Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 ("the Act") and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: FTS/HPC/PF/20/1655

The Parties:

Dr Andrew Waugh, 4/18 Lochend Road (Flat 18 Lochend School, 4 Lochend Road) Edinburgh EH6 8BR ("the homeowner")

and

James Gibb Property Management Limited, registered as a limited company in Scotland (SC299465) and trading as James Gibb Residential Factors, with a place of business at 4 Atholl Place, Edinburgh EH3 8HT ("the property factors")

Property: 4/18 Lochend Road, Edinburgh EH6 8BR ("the Property")

Tribunal Members – George Clark (Legal Member/Chairman) and Ahsan Khan (Ordinary Member)

Decision by 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')

The Tribunal has jurisdiction to deal with the application.

The property factors have not failed to comply with their duties in terms Sections 2.1 and 4.7 of the Property Factors Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). The property factors have not failed to carry out the Property Factor's duties.

The Tribunal does not propose to make a Property Factor Enforcement Order.

The Decision is unanimous.

Introduction

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 as "the Code of Conduct" or "the Code"; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as "the Tribunal".

The property factors became a Registered Property Factor on 23 November 2012 and their duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it and gave consideration to the application by the homeowner received on 4 August 2020, with supporting documentation, namely a copy of the property factors' Written Statement of Services, an Extract from the Land Certificate for the Property (MID54431), and copies of the homeowner's initial complaint, the property factors' response, an email in which the homeowner escalated the complaint and the final bill from the property factors relating to the Property. The Tribunal also considered the written representations of the property factors, emailed to the Tribunal on 12 October 2020, with supporting documentation, namely copies of the welcome letter and float Invoice issued to the homeowner, letters of 28 January 2019 and 20 February 2019 to the owners at the development regarding the review of the float, the property factors' Guide on floats, a sample client statement, the cease to factor letter sent to owners dated 22 November 2019, a letter sent only to debtors dated 9 April 2020 and a series of spreadsheets showing, *inter alia*, records of credit control actions.

Summary of Written Representations

(a) By the homeowner

The following is a summary of the content of the homeowner's application to the Tribunal:

In February 2019, the property factors had unilaterally increased the float payable by each owner in the development from £150 to £330. This was in contravention of the Property's title deeds. The property factors did not have the authority to do this. The homeowner had purchased the Property on 24 May 2019 and the material sent to him stated that the float was £330. This was a false and misleading statement. Not all residents had paid the float increase.

The property factors had ceased to be factors for the development on 16 January 2020. Final bills had been issued by them on 2 June 2020. The fact that not all residents had paid the float increase had had a material impact on the final bill. The float increase had been carried over as an unpaid charge and included in the distributed debt. Since the production of the final bills, many owners had paid the monies owed. It was currently unclear what debt remained, if any, on the development. No ultimate final reconciliation had taken place.

The homeowner's complaint was that the property factors had failed to comply with Sections 2.1 and 4.7 of the Code of Conduct and had failed to carry out the property factor's duties. The homeowner sought a final reconciliation of the account for the development and, full refunds where other owners were owed money by the property factors, and the closure of all other accounts.

The initial letter of complaint by the homeowner was dated 9 April 2020. It referred to the Title Deeds, in terms of which the float was set at £150, "or such greater sum as may be agreed at meetings of the proprietors from time to time" and added that the property factors had provided no evidence that a meeting had taken place at which the proprietors had agreed to increase the float. The property factors had continued to charge and to hold on to a float of £330, even though they were not legally entitled to do so. They had failed to provide evidence that they had complied with Section 4.7 of the Code of Conduct by taking all reasonable steps to recover unpaid charges before redistributing the debt. The homeowner had requested this evidence by email on 25 November 2019, but no evidence had been provided in the property factors' response, or since that date. He contended that the balances on the final bills for all properties with floats of more than £150 should have their balances reduced by the difference between £150 and the higher amounts of their floats. He also wanted the property factors to provide information of the account balances and floats held for all the properties in the development.

The property factors issued their response to the complaint on 22 May 2020. In relation to Section 2.1 of the Code of Conduct, they explained that in early 2019 they had carried out an exercise to ensure that all developments under their management were "in funds", had identified that insufficient funds were held for the present development and that it was reasonable to request an additional payment, with the float set at £330. Their Written Statement of Services stated that the float amount "may be subject to change, by agreement with the Homeowners' Association (or the majority of owners) if costs increase significantly." A consultation process with owners had been undertaken, with a first letter of 28 January 2019 advising them that the review was under way and explaining that , as the property factors billed quarterly in arrears, they relied on the float to put them in funds and they also highlighted that the float is reviewed on a regular basis to ensure it covers the actual expenditure within the development. A second letter had been issued to owners on 20 February 2019, confirming that the review had been completed and that an increase to the float was required. They had confirmed in that letter that the float top-up would appear in the regular quarterly Invoice to be issued after the end of February 2019 and provided details of where owners could find out more information on floats. The float had been increased by the time the homeowner took ownership of the Property and the float amount had been confirmed to both him and his solicitor at that time. They had not received any query from either the homeowner or his solicitor as to why the amount requested differed from the float amount noted in the title deeds and at no time had they received a complaint from any owner at the development regarding the float increase.

The property factors told the homeowner that they believed the increase was necessary, justified and reasonable, that their approach to altering float payments

was clearly set out in their Written Statement of Services, with which they had complied, and that they had acted at all times transparently with owners, and also with the homeowner and his solicitor at the time of his purchase. They did not uphold the complaint that they had failed to comply with Section 2.1 of the Code of Conduct.

The property factor's response to the homeowner's complaint that they had not complied with Section 4.7 of the Code of Conduct was that reasonable steps had been taken to recover sums due by all homeowners at the development prior to redistributing any debt and they enclose redacted spreadsheets showing credit control timelines and account statements. They stated that GDPR restrictions meant that they were unable to provide the information in the format that the homeowner sought. The property factors did not uphold the complaint that they had failed to comply with Section 4.7 of the Code of Conduct.

On 15 June 2020, the homeowner emailed the property factors regarding the final bill, which he had received the previous day, and which included £83.26 as his share of redistributed debt. He said that he had paid the charges for services provided but was not content to pay any of the redistributed debt because one flat's debt related to the "illegal increase of the float", He said that that charge should immediately be cancelled and that any legitimate debt of the other flats would now be settled by the owners directly. He asked the property factors to formally close his account, removing the redistributed debt charge of £83.26. He also asked the property factors to escalate his complaint to the final stage.

(b) By the Property Factors

The property factors provided the Tribunal with written representations by email on 12 October 2020. They stated that the information that the homeowner alleged was misleading or false related to the float amount that was requested at the point of his taking ownership of the Property on 24 May 2019. They provided a copy of their first communication with him, which was a welcome letter and a request for the initial float of £330. They had also provided him with a copy of their Written Statement of Services and affiliated Development Schedule, which said that the float for the development had been set at £330 per property. The float amount had also been notified to the homeowner's solicitor during the transaction process and at no point had the fact that this differed from the amount stated in the development Deed of Conditions been queried either by the homeowner or his solicitor. All communications relative to the float amount issued to the homeowner or his solicitor, the float Invoice request and the sum contained in the Written Statement of Services had consistently stated the sum as £330.

The property factors referred to their response to the homeowner's complaint in which they had highlighted that a review of float levels had been carried out across all developments under their management, with letter circulated to all affected owners in early 2019, prior to the homeowner's purchase. Two letters had been issued to the then owner, dated 28 January and 20 February 2019. The earlier letter had included a reference to the property factors' Customer Guide on the purpose

and use of floats. The property factors confirmed that the float level at the development had previously been £150, but stated that this was manifestly too low and that the quarterly charges levied had consistently exceeded that amount, as evidenced by the sample client Statement which they produced. The uplifted balance was in line with the average quarterly requirement to meet development expenditure.

The homeowner's statement that the property factors had produced false information to owners to increase the float and had no authority to do so was denied on the basis that the uplift was required in order to maintain services and insurance cover and this was notified to all existing owners prior to the uplift being applied. The information provided to the homeowner had been detailed and consistent and, on this basis, there had been no breach of Section 2.1 of the Code of Conduct.

In response to the complaint under Section 4.7 of the Code of Conduct, the property factors referred to their credit control procedures and to the reference to this process in their Written Statement of Services. Section 5.7 of the Written Statement of Services detailed the terms relative to payment of Invoices and there was also a dedicated Section on Income Recovery.

The owners at the development had sent the property factors a cease to factor notification letter effective from 14 January 2020. The property factors had written to all owners with confirmation of this on 22 November 2019. That letter had clearly stated that the last full maintenance Invoice would be issued to 28 February 2020, with all charges apportioned to the cease date of 14 January. The final Invoice, which would include refund of floats, would be issued at the May quarter end. Floats were not refunded on the same billing cycle as the cease date in order to ensure that the final charges were met. That also gave the opportunity to recover additional charges for services due but not invoiced prior to the quarter end. The letter also advised that maintenance charges up to the cease date were payable in full and could not be offset against floats held and that arrears balances would be reallocated on the final Invoice as distribution of debt, with those having sums re-distributed being named at that time.

The bills issued to 28 February 2020 had included charges up to the cease date and were payable in full. A letter had been issued on 9 April 2020 to all owners with debit balances, advising them of the sums due and requesting settlement within 7 days, failing which their debt would be redistributed amongst other owners in the final bill to be issued in May. The five owners listed in the final bill as having had their debt redistributed, had all been paying ongoing charges by monthly instalments, all of which were running in arrears and had been carrying debit balances to varying degrees over some time. All had been contacted by the property factors' Income Recovery Department and had been issued with Stage 1 and Stage 2 letters, as was evidenced by the spreadsheets provided as part of the written representations.

The property factors stated that significant information had been provided to the homeowner demonstrating that reasonable steps had been taken by the property factors in terms of their Debt Recovery process to recover funds from those owners who were due balances and that, on that basis, there had been no breach of Section 4.7 of the Code of Conduct.

The property factors accepted that not all owners had paid the full float amount but stated that this did not form part of any re-allocated debt when the accounts were finalised. None of the redistributed sums related to unpaid or disputed floats, as all floats actually held for individual owners were refunded on their final bills. All redistributed debt balances were exclusively arrears in maintenance charges, premiums or fees due by the 5 named owners. Some of them had subsequently paid the amounts due by them, but these payments had been returned, as all financial matters had by then been wound up. The bills issued on 2 June 2020 had been the final bills that wound up all financial matters relative to the development and were the final reconciliation of the development account, the final action being to redistribute the debt and refund the floats held.

The Hearing

A Hearing took place by way of a telephone conference call on the morning of 2 November 2020. The homeowner was present. The property factors were represented by Jenny Bole and Angela Kirkwood.

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 the written submissions and the documents which accompanied them. The homeowner agreed with the Chairman's summary of the issues to be discussed, namely:

1. Were the property factors entitled to increase the floats in the way they did, rather than by following strictly the process set out in the title deeds, which would have involved holding a meeting if the owners?
2. Did the property factors take all reasonable steps to recover unpaid charges from the owners whose accounts were in debit before redistributing that debt amongst the other owners? And
3. In what way did the homeowner believe the property factors had failed to carry out the property factors' duties?

The homeowner confirmed that his complaint in relation to the property factors' duties was fully covered by his complaints in relation to Sections 2.1 and 4.7 of the Code of Conduct and that there was no specific evidence to be provided in this regard. The discussion then centred on items 1 and 2.

1. The homeowner confirmed that there was no Residents' Association of formally constituted Owners' Committee for the development but that occasional meetings had been held, such as the one to discuss the proposal to terminate the contract with the property factors. His view was that the property factors were not entitled to increase the float without holding a meeting of owners.
   The property factors told the Tribunal that they had reviewed the floats across a portfolio with some 46,000 owners. Their Written Statement of Services clearly stated that the amount of the float might be subject to change and sets

out the process that they would go through. They held meetings where there was a Residents' Association or a Committee and if neither was in place, they sent out letters to each owner. Before they commenced factoring any development, they submitted a management proposal which included their Written Statement of Services and, in deciding whether to appoint them as factors, owners were voting on the basis of those documents.

2. The property factors told the Tribunal that their Invoices were due for payment within 14 days of being issued. If payment was not made, a Stage 1 letter was sent. It was a first reminder and advised owners that, if follow up procedure was required, charges would be added. The next step was a Stage 2 letter, which contained a reminder that if payment was not made, the account would be passed to a debt collection agency. The property factors confirmed that, of the 5 owners who had been in debt, two cases had been passed to debt collectors. The decision on whether or not to take that step would depend on the responses to the Stage 1 and Stage 2 letters. The property factors referred the Tribunal to a number of spreadsheets lodged as productions, which documented the issue of Stage 1 and Stage 2 letters and references to debt recovery in individual cases. They had not gone as far as legal action against any of the 5 owners whose accounts were in debit, explaining that it depended on the amount of the principal sum, on whether any items were disputed and on whether the owners told the property factors that they were in financial difficulty, as the property factors had to weigh up the cost of legal proceedings. If individual owners were in contact with them, they tried to resolve the issue directly. Late payment charges would be added after the second reminder was sent. This was a flat fee of £30, which was applied to the individual's debit balance.

   The Tribunal asked the property factors to clarify the statement in their letter to owners of 22 November 2019 that the float could not be offset against current charges that were in debit. They explained that in the present case the last quarterly Invoice covered the period from November 2019 to February 2020, with charges apportioned to 16 January, the date on which they ceased to factor the development. Their final bill was sent in May 2020, and that included the refund of floats. Floats were held in trust for owners, so had to be fully credited back to individual accounts and the final bill was the return of the float, under deduction of any residual debt on the individual's account.

   The homeowner questioned whether it could be said that all owners had their full floats refunded, when some, who had paid their last Invoice of February 2020, had had the redistributed debt deducted from it. The property factors told the Tribunal that all owners had had their floats returned, whether these were £330 or £150, but each under deduction of their share of the redistributed debt, namely £83.26 per property.

   The homeowner then asked the property factors why no final reconciliation for the development had been produced in evidence. He was referring to the fact that he understood that 3 of the owners who had been in debt had paid money to the property factors after the final bill was issued in May 2020. The property factors confirmed that some owners had sent in moneys after their final bills had been issued, but the property factors had returned these payments, as they

no longer acted for the owners. In other words, they did not then redistribute the payments received amongst the owners who had suffered the redistribution of debt. The property factors repeated that amounts that were redistributed referred exclusively to current charges and not to any "shortfall" in any owner's float. The actual amount of the float held for each owner was credited in that owner's final bill.

The Tribunal asked the property factors if they had taken steps to escalate action against any defaulting owners between 22 November 2019 and the date that final letters were sent out in April 2020 to those with debit balances. The property factors referred the Tribunal to the spreadsheets they had provided, which showed a number of credit control steps having been taken in that period.

The Parties confirmed that there were no further matters that they wished to put before the Tribunal. They then left the Hearing conference call, and the Tribunal members considered all the evidence, written and oral, which had been provided by the Parties.

Findings of Fact

The Tribunal makes the following findings of fact:

- The homeowner is the owner of the Property, which is a second and third floor mezzanine flat, part of a development of 25 flats and one house in a converted former school.
- The property factors, in the course of their business, managed the common parts of the development. The property factors, therefore, fall within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- The date of Registration of the property factors was 23 November 2012.
- The property factors issued a welcome letter to the homeowner on 7 September 2019. This included an Invoice for a float payment of £330.
- The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- The homeowner made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") received on 4 August 2020 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.

- On 8 September 2020, 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.
- The owners in the development accepted a proposal by the property factors to increase their floats from £180 to £330 with effect from February 2019.
- On 22 November 2019, the property factors acknowledged to owners that they had received written notice to terminate their services and that it had been agreed that they would cease to factor the development on 16 January 2020. They stated in that letter that the last full maintenance invoices would be issued at the end of the current quarter, 28 February 2020. These Invoices would be payable in full and, thereafter, the property factors would prepare a final Invoice which would include any residual charges, refund of float moneys and redistribution of arrears across the development. The letter also stated that any accounts with arrears balances might be included in the "distribution of debt" process, which could result in any arrears being passed on to co-owners on their final Invoices and that, should that happen, the property factors would provide co-owners with details of any defaulting payers, so that they could pursue their own legal recoveries of the arrears.
- The property factors ceased to factor the development on 16 January 2020 and issued a quarterly bill to 28 February 2020, with charges apportioned as at the cessation date.
- On 9 April 2020, the property factors wrote to owners with an outstanding balance, asking them to settle their accounts within the next 7 days, failing which the outstanding balances would be distributed amongst all remaining homeowners. The letter stated that all float payments would be refunded on production of their final Invoice when completed charges could be finalised and could not be offset against any current charges that were overdue.
- The property factors issued their final bill to the homeowner, dated 2 June 2020. It showed a credit of the deposit of £330 and debits totalling £83.26 in relation to redistribution of debt of 5 named owners, with details of the amounts owed by each of them.

Reasons for Decision

Section 2.1 of the Code of Conduct provides that property factors must not provide information which is misleading or false.

The Tribunal did not uphold the homeowner's complaint under this Section.

The homeowner's complaint under Section 2.1 of the Code of Conduct was that the property factors had acted illegally by increasing the owners' floats from £150 to £330 without following the process laid down in the title deeds, in that they had failed to convene a meeting of the owners to approve the increase. The Deed of Declaration of Conditions for the development was registered in the Land Register on 19 December 2002. It provides that "each of the proprietors shall pay to the Factor within one month of taking entry ..a maintenance float of £150 or such greater sum as may be agreed at meetings of the proprietors from time to time". The homeowner argued that, as no such meeting had been held prior to the increase in the float to £330 in February 2019, the property factors did not have the right to ask owners to pay the increased sum and their statement at the time of his purchase that the float payment required of him was £330 was, therefore, misleading and false. He was also of the view that the failure by some owners to pay the additional £180 had resulted in their shortfalls being included in the redistributed debt, so he disputed the property factors' right to redistribute the debt in their final account.

The Tribunal noted that, as the property factors' services had been terminated by the owners and all floats had been credited back to individual owners' accounts, the question was now an academic one, but the Tribunal was satisfied from the property factors' evidence that the debt which had been redistributed related entirely to the failure of a number of owners to pay their quarterly Invoices and did not include any element of shortfall in float payments. The final Invoices had credited each owner with whatever sum he or she had put in as a float. The homeowner had been under a misapprehension that the redistributed debt included float deficits.

The Tribunal noted the process by which the float had been increased. The property factors' Written Statement of Services stated that the float amount quoted in the development schedule attached to it was correct at the date of publication of the Statement of Services and "may be subject to change if costs increase significantly. Advance notification of a float increase, along with reasons for the increase, will be given to affected homeowners". The Tribunal noted that this wording differed from the wording quoted by the property factors in their response of 22 May 2020 to the homeowner's complaint. The Tribunal assumed that the property factors must have been referring to a different version of the Written Statement of Services when they stated in that response that the float "may be subject to change, by agreement with the Homeowners' Association (or the majority of owners) if costs increase significantly". The float amount stated in the development schedule at the time of the homeowner's purchase was £330. The property factors had explained in their written representations the process of intimation that had taken place prior to the increase, which took effect before the homeowner bought the Property, namely that they had told owners they were conducting a review, they had then told them that the review was complete and that their conclusion was that floats had to be increased. They had set out when the increase would be billed and had included the cost as they had said they would. The view of the Tribunal was that the owners had, explicitly by paying the increase, or impliedly by not objecting to it, accepted the situation, albeit it appeared that some owners had not paid in the funds necessary to top up their individual floats. There was no evidence before the Tribunal to indicate that any

owners did not agree with the proposal. Accordingly, the Tribunal determined that the increased float level had been accepted by the owners of the development in February 2019 and that the amount of the float stated to the homeowner and his solicitors at the time of his purchase was correct.

The view of the Tribunal was that the property factors had followed correctly the procedure set out in their Written Statement of Services. The Tribunal noted that no meeting had taken place, so the property factors had not strictly followed the process set out in the Deed of Declaration of Conditions, but the property factors were not party to or bound by the Deed of Declaration of Conditions. The process for reviewing floats was governed not by the title deeds but by the contract between the owners and the property factors. Owners appointed the property factors on the basis of their Written Statement of Services, which forms part of the management proposal put to owners in advance. That Statement includes provisions relating to review of floats and the property factors followed the procedure as set out there. Property factors are required by law to provide their services on the basis of a Written Statement of Services, and, if owners are not content with the proposal put to them, they can look to appoint a different factor and, if they are not content with any proposed alterations to the Written Statement of Services or the Development Schedule, such as an increase in the property factors' fees, they can terminate the contract on giving the required period of notice. There is an analogy to be found in relation to common repairs, where Deeds of Conditions will frequently provide that if a majority of owners approve a proposal for repair works, all are bound, but the contractors will very often refuse to start the work until agreement is unanimous and all owners have paid their shares of the anticipated cost.

The property factors in the present case had sent a copy of their Written Statement of Services to the homeowner and had provided his solicitor with information which included the amount of the float payable. All the information provided to the homeowner and his solicitor at the time of his purchase was correct and consistent. It was, therefore, the view of the Tribunal that the property factors had not made any statement that was false or misleading.

Accordingly, the Tribunal did not uphold the homeowner's complaint under Section 2.1 of the Code of Conduct and moved on to consider the complaint made under Section 4.7.

Section 4.7 of the Code of Conduct states that property factors must be able to demonstrate that they have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging those remaining homeowners if they are jointly liable for such costs.

The Tribunal did not uphold the homeowner's complaint under this Section.

In order to determine whether the property factors had complied with Section 4.7 of the Code of Conduct, the Tribunal had to consider the actions taken by the property factors in relation to those owners whose accounts were in debit. The property factors provided the Tribunal with evidence that their credit control procedure involved the sending of a Stage 1 letter to owners who had not settled their bills within 14 days. This first reminder stated that, if follow up procedure was required, charges would be added. If payment was still not made, the property factors would send a Stage 2 letter, which said that if payment was not made, the account would be passed to a debt collection agency. The property factors confirmed to the Tribunal that, of the 5 owners who had been in debt, two cases had been passed to debt collectors and provided the Tribunal with redacted spreadsheets for each of the 5 owners involved. These documented the issue of Stage 1 and Stage 2 letters and references to debt recovery in individual cases. They had not gone so far as to institute legal action against any of the 5 owners whose accounts were in debit, explaining that it depended on the amount of the principal sum and the extent of engagement with the owners involved, as they had to be mindful of the costs involved in litigation.

The Tribunal was of the view that the property factors had taken reasonable steps to recover debt from defaulting owners before they took the decision to redistribute it. The Code of Conduct does not require property factors to take all necessary steps to recover debt. Litigation would involve legal and court expenses which might not be recoverable from the defaulting owners and might exceed the amount due. The Tribunal's view was that the property factors in this case had demonstrated that they had taken reasonable steps, by issuing Stage 1 and Stage 2 letters and referring 2 cases to debt collectors, and that the exercise of their discretion in deciding not to pursue the 5 owners through court action had been reasonable, given the amounts due and the potential costs involved in recovery, which might, ultimately, be unsuccessful.

The Tribunal had sympathy for those owners who had borne the cost of the redistributed debt, although the amount per head was reasonably modest. The homeowners still, however, have the right to pursue the 5 defaulting owners directly to recover the sums that they have paid. The evidence presented by the homeowner indicated that a number of them had paid moneys which had been returned by the property factors. This had been the correct procedure for the property factors to follow, in circumstance where they were no longer acting for the development owners, so had no authority to hold or distribute funds. The property factors had presented their final Invoices in line with their Written Statement of Services. Thereafter, having dispensed with the services of the property factors, responsibility reverted to the owners to sort matters out amongst themselves.

Having considered all the evidence, written and oral, before it, the Tribunal did not uphold the homeowner's complaint under Section 4.7 of the Code of Conduct.

Failure to Comply with the Property factor's Duties.

The Tribunal did not uphold the homeowner's complaint under this heading.

The homeowner made no specific averments under this heading and, as the Tribunal was satisfied that the substance of the complaint had been fully considered under Sections 2.1 and 4.7 of the Code of Conduct. The Tribunal did not uphold the complaint that the property factors had failed to carry out the Property Factor's Duties as defined in Section 17 of the Act.

Having decided not to uphold any part of the homeowner's complaint, the Tribunal does not propose making a Property Factors Enforcement Order.

Right of Appeal

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 (Legal Member/Chair)

2 November 2020