Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19 of the Property Factors (Scotland) Act 2011 and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber reference: HOHP/PF/16/0147

Re: 67U Glenfinnan Drive, Glasgow G20 8HN ('the property')

The Parties:

M/s Avril Jordan, residing at 67U Glenfinnan Drive, Glasgow G20 8HN ('the homeowner');

and

Cube Housing Association, care of YourPlace Property Management having their registered office at 177 Trongate, Glasgow G1 5HF, ("the property factor')

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

Committee members:

George Clark (Legal chair) and Mary Lyden (Ordinary member)

Decision

The Tribunal has jurisdiction to deal with the Application.

The property factor has not failed to comply with its duties under section 14 of the 2011 Act.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code of Coduct" or "the Code"; the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as "the 2012 Regulations"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations as "the 2016 Regulations"; the Homeowner Housing Panel as "HOHP"; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as "the Tribunal"

The property factor became a Registered Property Factor on 12 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the application by the homeowner received on 10 October 2016 with supporting documentation; further written submissions on behalf of the homeowner received on 23 January 2017, with supporting documents extending to 35 pages; and the property factor's written response, sent by e-mail on 24 January 2017, with 14 appendices.

Summary of Written Representations

(1) By the Homeowner.

The following is a summary of the content of the homeowner's application to HOHP:- The homeowner was concerned by bills she had been receiving from the property factor. Her concerns included the manner in which costs of repairs and improvements were calculated, who was carrying out the repairs and how residents' votes on improvements were being carried out. Homeowners used to receive quarterly bills which detailed what costs would be incurred prior to work being carried out, but now they were receiving numerous bills, on some occasions twice in one week and these bills did not clearly set out how costs were incurred and charged to homeowners.

As an example of this, on 3 July 2013, work had been carried out to gutters and downpipes and the replacement of the wooden fascia and soffits with Upvc had been carried out. The homeowner had been quoted a price but the property factor had refused to give a breakdown until the homeowner's MSP had intervened on her behalf.

On 1 April 2015, the insurance provider had been changed, resulting in a change in premium, but the property factor had not consulted the homeowner in relation to the change and had not provided information as to how insurance quotes had been sourced.

The property factor did not provide information showing how it obtained competitive quotes for work to be carried out on common property. The homeowner had researched the costs of labour and materials and believed that the homeowners were being overcharged for work.

When votes were held in relation to improvement plans for the development of which the property forms part, the homeowners were split into 2 groups. The voting procedure lacked transparency and homeowners did not get to see the full result of the vote. The property factor automatically counted absent homeowners as voting in favour of the proposition, rather than discounting them. This often resulted in the property factor being successful in what it proposed due to the absent, non-voting members being taken to have voted in favour.The homeowner cited as an example of this the vote taken in August 2014 in relation to a proposal to install a controlled door entry system.

The homeowner had been made aware of cladding works which were to be carried out at no expense to the homeowners and other works which were to be carried out at the same time to take advantage of the fact that scaffolding would be erected in order for the cladding works to be carried out. She had sought a breakdown of costs for the work done to gutters and downpipes and the replacement of the wooden fascia and soffits but did not receive a reply. She had only received the breakdown when her MSP intervened on her behalf. Any further contact with the property factor had been met with a lacklustre response.

The homeowner had approached University of Strathclyde Law Clinic for advice in January 2016. The Clinic had written to the property factor on 7 March 2016, but had not received a reply. It had written again on 4 April 2016 but, whilst it did receive a reply to that letter, matters remained unresolved.

The homeowner contended that Sections 2.4 and 3.3 of the Code of Conduct had been breached by the property factor. In relation to Section 2.4, the property factor had not sought written approval before providing work or services that would incur charges or fees in addition to those relating to the core service. The homeowner also did not believe there was an agreed level of delegated authority enabling the property factor to incur costs up to an agreed threshold or to act without seeking further approval in certain situations. As an example, on 3 July 2013, the homeowner had been informed of the cladding work to be carried out for no cost and that, further to this, the property factor had decided that it was in the best interests of the homeowners to carry out further works while they were able to use the scaffolding from the cladding work. This further work incurred costs, but the approval of the homeowners had not been actively sought. Work had also been carried out to replace common windows. The homeowner agreed that for some of the windows, this work was necessary, other windows were not in need of repair and approval from the homeowners should have been sought. The cost of this work was intimated to the homeowner in a bill issued on 15 October 2015.

There was a final example, namely work carried out in relation to the bin hoppers. It had been identified that they required smoke seals to comply with British Standards. The property factor had decided to replace the bin hoppers, despite the fact that they were in working order, apart from the requirement to fit smoke seals. The property factor had not actively sought written approval for this work from the homeowners.

In relation to Section 3.3 of the Code of Conduct, the homeowner's concern was that the property factor had not provided a detailed financial breakdown of charges for activities and works carried out. These details had not been provided yearly. Supporting documentation and invoices regarding the breakdown of charges had not been provided when the homeowner had requested them, but only when the homeowner's MSP intervened on her behalf. Further, the property factor, in relation to work done to the side of the building and the gutters and downpipes, had told the MSP that it was unable to provide a copy of the estimate and had cited "commercial sensitivity" as the reason. The property factor had suggested that the high cost was due to labour costs being included, but would not provide in the breakdown how much of the cost related to labour.

In addition to the alleged breaches of the Code of Conduct set out above, the homeowner believed that the property factor had not complied with the duty on property factors set out in Section 14(5) of the Act to ensure compliance with the Code of Conduct for the time being in force, so had failed to carry out Property Factors' duties.

For the reasons that she had set out, the homeowner did not consider her complaints to have been satisfactorily resolved. She would like to return to paying bills on a quarterly basis and to be billed in a more efficient and transparent manner. She wanted the property factor to provide consistent invoices, identifying who was carrying out maintenance work, with a breakdown of costs to be available to her which showed that the costs were fair and just. She also wanted a clear definition of the voting procedure in relation to improvements, with the practice of assuming absent voters were in favour of the property factor's propositions being discontinued and the property factor also ending the practice of splitting up residents when votes were being cast.

The further written submissions on behalf of the homeowner, received on 23 January 2017, comprised copies of a series of documents, namely a quarterly bill dated 19 May 2011, a Breakdown of Completed Work to gutters, downpipes, soffirs and facia (sic) renewal and the removal of asbestos prior to gutter works, an undated letter from the property factor relative to the installation of a controlled door entry system, a letter from the propery factor dated 25 February 2016 regarding the common close window renewal, a quarterly factoring bill covering the period from 1 January 2017 to 31 March 2017 and a copy of the homeowner's title Deed of Conditions.

(2) By the Property Factor

The property factor identified 7 key themes requiring clarification, in addition to responding specifically to the alleged breaches of Sections 2.4 and 3.3 of the Code of Conduct.

1. When the property factor joined Wheatley Group, all factored owners had been advised that the factoring service would be provided by Wheatley Group subsidiary, YourPlace. All customers had been notified of what this would involve, including how the billing process would change. Common charges were billed quarterly, a breakdown was issued with each bill and an annual summary of service charges was also issued.
2. Repairs were charged on a schedule of rates basis, so there was a fixed cost for each description of work that included labour and materials.
3. The property factor had a contract with City Building Glasgow LLP. This was awarded in 2009 following an extensive tendering exercise in compliance with all relevant regulations. An extension of the contract had been optioned in 2014, making City Building Glasgow the property factor's appointed contractor for all repairs and maintenance. The property factor did not, therefore, require to tender each repair on a job by job basis.
4. The consent process was outlined in the Deed of Conditions, which stipulated a threshold of £250 per property for anticipated expenditure. The supporting documents included a copy of a letter issued to all owners on 5 June 2001, increasing that threshold to £400 per household. Repairs and improvements were charged according to the apportionment defined by the Deed of Conditions and this was clearly outlined on Page 3 of the property factor's Written Statement of Services, a copy of which was included with the written submissions.
5. Customers had been advised that the block insurance provider would change and letters sent detailing the reasons and benefits of this were sent to the owners.
6. The property factor acknowledged that the homeowner appeared to have experienced difficulty in receiving responses to her enquiries and those made on her behalf and apologised for this. It noted, however, that an e-mailed response appeared to have been sent on 1 September 2016, although it had been unable to find a copy of it.
7. Customers had been advised that the property factor would replace the common windows at the property as part of ongoing investment works. The windows had been more than 50 years old and many were beyond their lifespan. The timber units had been replaced with UPVC, which had a longer lifespan and did not require regular maintenance,such as painting, thus reducing the lifespan costs for customers.

The property factor then referred to the specific allegations of breaches of the Code of Conduct. In relation to the complaint under Section 2.4 of the Code of Conduct, the procedure was outlined in the Deed of Conditions for the block which stipulated a threshold of £250 per property for anticipated expenditure. All owners had been issued with a "Notice of Amendment to Clause 11 of Disposition" in June 2001, when the threshold was increased to £400. The letter sent to all homeowners advising of the intention to replace the common windows stated the cost per owner as £213.11, exclusive of VAT. This was below the level where written consent was required.

In relation to Section 3.3, the property factor stated that it billed common charges quarterly, that a breakdown of these charges was issued with each bill, that it issued an annual summary of service charges to its customers and that it billed repairs as soon as was practical after they were completed, such bills being sent out on a monthly basis.

The property factor believed that it was fully compliant with the Code of Conduct on both counts.

The property factor's written submissions include copies of all the documents to which it referred, apart from an e-mail of 1 September 2016, which was referred to in a chain of e-mail correspondence, but which the property factor had been unable to find.

THE HEARING

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow G2 2XLG on 31 January 2017. The homeowner was present at the hearing and was represented by Sean Scott and Andrew Harding of University of Strathclyde Law Clinic. The property factor was represented at the hearing by Mr Tom Cuthill, Repairs Manager of YourPlace and Cube Housing Association and Vicky Aitken, Service Improvement Head for YourPlace and Cube Housing Association.

Summary of Oral Evidence

The chairman told the parties that they could assume that the Tribunal members had read and were completely familiar with all of the written submissions and the documents which accompanied them. He then invited the homeowner's representatives to address the Tribunal with reference to her complaints under each Section of the Code and in relation to the alleged failure to carry out the Property Factor's duties.

The homeowner's representative Mr Harding told the Tribunal that he did not intend to go through all the evidence that had already been submitted, but would restrict himself to the issues that fell to be determined by the Tribunal. He advised the Tribunal that the

homeowner wished to remove from her complaint the issue relating to the change of insurer provider and also the matter of the voting procedures in respect of common repairs.

Mr Harding dealt first with the complaint under Section 2.4 of the Code of Conduct. He told the Tribunal that the homeowner accepted there was an agreed level of delegated authority and that it was upwardly reviewable and had been increased to £400 in 2001, but the concern was that it had been increased by such a large percentage in one fell swoop. Unsuspecting homeowners had been hit with an unexpected large increase. Mr Harding argued that there should be more regular, minor, adjustments, particularly as the homeowner had had to adjust from having a working wage to relying on a state pension.

The homeowner's representative then referred to the Breakdown of Completed Work, showing a date of notification of 26 March 2015, and relating to "gutters, dowpipes, soffits and facia" (sic), together with the removal of asbestos prior to gutter works. He contended that this was not really a breakdown of costs. In relation to the windows, he argued that repairs should fall under the heading of normal factoring charges. If they were being reinstated, the cost was above the old threshold and the new threshold was too high. The homeowner intervened at this point and queried the need to replace windows in a common close with double glazed units. She was quite happy to repair windows if they were rotten, but the property factor was replacing windows that did not need to be replaced, including one that had already been replaced only 2-3 years previously.

Mr Harding then directed the Tribunal to a letter sent to the homeowner by the property factor on 25 February 2016. It referred to the windows in the common close and drying area and also to 3 further items of work, namely the replacement of bin chute hoppers in the closes, the upgrading of common lighting and common area painting work. All of this work was to be carried out in the following 12 month period and the anticipated cost amounted to one-fifth of the homeowner's total annual income. If these were seen as repairs, they should be included in the management charge set out in page 3 of the Written statement of Services.

The homeowner's representative then turned to the complaint under Section 3.3 of the Code of Conduct and told the Tribunal that the quarterly bills were not sufficiently detailed, as they did not include repairs. All repairs and improvements charged for in the period should be included in the summary. The Tribunal's attention was drawn to a former version of the quarterly bill, covering the period to 31 March 2011, which included details of a number of repairs and to the latest bill, for the period to 31 March 2017, which did not include any repairs works, but was restricted to the standing items, namely caretaking service, communal electricity, the factoring management fee, buildings insurance and landscape maintenance. The homeowner's view was that the present style of bill did not meet the requirements of Section 3.3 of the Code of Conduct as it did not give a detailed breakdown and did not, for example, include labour costs. The property factor had also breached Section 3.3 by not providing a detailed breakdown when requested to do so in a

telephone call by the homeowner. It had taken the intervention of the homeowner's MSP to obtain a response. The homeowner had sought details of labour costs and how suppliers are sourced, in order to be satisfied that the homeowners were getting the best deal, as they were the ones paying for it. The homeowner's representative told the Tribunal that the property factor had not advised the owners that there was a separate contract and that she did not accept that this could be regarded as a matter of commercial sensitivity when it was the homeowners who were paying the bills. If there was an agreed template with a schedule of rates, the homeowners should be entitled to see it. Accordingly, the homeowner's representative concluded, the failure to provide a detailed breakdown when requested to do so constituted a breach of Section 3.3 of the Code of Conduct.

The homeowner's representative concluded by telling the Tribunal that the homeowner wanted to have a happy relationship with her service provider and many of the points he had made on her behalf were to do with communication. The homeowner herself added that the owners wanted everything put on one bill, divided by the 23 owners in the block. That way, they would know where they stood. At present, they could not understand the bills that were being sent and it worried her that the property factor was not listening to them.

Mr Cuthill then addressed the Tribunal on behalf of the property factor. He began by saying that the property factor's written representations contained its full response and that he did not propose repeating it in detail, as the Tribunal would already be familiar with the written submissions of the parties. He accepted that some bills had mistakenly been issued showing the homeowner as being liable for a 1/21st share instead of a 1/23rd share of the cost. This had been reviewed and the accounts rectified. This was not a point that had been covered by the homeowner's representatives at the hearing thus far, but the homeowner commented that it was because of mistakes like this that the owners were having to examine minutely every bill that came in. She added that the owners appreciated the work that the property factor was doing, but too much was being done too quickly and the owners were suffering financial difficulty as a result. Mr Cuthill undertook that, after the hearing, the homeowner's account would be looked at closely and a representative of the property factor would then call to see the homeowner and explain it to her in detail.

Mr Cuthill stressed that the property factor was hoping to resolve things and build a better relationship. The property factor had taken over housing stock from the previous landlords, together with the factoring responsibilities for the properties in private ownership, so were either landlords or factors for the whole block, which comprised 23 houses. The majority of the houses were owner-occupied. As landlords, the property factor was required to maintain properties to meet Scottish housing standards, but, as YourPlace had 27,000 customers, the property factor could bring economies of scale and there was no doubting the fact that homeowners benefited from this.

Mr Cuthill acknowledged that the homeowner had suffered delays and problems in obtaining responses to enquiries and he apologised for that. He told the Tribunal that the original plan in relation to the windows had been to replace all 12 of the communal windows, but that this had subsequently been reduced to 11, as one window did not require to be replaced. The accounts had been adjusted, but he accepted that this had not been communicated properly to the homeowners. The repairs cost threshold had been increased in 2001, having remained unchanged since the 1980s and the level of increase had reflected inflation over the intervening years. The Written Statement of Services provided, as part of the Core services, access to to the property factor's common repairs service for minor repairs, major repairs and emergency repairs, but the fees for the Core service did not include the actual costs of any repairs carried out under the common repairs service. The reason for issuing monthly repairs bills was to ensure they went out as soon as possible after work was completed. Homewoners should receive a system-generated letter, advising that repairs will be carried out and the anticipated cost. This would be followed by a letter confirming the work had been completed (with a satisfaction survey form), then a further letter with the bill for payment. Cube Housing Association had written to all homeowners, advising that YourPlace would be dealing with the factoring service from 1 November 2013, setting out the changes that would result, the benefits and the various means of contacting the YourPlace team should homeowners have any problems.

In response to the complaint under Section 3.3 of the Code of Conduct, the property factor told the Tribunal that repairs invoices are broken down as much as they could be. The property factor had, based on feedback, reviewed the billing system and, for example, now issued bills at the start of each quarter, payable by the end of the quarter. The property factor attended owners' forum meetings across the city and listened to all suggestions. Mr Cuthill accepted, however, that there had been a lot of changes in a short period of time.

Mr Cuthill then advised the Tribunal that the repairs and maintenance contract had been put out to tender in 2004 and in 2009, with an option for extension having been taken up in 2014. When companies tendered, they submitted a schedule of rates, which was extremely detailed, giving an overall cost for every potential item of work. That cost was not broken down into materials and labour, as the property factor was interested in the total cost for a job and contractors would not give that level of granular detail anyway, as it would provide commercially sensitive information to competitors. He stressed that the property factor worked closely with the chosen contractors, challenging them to ensure quality is there and that the cost is correct.

That concluded the evidence given by the property factor and the homeowner's representative was given the opportunity make closing comments. He asked who set procurement processes and where they could be found and commented that it was very disappointing that it had taken a very long time and the intervention of an MSP and the application to the Tribunal to get to this stage of understanding of the tendering process. Mr

Harding also commented on the bill for the gutters, downpipes, soffits and fascia which had amounted to £326.77 plus VAT. This was below the £400 threshold, but the same bill included a separate entry for removal of asbestos prior to gutter works and, if that cost had been included as part of the repair itself, it would have taken the total above the threshold and written consent from the owners would have been required. He wondered whether the the threshold was inclusive or exclusive of VAT. He told the Tribunal that the homeowner appreciated the clarity which she had obtained from the hearing, but the Tribunal should note that this did not excuse the breaches of the Code of Conduct.

The property factor had no further closing comments to make.

Having concluded giving oral evidence, the paries withdrew and the Tribunal gave careful consideration to all the evidence before it.

The Tribunal makes the following findings of fact:

- The homeowner is the owner of the property.
- The property forms part of a block of 23 dwellingouses at the corner of Glenfinnan Drive and Invershin Drive, Glasgow, formerly belonging to Scottish Special Housing Asociation.
- The property factor, in the course of its business, manages the common parts of the development of which the Property forms part. The property factor, therefore, falls within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- The property factor's duties arise from a Written Statement of Services, a copy of part of which has been provided to the Committee.
- The date from which the property factor's duties arose is 1 November 2012, the date on which the Act came into force.
- The property factor was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- The date of Registration of the property factor was 12 November 2012.
- The homeowner has notified the property factor in writing as to why she considers that the property factor has failed to carry out its duties arising under section 14 of the Act.
- The homeowner made an application to The Homeowner Housing Panel ("HOHP") received by HOHP on 10 October 2016 under Section 17(1) of the Act.
- The jurisdiction of HOHP was transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.

- On 5 January 2017, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a tribunal for determination.

Reasons for the Decision

The Committee considered the application, with its supporting papers, the written representations of the homeowner and the property factor and the evidence given by the parties at the hearing. The Committee made the following findings:

Section 2.4 of the Code of Conduct provides that property factors must have a procedure to consult with groups 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. The Section provides an exception where the property factor has agreed a level of authority to act without seeking further approval in certain situations, such as in emergencies.

The Tribunal considered that the terms of the Written Statement of Services were clear in that they provided that "Where the cost of a repair is more than £400 per owner, we will write to you asking for permission to go ahead. If we get permission from a majority of owners, including Cube, who get a vote for each flat they own in your block, we'll instruct the work to be completed". The Tribunal noted that the homeowner had, in her written submissions, expressed concern that absent voters were taken to have approved the property factor's proposals and that the owners were split into two groups prior to voting, but that this element of the complaint had been specifically withdrawn by the homeowner's representative at the commencement of the hearing.

Accordingly, the Tribunal did not uphold the homeowner's complaint under Section 2.4 of the Code of Conduct. The Tribunal nevertheless recommends that the property factor clarifies the relevant section of its Written Statement of Services to make it clear whether the threshold figure of £400 is inclusive or exclusive of VAT. The view of the Tribunal is that an ordinary construction of the words "the cost of a repair..per owner" indicates the total cost to that owner and should, therefore, be inclusive of VAT.

The Tribunal also noted the homeowner's concern at the level of increase in the threshold which took place in 2001. This was not a matter on which the Tribunal could comment, as it pre-dated the 2011 Act, which created HOHP, but the Tribunal would encourage the property factor to consult with homeowners prior to increasing the threshold figure again, as another large increase, even if justifiable by inflation, would have a disproportionate impact on those who, like the homeowner, were on fixed incomes. The Tribunal was not prepared to hold that the asbestos removal should have been included in the cost of repairing the gutters etc., as asbestos removal is generally carried out by specialist firms, but would caution the property factor to ensure that it does not take any action or allow its

contractors to take any action in costing works, that would open it up to suggestion that jobs had been artificially "sub-divided" in order to keep the cost of each element below the threshold. The Tribunal felt that this was particularly important where, as in this case, the property factor, as a social landlord, also owned a number of properties in the block.

The homeowner's representative had sought to argue that the work done on the common windows should be regarded as repair work and included in the quarterly factoring bill rather than separately charged. The Tribunal noted, however, the comment made by the property factor that the core service included access to a common repairs service, but not the cost of any repairs and the Tribunal considered that the Written Statement of Services made that clear. The Tribunal was of the view, however, that, irrespective of how the window works were categorised, the threshold figure would have applied in any event.

Section 3.3 of the Code of Conduct states that property factors must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, property factors must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying.

The Tribunal noted that the property factor had explained the process for billing and for instructing repairs and was satisfied that the Billing section of the Written Statement of Services made it clear that common charge accounts would be issued quarterly and that, if shared repairs were carried out, the bills for these would be sent out within one month of the work being finished. The Tribunal noted the comment of the homeowner that the procedure had been different in the past, but held that the homeowner had received the Written Statement of Services, as a copy was included amongst the supporting papers which accompanied the application and that the letter to homeowners, intimating that YourPlace would be dealing with factoring matters, dated 1 November 2013 also clearly stated that one of the changes would be that repairs would be billed separately as they were completed and that repairs bills would be sent out monthly.

The Tribunal was satisfied that the billing arrangements met the requirements of Section 3.3 of the Code of Conduct.

The Tribunal noted the concern of the homeowner that she had been unable to obtain a breakdown of costs that showed both the material and labour elements of the total cost of repair works and was disappointed that the property factor had not responded to her telephone enquiry on this matter. The property factor had been unable to find an e-mail of 1 September 2016, which it understood to be a response to the enquiries made by the homeowner and by her representatives. The Tribunal noted that this e-mail was amongst the supporting papers which accompanied the application and it related to the window replacements. The homeowner had first been made aware of the proposal to carry out the

window works on 15 October 2015 and the bill for the work was issued on 26 June 2016, the work having been completed on 15 March 2016. The homeowner's representatives had written to the property factor on 7 March 2016, but the gist of the complaint contained within the letter was that the window replacement work was unnecessary and that the consent of the owners had not been obtained. No response was received to that letter and a reminder was sent on 4 April 2016. Vicky Aitken of YourPlace e-mailed the homeowner's representatives on 17 August 2016. She stated that she understood that a response had been issued, but requested copies of the original letters. The substantive response from the property factor appears to be the e-mail of 1 September 2016. As the property factor has not produced a copy of an earlier reply to the letters of 7 March and 4 April 2016, the Tribunal holds that, on the balance of probabilities, no such reply was sent.

The Tribunal had seen no evidence as to the date on which the homeowner expressed her concerns about the windows to the property factor, so was unable to determine the time that elapsed before the homeowner consulted her representatives prior to their writing to the property factor on 7 March 2016, but it was clear that the work must have been well under way by that date, as the bill indicates that it was completed on 15 March 2016.

The property factor had also responded to enquiries from the homeowner's MSP with regard to the guttering work and the Tribunal was disappointed that it took his intervention for that issue to be properly explained to the homeowner, but had no evidence before it as to the date on which the homeowner had first raised the matter with the property factor. The MSP had first written to the property factor on 18 December 2014. The property factor replied on 6 January 2015 and there was further correspondence on 15 and 26 January and 9 February 2016.

The Tribunal determined that there was a lengthy delay in responding to the letters of 7 March and 4 April from the homeowner's representatives, but that a proper response was sent on 1 September 2016. The homeowner's application did not, however, include a complaint under Section 2.5 of the Code of Conduct, the section which requires property factors to respond to enquiries and complaints within prompt timescales. Had it done so, the Tribunal would have upheld that complaint, but, as the property factor had, albeit belatedly, supplied such supporting documentation and invoices as it was able to do, the Tribunal could not uphold the complaint that it had been in breach of Section 3.3 of the Code of Conduct

The Tribunal then considered the main substantive complaint under section 3.3 of the Code of Conduct, namely that the breakdown of costs, when it was provided, did not show a division between materials and labour. The Tribunal could understand the frustration of the homeowner in this regard, given that the owners were the ones who were paying the bills, but accepted the explanation given by the property factor that it did not know the division in relation to any particular repair item, because of the way in which its tendering process operated. The Tribunal understood that, to the homeowner, this would appear to be, at

best, curious, as it would be perfectly normal, when instructing repairs to, say, a car, to have a bill which showed parts and labour separately. The property factor had, however, explained to the Tribunal that companies tendering for the repair and maintenance work were asked to quote against a long list of possible repair items and that they provided a total cost for each rather than state an hourly rate for labour, which might then become known to their competitors. The Tribunal, from its own knowledge, was aware that such an approach was not uncommon.

The Tribunal was satisfied that the tendering process allowed the property factor to know in advance and for the contract period the precise cost of any repair item, irrespective of whether the job was more or less labour-intensive in any individual case. There was no suggestion that the appropriate rules for tendering had not been followed and the Tribunal was aware that, as the propery factor was also a social landlord, its tendering process would be scrutinised by government agencies. The Tribunal also accepted that economies of scale would operate in favour of the homeowner in respect of a large-scale operator like YourPlace, both in terms of tendering the repairs and maintenance contract and in terms of streamlined, centralised billing, but, recognising that changes to billing arrangements would potentially be confusing for some customers, the property factor should be very aware of the need for effective communication with homeowners, at an individual level for some if necessary. The Tribunal noted the offer made by the property factor to send a colleague to meet with the homeowner to fully explain her bills and, whilst the offer might have been made at an earlier date, was satisfied that it was the correct approach to take.

Accordingly, and for the reasons set out above, the Tribunal did not uphold the homeowner's complaint under Section 3.3 of the Code of Conduct.

As the Tribunal did not uphold the homeowner's complaints that the property factor had breached the Code of Conduct, it was unable to uphold the complaint that the property factor had not complied with the duty on property factors set out in Section 14(5) of the Act to ensure compliance with the Code of Conduct for the time being in force.

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.

George Clark

Chairperson Signature ... Date 31 January 2017