeting that all owners should contribute £10 per month towards increasing the funds held for the future maintenance works. This money should be ring fenced and can only be spent with the prior agreement of the owners...*'

(ii) A copy of the bank statement for a bank account with Barclays bank in the name of Arthur Akugbo for the period 1st November 2018 to 5th December 2022 which showed a balance of £29130.90 at 5th December 2022.

(iii) A copy of the accounts for the years 2020/ 2021 and 2021/2022 signed by RSM Audit LLP accountants dated 15th August 2022. The Report of the Accountant states: '*These accounts have been properly prepared from the nominal ledger of Bield Housing & Care from which Bield's audited accounts for the year ended xxx were prepared.*'

(iv) Details of the bank interest paid on the homeowners' funds held by the Factor:

2019/20 £76.00

2020/21 £14.00

2021/22 £4.00

10. A Hearing by conference call took place in respect of the application at 10am on 12th December 2022.

The Homeowners' representatives James Hind and Mrs Beryl Craig attended.

The Factor was represented by David MacInnes, former head of owner services at Bield Housing and Care.

10.1 In relation to the documents lodged with the Tribunal by the Factor the parties advised as follows:

10.2 Mr Hind and Mrs Craig confirmed that the Homeowners' queries regarding the accounts had now been answered by Mr MacInnes.

10.3 In relation to the detail of the application the parties advised as follows:

10.3.1 The copy letter dated 8th November 2016.

Mr MacInnes explained that the letter sets out the agreement reached with the owners regarding the contingency fund. No other agreement is in place regarding use of the contingency fund.

10.3.2 A copy of the bank statement for a bank account with Barclays bank in the name of Arthur Akugbo for the period 1st November 2018 to 5th December 2022.

Mr MacInnes also explained that as Factor they are not allowed to hold money due to owners in the company current account. Accordingly, they set up the deposit account with Barclays bank. Arthur Akugbo is the head of finance of Bield Housing and Care. The Factor pays all sums they receive from homeowners into the company Royal Bank of Scotland current account. Reconciliations are carried out quarterly and any surplus is credited to the Barclays account. Whilst the Barclay's account is registered in the name of Arthur Akugbo it is truly in trust for the homeowners. The auditors reconcile the Factor's ledger with the Factor's current account and prepare the annual accounts on this basis. He confirmed that the contingency funds paid by the homeowners are not fully credited to the Barclays account. Some of the contingency funds will remain in the Factor's current account. Whilst the bank account exhibited shows a current balance of £29130.90, this sum is due to the Factor as the Factor used their own funds to pay the final balances to the homeowners.

Mr Hind and Mrs Craig emphasised that the sums in the contingency account should not have been used without the prior agreement of the homeowners.

10.3.3 A copy of the accounts for the years 2020/ 2021 and 2021/2022 signed by RSM Audit LLP accountants dated 15th August 2022.

Mr MacInnes acknowledged that even although the accounts for 2020/ 2021 and 2021/2022 have been signed by RSM Audit LLP accountants, the accounts are incorrect and the financial summary position previous exhibited to the Tribunal which shows a final balance due to the homeowners of £19460 is correct. This sum was paid on 7th October 2022.

Mr Hind and Mrs Craig confirmed that they are satisfied that the financial summary position exhibited which shows that the sum of £19460 is due to the homeowners is correct.

10.3.4 Details of the bank interest paid on the homeowners' funds held by the Factor

Mr Hind and Mrs Craig explained that they were surprised that the interest figures were so low. Mr MacInnes explained that the interest figures provided are the sums of interest that were paid by the bank.

11. In relation to the detail of the application the parties provided additional oral representations as follows:

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

Homeowners' Representatives Representations.

Mrs Craig reiterated that the funds in the Contingency Account should not have been used without the consent of the owners.

The Property Factor's Representations.

Mr MacInnes reiterated that even although funds in the Contingency Account had been used to pay the gardening and window cleaning accounts the Homeowners were not out of pocket.

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 (Section 1 refers).

Homeowners' Representatives Representations.

Mr Hind emphasised that providing holding responses was not sufficient. The detailed accounts and financial information that was requested was not provided timeously.

The Property Factor's Representations.

Mr MacInnes explained that responses were sent to the Homeowners' questions and they required time to obtain the information that was sought.

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

Homeowners' Representatives Representations.

As before, Mr Hind confirmed that the accounts have now been provided and that the figures detailed in the accounts are what they had expected.

The Property Factor's Representations.

As before, Mr MacInnes explained that production of the final accounts had originally been delayed due to covid. They were also delayed due to the fact that the accounts had to be made up to 30th April 2021 which was one month into the new financial year.

3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

Homeowners' Representatives Representations.

Mr Hind explained that he had nothing to add to this complaint.

The Property Factor's Representations.

Mr MacInnes also confirmed that he had nothing to add to this complaint.

12. Mr Hind and Mrs Craig explained that had they not brought the application to the Tribunal the homeowners would not have received the repayment of £19,460. They have suffered significant time, and stress in relation to pressing the Factor for the required financial information that should have been provided within three months of 30th April 2021. They should also receive interest on the contingency funds and other funds that should have been paid to them.

13. Findings in Fact

- A. The Property Factor were factors of Shaw Court, Newton Mearns until 30th April 2021.
- B. The letter from the Factor to the Homeowners dated 8th November 2016 detailed the procedure regarding the management of the contingency fund.
- C. The Factor sent the unaudited accounts for 2020/2021 and 2021/22 to the Tribunal and the homeowners' representatives in August 2022.
- D. The Factor sent the audited accounts for 2020/2021 and 2021/22 to the Tribunal and the homeowners' representatives in October/ November 2022.

- E. The Factor sent a copy of the contingency fund bank account with Barclays bank to the Tribunal and the homeowners' representatives in December 2022.
- F. The parties agreed that sums totalling £38048 were paid to James Gibb, the Homeowners new property factor, in November and December 2021
- G. The parties agreed that the final payment of £19460 was paid to James Gibb, the Homeowners new property factor, on 7th October 2022.
- H. The underpayment of £19460 was identified by the Property Factor following the Homeowners' application to the Tribunal.
- I. The sums credited to the Barclays bank account registered in the name of Arthur Akugbo comprise the quarterly surplus of the homeowners' funds and does not amount to the full amount of the contingency payments made by the homeowners.
- J. The Property Factor used surplus payments made by the Homeowners to pay the gardening and window cleaning accounts without obtaining the prior authority of owners.
- K. The audited accounts for the periods being the years to 31st March 2020 and 31st March 2021 are not correct.
- L. The Homeowners accepted that the financial summary which disclosed that the sum of £19460 was due to the homeowners was correct.
- M. The Homeowners/ homeowners representatives had sent approximately fourteen emails to the Property Factor requesting detailed financial information which they were entitled to receive in terms of the Code of Conduct. The Property Factor did not provide the information until after the current application was made to the Tribunal.

14. Decision.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

The Tribunal accepted that the letter from the Factor dated 8th November 2016, which had been produced to the Tribunal, detailed the procedure in relation to the Homeowners' contingency funds and therefore the **Tribunal determined that the Factor had not breached section 2.4 of the Code of Conduct.**

The Tribunal acknowledged that the separate matter of whether the Factor had adhered to the agreed procedure in relation to the contingency fund was not a matter which fell within section 2.4 of the Code of Conduct and could not be considered by the Tribunal.

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 (Section 1 refers).

The Tribunal accepted that the emails listed in the application requested that the Property Factor provide the Homeowners with detailed financial information and the final accounts.

The Tribunal has found:

- (i) The Factor sent the un audited accounts for 2020/2021 and 2021/22 to the Tribunal and the homeowners' representatives in August 2022 and
- (ii) The Factor sent the audited accounts for 2020/2021 and 2021/22 to the Tribunal and the homeowners' representatives in October/ November 2022.

The Service Standards section of the Property Factor's Written Statement of Services states that a response to an enquiry must be provided within 10 days. The Tribunal acknowledged that the Property Factor provided the Homeowners and/ or their representatives with timeous holding responses but they failed to a full response in the form of the final accounts within a reasonable time. Sixteen months after termination of the factoring contract was not considered to be reasonable and did not meet the requirement to provide information quickly and as fully as possible.

Consequently, the Tribunal determine the Property Factor did not comply with section 2.5 of the Code of Conduct.

3.1 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services) and

3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

The Tribunal has found:

(i) The Property Factor ceased to be employed as the Homeowners property factor on 30th April 2021.

(ii) The Property Factor sent the audited accounts for 2020/2021 and 2021/22 to the Tribunal and the Homeowners' representatives in October/ November 2022.

(iii) The sums totalling £38048 were paid to James Gibb, the homeowners new property factor, in November and December 2021

(iv) The final payment of £19460 due to the homeowners was paid to James Gibb, the Homeowners new property factor, on 7th October 2022.

The Tribunal determine that the Property Factor did not comply with section 3.1 of the Code of Conduct as the final accounts were not exhibited to the homeowners by 1st August 2021.

The Tribunal determine that the Property Factor did not comply with section 3.2 of the Code of Conduct as the outstanding funds due to the Homeowners were not settled until 7th October 2022. The parties did not provide the Tribunal with the exact date that the final bill was settled, however given that the Property Factor ceased to be factor of the Homeowners properties on 30th April 2021 the Tribunal consider it reasonable to assume that any final account would have been settled by 1st August 2021.

15. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Sections 2.5, 3.1 and 3.2 of the Code of Conduct.

The Tribunal believe that the shortfall of the sum of £19,460 was only identified as a result of the complaints made by the Homeowners. The Tribunal acknowledge that this is a significant sum. The Tribunal also acknowledge that that the Homeowners and their representatives spent a considerable time pursuing the complaint.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'The Factor must pay each of the Homeowners £300 for the inconvenience they have suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'

16. Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Signed

Date 12th December 2022

Chairperson