

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 19 of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/22/2276 and FTS/HPC/LM/22/3184**

**Re: Property at Flat 14, 4 Gaskell Street, Edinburgh, EH14 2AF (“the Property”)**

#### **Parties:**

**Miss Lesley Anne Forson, Flat 4, 4 Gaskell Street, Edinburgh, EH14 2AF (“the Applicant”)**

**Residential Management Group Scotland Ltd, Unit 6, 95 Morrison Street, Glasgow, G5 8BE (“the Respondent”)**

#### **The Tribunal comprised:-**

Mrs Ruth O’Hare	-	Legal Member
Mrs Mary Lyden	-	Ordinary Member

#### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the property factor has complied with the code of conduct as required by Section 14 of the 2011 Act, determined that the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011. The Tribunal therefore gives notification to parties of its intention to make a property factor enforcement order.

#### **Background**

- 1 The Applicant submitted two applications to the Tribunal citing alleged failures by the Respondent to comply with the Property Factors Code of Conduct, one arising from the Property Factors Code of Conduct 2012 and one arising from the Property Factors Code of Conduct 2021. The timeline of breaches alleged by the Respondent crossed the two versions of the Code. In particular the Applicant alleged that the Respondent was in breach of sections 2.4, 2.5, 3.3, 3.4, 6.1, 6.3, 7.1 and 7.2 of the 2012 Code and sections 2.6, 2.7, 3.2, 3.4, 7.1 and 7.2 of the 2021 Code.
- 2 In support of the application the Applicant provided the following documents:-

- (i) Notification to Respondent of breach of 2012 Code dated 5 July 2022;
  - (ii) Notification to Respondent of breach of 2021 Code, undated;
  - (iii) Copy email correspondence between the Applicant and the Respondent;
  - (iv) Statement History dated 22 June 2022;
  - (v) The Respondent's Written Statement of Services;
- 3 In summary the Applicant's position was that the Respondent had not provided information regarding repairs that had been carried out and had failed to resolve issues, that billing statements issued were not easy to understand, that money had been taken out from her bank account by the Respondent without warning and that there had been a lack of communication and conflicting information on the part of the Respondent.
- 4 By Notice of Acceptance of Application the Legal Member of the First-tier Tribunal determined that there were no grounds upon which to reject the application. Accordingly a case management discussion was assigned for 9 December 2022.
- 5 The Tribunal subsequently received written representations from the Respondent. In summary the Respondent rejected the allegations that they were in breach of the Code. An emergency roof repair had been carried out in line with the procedures set out in the Respondent's Written Statement of Services. Whilst notification of this was not given to owners in writing it had been raised at a face to face meeting. The Respondent conceded that there may have been some delays in providing answers to queries there had been no lack of communication. The Respondent had complied with the timescales outlined in the Written Statement of Services for handling complaints. The Respondent accepted that money had been taken from the Applicant's account without warning due to an administrative error however the issue was quickly resolved. A compensation payment had been offered to the Respondent as a result of the error which she had refused. The billing statements issued to owners were clear and transparent. Quarterly invoices were issued with a breakdown of charges on a line by line basis and a description of works carried out. In support of their representations the Respondent provide the Deed of Conditions for the property with supplementary data plan, a site plan, owner welcome pack, complaints procedure, copy correspondence between the Applicant and Respondent, copy invoices, minutes of resident meetings, an invoice for the roof repairs and the Applicant's Statement of Account.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place on 9 December 2022. Miss Forson was in attendance accompanied by her father Mr David Forson as a supporter. The Respondent was represented by Mr Darren Gallagher who was accompanied by his colleagues Megan Evans and Melissa Neilson.

- 7 The Legal Member explained the purpose of the Case Management Discussion and the legal test. She explained that the Tribunal would go through each section of the Code which Miss Forson alleged to have been breached and she asked parties addressed her on their respective positions with regard to each issue. It was noted that there were two applications before the Tribunal – one in relation to the 2012 Code of Conduct and one in relation to the 2021 Code of Conduct. The 2012 Code could only be relied upon for matters that had arisen pre-August 2021 and the 2021 Code for anything that had arisen post-August 2021.
- 8 The Tribunal then heard from the parties on each section in turn. For the avoidance of doubt the following is a summary of those matters relevant to the Tribunal's determination of the applications and does not constitute a verbatim account of what was discussed at the Case Management Discussion.
- 9 **2012 Code of Conduct**

The Tribunal heard from the parties on the relevant sections of the 2012 Code of Conduct which the Applicant claimed to have been breached:-

- (i) ***Section 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).***

After some discussion Miss Forson advised that she wished to withdraw her reliance upon this section as the relevant issues had arisen post-August 2021.

- (ii) ***Section 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).***

Miss Forson advised that she had been trying to arrange for direct debits to be set up for her account since June 2021. She had discussed a set amount with Mr Gallagher and had been given a rough figure of £36 per month. She understood this had been arranged however a lump sum of £341.95 had been taken from her account on 1<sup>st</sup> June 2021 which put her into overdraft. She contacted the Respondent and it was refunded on 8<sup>th</sup> June 2021 because she had contacted them. They had no

explanation for why it was taken. It appeared to have been an error due to the direct debit not being set up correctly. Miss Forson had tried to sort this out with the Respondent and had held telephone discussions and meetings. She felt that she was constantly having to chase things up and it has been really stressful. She confirmed it was her position that emails were not responded to within prompt timescales and it had been difficult to get a clear answer. She confirmed that she had submitted the correspondence she wished to rely upon to support this with her application.

Mr Gallagher advised that he was aware of the direct debit issue. It had been an admin error, they had identified that and the money had been refunded. He was aware that there had been some delays in queries being answered however Miss Forson had been told when there would be delays. Mr Gallagher believed her queries had been answered. Mr Gallagher advised that the Respondent gave owners the opportunity to set up direct debits with an estimated monthly payment that was calculated based on projected bills so that they could have the certainty of knowing what payments were required. If the direct debit did not cover the actual costs the owners would be advised by letter. Their invoice would show the additional costs so that they knew what balance to pay. The direct debits were also reviewed on a six monthly basis to ensure that they would continue to cover any future invoices. The Respondent also organised regular resident meetings at the development to engage with the owners.

- (iii) ***Section 3.3 - You 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, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.***

Miss Forson advised that she accepted that the Respondent issued quarterly invoices. However she would often have to go on to the online system due to the issues with payments and check her balance online. She had some issues with maths and numbers, and had sought assistance from her father, however the invoices were very difficult to understand. They were not sufficiently clear. Mr Gallagher confirmed that invoices were sent quarterly via the owner's preferred payment method, email or post. If owners had any issues with understanding the invoices they could get in touch with the Respondent and have the charges explained to them along with anything else they don't understand. Mr Gallagher advised again that direct debits were reviewed six monthly

and a communication sent to owners if an increase or decrease was required. A direct debit was not mandatory, owners could receive their quarterly invoice and they would have 30 days to pay. Mr Gallagher, with assistance from his colleagues, advised that he accepted Miss Forson had experienced difficulties however the new system would be more streamlined and improve the customer experience.

Miss Forson advised that she had never received any letter regarding issues with her payments unless she queried it herself. She always had to follow up. She had not received any letter saying she was not paying enough money, she had been informed at her face to face meeting with Mr Gallagher on 29<sup>th</sup> April 2022. She advised that she did not have any confidence in the new system, as she already had a bill for £564 that she knew she was not due to pay.

- (iv) ***Section 3.4 – You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on sale of the property).***

Both Miss Forson and Mr Gallagher referred back to their previous submissions regarding the direct debit issue in relation to this section and had nothing further to add.

- (v) ***Section 6.1 – You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.***

Miss Forson advised that her reliance on this section was to do with ongoing issues with the main entry door. It had been brought to Mr Gallagher's attention on several occasions. It had been raised with him as a concern and safety issue. For a while the owners weren't able to gain entry to the building and instead had to go through the bike store. The issue had now been fixed and she had been charged. Miss Forson confirmed she had reported the repair via email however it had taken a significant length of time for it to be fixed. She believed the issue had been reported in September 2019, there had been ongoing issues with the door since that time. Miss Forson confirmed the Respondent had an out of hours contact number however it wasn't always easy to get an answer. Miss Forson confirmed that she would attempt to locate the emails that she had sent at the time regarding the repair. Mr Gallagher confirmed that he was aware of the issues with the front and back door to the building and had initially sought input from the developer. The response was that it was not a defect issue therefore the developer was

not responsible and the factor required to arrange the repair. The repair had been carried out in January 2021 and charged to the owners account. Mr Gallagher confirmed that the Respondent's records would show the reporting of the repair.

- (vi) ***Section 6.3 – On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.***

Following discussion on this point Miss Forson advised she was withdrawing this section on the basis that the matters giving rise to the alleged breach under this section occurred post August 2021.

- (vii) ***Section 7.1 – You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.***

Miss Forson advised that she had made complaints to the Respondent but they did not seem to go far. She had made contact with the managing director of the Respondent who had made contact with Mr Gallagher in order to contact her and resolve the issues. She had been hopeful that after the face to face meeting in April 2022 the issues would be resolved however she continued to constantly chase the Respondent for a response. She had a telephone discussion with Mr Gallagher and the managing director Lisa Piper in July, during which they had acknowledged the payments hadn't been correct and they had looked into this. There had been a discussion regarding some form of compensation, perhaps a reduction in management fees. She had then been disappointed when they offered to clear her balance of £77. She felt insulted. There had been a lack of communication and conflicting information given from members of staff. Miss Forson accepted that there was a complaints procedure in place but she had never been provided with a copy of it. She had to go to the managing director because she wasn't getting anywhere. Mr Gallagher advised that he did not believe the Respondent had breached this part of the Code, there was a written complaints procedure in place. Looking at the evidence he believed the Respondent had responded within the timescales set out in the complaints procedure.

## **10 2021 Code of Conduct**

- (i) ***Section 2.6 - A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or***

***provisions of the agreed contract service, 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 there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.***

Miss Forson advised that a roof repair had been required for the building which was less than three years old. She had not been informed nor advised about the repair. She had later had a face to face meeting with the Respondent's representative where the repair was discussed. She understood that the repair was due to water coming through the roof and it was seen as an emergency. She only found out when she was charged. No correspondence had been sent. Mr Gallagher conceded that written confirmation had not been sent to the owners, albeit the issue had been raised at a residents meeting. He had arranged a face to face meeting with Miss Forson where it was discussed. Mr Gallagher pointed out that this issue had not been raised by Miss Forson in her initial complaint to the Respondent.

- (ii) ***Section 2.7 - A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their Written Statement of Services. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.***

Miss Forson confirmed that she had lodged a formal complaint with the Respondent in March 2022 which had proceeded to the resolution stage on 26 March. She then felt that the communication was not great and escalated it to the overall manager of the Respondent. It had been passed back to Mr Gallagher to deal with. She had raised a number of concerns, mainly relating to the issues with her direct debit. She had believed that a direct debt had been set up for £38 per month however she had been charged £117 on 1<sup>st</sup> February 2022. She contacted the Respondent to ask why this had happened however they could not provide an explanation. The money was refunded automatically. She had held a face to face meeting with Mr Gallagher on 29<sup>th</sup> April 2022. She didn't hear anything further and followed up on the 10<sup>th</sup> May 2022. She then had a telephone appointment with Mr Gallagher on 25<sup>th</sup> Jul 2022 where the issues had been discussed and acknowledged, with an indication that there may be the potential for a form of compensation. She then had a phone call with Mr Gallagher in August where he put forward an offer to clear her balance which was £77. She didn't think this was good enough. Because her direct debit had not been set up correctly she had ended up with a bill for £380 and had to seek assistance from her parents to pay it. Mr Gallagher offered a further compensation payment of £100 however by that point she had raised the

application with the Tribunal. She felt she was left with no further option. She had cancelled her direct debit due to the issues and was putting money aside to pay her bills. She felt she was frequently chasing up the Respondent due to their delay in responding and as a result of issues arising.

Mr Gallagher advised that the Respondent had dealt with Miss Forson's complaint in line with their complaints procedure. With regard to the direct debit issue, the Respondent had accepted that there had been an administrative error in that the direct debit had not been set up properly hence why compensation had been offered. Mr Gallagher advised that the Respondent was moving to a system which would benefit owners with regard to invoices and direct debits.

- (iii) ***Section 3.2 - The overriding objectives of this section are to ensure property factors: protect homeowners' funds; provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor; and make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income***

Miss Forson and Ms Gallagher advised that they had addressed the issues arising from this section in previous submissions regarding the invoices and Respondent's accounting procedures and had nothing further to add.

- (iv) ***Section 3.4 - A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.***

Miss Forson again confirmed she had received invoices but they were difficult to follow. Mr Gallagher had colour coded them in order to try and explain more about the charging however they were complicated to understand. This was one of the reasons for the face to face meeting on 29 April 2022. Her father had attended and was able to explain it to her better once they had talking it through. However there continued to be issues with her direct debits and she had therefore cancelled her direct debit in June 2022. She pointed to the £117 that had been taken from her account in March 2022 which she had queried and received a refund. However because her direct debit had not been set up correctly she had then received a bill for £380.54. She had paid the bill with the assistance of her parents but was disappointed that things hadn't been rectified. Mr Gallagher advised that he did not believe the Respondent had breached this part of the Code as they did send out detailed invoices. In calculating the direct debits the Respondent would look at their budget for the year together with any contracts for works and buildings insurance. They would also look at the previous financial year



and the costs of any scheduled work. That would then inform the estimate for the direct debit. The Respondent did everything in their power to ensure owners did not have an additional bill to pay.

(v) ***Section 7.2 - When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.***

Miss Forson and Mr Gallagher addressed these points under Section 7.1 of the 2012 Code.

- 11 Having heard from the parties the Tribunal noted that a lot of the substantive facts were agreed however there were two issues to be resolved that the Tribunal required further information in order to determine, namely:
- With regard to the main entry door, when and how was the repair reported, when was it completed and were owners kept advised of the timescales; and
  - Whether the parties have additional evidence to support their respective positions regarding whether there was timeous responses to Miss Forson's communication from the Respondent.
- 12 The Tribunal therefore determined to fix a Hearing in the matter. A Direction was issued requiring parties to comply with timescales for lodging additional documentation and confirming witnesses. The Applicant provided a response to the Direction on 25 January 2023. She submitted additional documents in the form of copy excerpts from Resident Association discussions, copy email correspondence between the Applicant and the Respondent, and the Applicant and the developer regarding the main entry door together with a excerpt from the Residents Association discussion, and a Statement History highlighting the charge for the main entry door.

## **The Hearing**

- 13 The Hearing took place on 14 February 2023. The Applicant was present and accompanied by her father David Forson as a supporter. The Respondent was represented by Darren Gallagher who was accompanied by his colleague Meghan Mitchell. The Tribunal heard evidence of the parties on the two issues to be resolved. For the avoidance of doubt this is a summary of the evidence relevant to the Tribunal's determination of the application and is not a verbatim account of what was said at the hearing.

### **Main door entry system**

- 14 The Applicant advised that she had moved into the property in September 2019. Since then there had been issues on and off with the door. She had sent an email on 4 November 2019 to the developer, raising concerns about the main front door which had been inoperable, resulting in access having to be gained to the property through the bike shed. The developer had responded later that month to say that a joiner had attended and the door had been fixed. The issue had persisted and the Applicant had made telephone calls to the

Respondent to report her concerns. In 2021 the Respondent had been in touch with owners to say that they were aware of the issues with the door and that the matter had been passed back to the developer to investigate. The Applicant advised that the door would get fixed and would work for a short time, then the issue would arise again. The issue was ongoing from 2019. It would be fixed and it would work for a wee while. In January 2021 a repair was carried out and the Respondent had provided an update to say that the door was now fixed. However there had been another problem raised in April 2022 by another owner in the block. The Applicant was aware that there had been some suggestion that the issues with the door were caused by vandalism and the door being propped open with stones. However she doubted that to be the case. It had been an ongoing issue since she moved in. The Applicant confirmed that she had been in contact with the Respondent between 2019 and 2021. Accordingly she did have all of the contact recorded due to some communication being by telephone. In response to questions from the Tribunal the Applicant confirmed that the main door entry system was activated using a fob which was supposed to unlock the door hatch. However on occasion the door fob would be used but the door would not unlock. Because of that the residents would have to go through the bike shed and enter via the back door. There had been issues with the back door but these had been fixed.

- 15 Mr Gallagher addressed the Tribunal on behalf of the Respondent. He confirmed that there had been an issue with the main door in relation to residents being unable to get in and out of the building using their door fob. The developer had replaced the control panel however the issues that had arisen since were separate to that. Mr Gallagher drew the Tribunal's attention to the timeline of events submitted. The issue had first been reported to him by email on 12 November 2021. He had issued a response stating that he would contact the developer who was on site. The developer had investigated but advised that it was not a defect issue as the problem had potentially been caused by vandalism, namely owners wedging the door open which affected the door alignment. The repair was not therefore covered by the developer as it was not considered to be a defect. The Respondent had then arranged for their own contractor to carry out a repair and he had attended the next day. Mr Gallagher referred to the invoice that had been submitted for that repair, at a cost of £192. On 17 December 2021 the contractor had advised the Respondent that he believed the door had been wedged open with a stone. In January 2022 the Respondent had received a further report that the door was not working. The contractor attended the development and noted that the door was securing, it was just taking some time to do so. In March 2022 the issue was raised again and the contractor attended. He subsequently recommended replacing the motor in the system. Updates had been provided to residents advising them on this. On 14 April 2022 the Respondent received quotes for the work. The contractor was asked to go ahead but the Respondent had yet to receive an invoice. They were in discussion with the contractor directly about the timescales for issuing invoices.

Mr Gallagher highlighted that the door entry system had not previously been raised by the Applicant as part of her complaint, which was predominantly related to the payment issues. Mr Gallagher confirmed that the development

was handed over to the Respondent on 11 December 2019 therefore they were not responsible for the issue prior to this date, when it would have remained the responsibility of the developer. Mr Gallagher made reference to the multiple productions submitted which evidenced correspondence with the residents and the contractor, as well as the developer. Mr Gallagher advised that he did not have logs of any telephone calls with the Respondent regarding the main door between 2019 and 2021.

- 16 The Applicant confirmed that she had been corresponding with the developer prior to the handover on 11 December 2019. She had raised the issues with the door with them. The Applicant advised that she couldn't comment as to whether stones had been used to prop open the door, but she pointed out that owners would need a way of keeping the door open, particularly when moving in or out of the block. She didn't understand why that would cause issues. The Applicant pointed out in the correspondence submitted by the Respondent that on the one hand there was reference to the issues with the door being there from the start, but on the other it was said the root cause was vandalism. She felt this was contradictory. The Applicant advised that she had not seen any evidence of vandalism.
- 17 Mr Gallagher confirmed that repositioning had been required in order to secure the main door. Because the developer had stated that it was not a defect the Respondent had to act as factor to repair the door, as it was considered a maintenance issue and not a defect issue. Mr Gallagher referred to the invoice for the £192 repair, which confirmed it was related to the same issue, namely the original complaint that the door wasn't closing properly. On 15<sup>th</sup> November 2021 the Respondent had spoken with the developer and the contractor regarding the issue following a report. On 23<sup>rd</sup> November 2021 an announcement had been sent out to the owners confirming that the issue was not a defect and it was an act of vandalism. On 24 November 2021 the contractor had completed the repositioning of hinges, at a total cost of £192. This was all connected to the same issue. Mr Gallagher submitted that the Respondent had evidenced that they had been in communication with the contractor, the developer and the owners regarding the repair.

#### Communication

- 18 The Applicant stated that communication with the Respondent in general had not been great. She didn't think that timescales were in place. She was not the only owner who felt this way, the issue was regularly raised at residents meetings. She would sometimes email and not hear anything within a few days, sometimes a week. It was not always easy to get a hold of someone on the phone. Communication has been an ongoing issue. In response to questions, the Applicant confirmed that she would sometimes send emails to the generic inbox, and sometimes directly to Mr Gallagher. She was asked which source took longest to reply and said it was an ongoing issue that had been raised throughout with Mr Gallagher. She appreciated that there would be external factors that could delay a response however communication was not good from Mr Gallagher. Sometimes it could take over a week to get a response back, other times the Applicant would have to chase for a reply. She had a face to

face meeting with Mr Gallagher in her property and hoped that she would hear back from him promptly however she had found herself after a few weeks having to chase him for an update and clarity on the outcome.

- 19 Mr Gallagher stated that the Respondent worked hard to ensure the communication was good between themselves and the customers. They held regular residents meetings every month. Mr Gallagher referred to the written statement of services which confirmed that the first point of call for customers should be the customer service centre, using the numbers provided. If an urgent answer is required customers are recommended to call the Respondent's 24 hour service. Mr Gallagher conceded that there had been some delays in responding to emails however he was confident that all of the Applicant's queries had received a response to date. He did not believe anything was outstanding. This was further supported by the timeline of events that had been submitted by the Respondent. Using the issue of the main entry door as an example, he pointed out that the issue had been raised on the 12<sup>th</sup> November 2021, the Respondent had spoken with the contractor on 15<sup>th</sup> November 2021 and residents had been notified of the situation on 23<sup>rd</sup> November 2021 as soon as the necessary information was available. Mr Gallagher pointed out that there would be things happening in the background before they could be in a position to update owners, an example being discussion with contractors, obtaining quotes or speaking with the developer. The Respondent would sometimes need a bit more time to contact third parties before owners were updated. Ultimately issues were resolved in a timely manner.

Mr Gallagher confirmed that the Respondent has an online portal where announcements are posted. Owners would receive an email to advise them of this if they elected to receive notifications. Mr Gallagher confirmed that there were around 164 residents on the portal. He further confirmed that he currently manages around 12 to 13 other developments on behalf of the Respondent. He was regularly dealing with queries and enquiries from a large number of people. Mr Gallagher confirmed that the customer contact centre could deal with first time resolution of any issues. Anything that the customer contact centre couldn't deal with would be escalated to a property manager or the finance team, at which point they would get in touch with the owner to seek resolution. Calls identified as complaints would be escalated to the dedicated complaints team. The Respondent could run reports to check if queries are being responded to in a timely manner. If customers were going directly to a property manager that could cause delays, through skipping that first line of contact. The Respondent had around 50 customer care centre workers who worked shifts. They would try to resolve any issues in the first instance without escalation. Mr Gallagher advised that they could perhaps look at encouraging a customer to go through the contact centre first. If an issue reached the complaint stage, the dedicated complaints team would pick this up, acknowledge the complaint and ensure a response. The complaints would go through a two stage process, with the second stage consisting of escalation to the Director who would independently review and respond accordingly. The Respondent would always try and resolve complaints inhouse, without owners resorting to the Tribunal.

- 20 The Tribunal asked parties to address it on what they considered appropriate in terms of any enforcement order, if the Tribunal were minded to make one. Miss Forson advised that a residents meeting had been held on 26 January 2023 with Mr Gallagher and another line manager. A residents association had subsequently been created because of ongoing issues with the property factor. She was aware that as a collective the residents association had submitted a formal complaint to factor. A lot of the things raised in the complaint were similar to the issues she had experienced. Miss Forson explained again the financial difficulty she had experienced and the emotional stress it had caused her. Being a first time buyer it had been a difficult experience. She did not think the attitude of the factor had been helpful. The issues were not getting resolved. She had to seek support from her parents and felt that a level of compensation was justified. Miss Forson accepted that compensation had been offered but she didn't think the level was appropriate and was keen to see the outcome of the Tribunal proceedings.
- 21 Mr Gallagher advised that he was aware there were minor issues with Miss Forson's direct debits. Those queries had however been resolved through the complaints procedure and Miss Forson had been offered compensation which she had refused. Mr Gallagher pointed out that there were issues raised as part of the applications which were not mentioned by Miss Forson in her original complaint. He believed the factor had performed in line with the Code of Practice.

## **Relevant Legislation**

- 22 The relevant legislative provisions are the following sections of the Property Factors (Scotland) Act 2011:-

### ***"17 Application to the First-tier Tribunal***

*(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—*

*(a) to carry out the property factor's duties,*

*(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty").*

*(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.*

*(3) No such application may be made unless—*

*(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and*

*(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.*

*(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.*

*(5) In this Act, "property factor's duties" means, in relation to a homeowner—*

*(a) duties in relation to the management of the common parts of land owned by the homeowner, or*

*(b) duties in relation to the management or maintenance of land—*

*(i) adjoining or neighbouring residential property owned by the homeowner, and*

*(ii) available for use by the homeowner.*

## **19 Determination by the First-tier Tribunal**

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

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

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

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

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

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

*(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order.*

*(4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal."*

## **Findings in Fact**

The Tribunal found the following facts to be established:-

- 23 The Applicant is the owner of the property at Flat 14, 4 Gaskell Street, Edinburgh, EH14 2AF.
- 24 The Respondent is the property factor for the development to which the Applicant's property forms part.
- 25 The Respondent took over the management of the development on 11 December 2019.
- 26 On 1 June 2021 the Respondent took a payment from the Applicant's bank account in error in the sum of £341.95.
- 27 The Applicant emailed the Respondent on 2 June 2021. The Respondent responded by email on 8 June 2021 confirming the error. The payment was refunded on 8 June 2021.
- 28 On 24 November 2021 the Respondent agreed to set up a direct debit for payments of £36.65 per month by the Applicant. This followed advice from the Respondent as to the estimated monthly breakdown of her management charges.
- 29 The direct debit was set up for payments of £7.75 per month instead of £36.65 per month.
- 30 On 1 March 2022 the Respondent took a payment from the Applicant's bank account in error in the sum of £117.17.
- 31 On 12 March 2022 the Applicant made a formal complaint to the Respondent regarding the error.
- 32 The complaint was acknowledged by the Respondent on 14 March 2022 and in line with the Respondent's complaints procedure it was confirmed that the Applicant would receive a response within ten working days.
- 33 On 25 March 2022 the Applicant received a response to her complaint with an apology and an offer of £50 compensation. The Applicant accepted said offer.
- 34 The payment of £117.17 was refunded on 31 March 2022.
- 35 Due to the error in the direct debit payments the Applicant received a bill for £396 in April 2022 from the Respondent. The Applicant contacted the Respondent's Property Manager on 11 April 2022 to query the bill. The

Respondent's Property Manager responded to the Applicant by email on 19 April 2022 to state that they would investigate.

- 36 On 20 April 2022 the Applicant emailed the Respondent's Director to make a further complaint. On 21 April 2022 the Respondent's Property Manager emailed the Applicant to arrange a face to face meeting with her. The Applicant and her father met with the Respondent's Property Manager on 29 April 2022. The Respondent's Property Manager confirmed that he would look into the issues the Applicant had raised.
- 37 On 24 May 2022 the Applicant emailed the Respondent's Property Manager seeking an update. On 26 May 2022 the Respondent's Property Manager emailed the Applicant with details of her charges and an apology for the direct debit having been set up incorrectly. The Respondent's Property Manager confirmed that he would ensure the direct debit was set up correctly for payments of £38.28 per month.
- 38 On 9 June 2022 the Applicant emailed the Respondent's Director and the Respondent's Property Manager to express her disappointment and frustration with the ongoing accounting issues. On 16 June 2022 she sent a further email chasing a response. On 21 June 2022 the Respondent's Property Manager emailed the Respondent to apologise for the conflicting information and to confirm that he would arrange for the direct debit to be set up as agreed.
- 39 On 27 June 2022 the Applicant emailed the Respondent's Property Manager to confirm that she had cancelled her direct debit as a result of the problems she had faced. On 29 June 2022 the Respondent's Property Manager emailed the Applicant to offer to call her to discuss.
- 40 The Respondent's Property Manager and his colleague Lisa Piper had a telephone discussion with the Applicant on 29 July 2022. On 5 August 2022 the Applicant spoke with the Respondent's Property Manager by telephone and was offered a compensation payment of £77. The Applicant refused said offer. The Respondent offered a further compensation payment of £100. The Applicant refused said offer.
- 41 The said issue with payments experienced by the Applicant caused her anxiety and led to her requiring to borrow funds from her parents.
- 42 The Applicant contacted Places for People by email on 4 November 2019 to raise a problem with the main door.
- 43 The Applicant received a response from Places for People by email on 6 November 2019 to confirm that a contractor had been sent out to repair the door.
- 44 The Applicant did not contact the Respondent by email to report any issues with the main entry door between November 2019 and the present day.



- 45 The Respondent has a customer contact process whereby owners contact the contact line first, followed by escalation to the finance team where appropriate or via their complaints procedure if the matter cannot be resolved.
- 46 The Respondent's complaint procedure states that *'Before making a complaint, we would ask you to, liaise once again with the person you were originally dealing with in order to give them the final opportunity to address your request. If this proves to be unsuccessful we would ask you to follow the steps outlined below:* This requires an owner to make an initial complaint to the Dispute Resolution Team who will process the complaint and provide a complaint within ten working days. Complaints are then escalated through the Respondent's Property Manager, then Operations Director and then Senior Director. At each stage a response is required to be provided within ten working days. The Property Factor's contact information for the Housing and Property Chamber, First Tier Tribunal for Scotland, in the event that a homeowner is still unhappy with the outcome of their complaint, is incorrect and refers to a previous address for the Chamber.
- 47 The Respondent has around 164 owners in the development to which the Applicant's property forms part. The Respondent's Property Manager manages another twelve to thirteen developments for the Respondent.
- 48 The Respondent issues quarterly statements to the Applicant which includes a breakdown of charges and reference to the reasons for same.

### **Reasons for Decision**

- 49 The Tribunal carefully considered the evidence from both parties in its determination of the matter, both in terms of their written representations and verbal submissions at the Case Management Discussion and Hearing. Both the Applicant and Mr McMillan were generally credible in their account of events and their recollections were the same in many areas. The primary question for the Tribunal was therefore the interpretation of the provisions of the Code of Conduct, and whether the Respondent's conduct in the particular circumstances of this case amounted to a breach of any of the following sections:

### **2012 Code of Conduct**

- 50 **Section 2.5** – The Tribunal could understand the Applicant's frustration with the issues that had arisen regarding her account and the stress that this had caused her. However it was clear that there had been regular correspondence between the Applicant and the Respondent's Property Manager and it was not the case that her emails had gone ignored, rather she was not getting a resolution to the issues she was experiencing. Her complaints had been acknowledged and dealt with by the Respondent, and apologies offered with compensation payments on two occasions. The Tribunal was also cognisant of the level of business the

Respondent's Property Manager in particular would be dealing with and considered that the timescales within which the Respondent's enquiries and complaints were dealt with were reasonable under the circumstances. The Tribunal was therefore unable to conclude that the conduct of the Respondent as outlined amounted to a breach of this section of the Code.

- 51 **Section 3.3** – Having had sight of the quarterly statements that had been issued by the Respondent which included a detailed breakdown of charges made and confirmation of the activities and works which were carried out, the Tribunal was satisfied that the Respondent had complied with this section of the Code. The Tribunal noted that the Respondent's Property Manager had also met with the Applicant to talk through the statement with her, so that she could gain a better understanding.
- 52 **Section 3.4** – The Tribunal accepted that the Respondent had procedures in place for taking advance payments via direct debit however it was clear in the Applicant's case that these procedures were not historically robust, having led to a direct debit being incorrectly set up and payments taken from the Applicant's account on two occasions in error. The Tribunal noted that the Respondent had since reviewed and upgraded their payment system however the Tribunal found the Respondent was in breach of this section of the Code in terms of their previous failure to adhere to procedures in respect of the Applicant's account.
- 53 **Section 6.1** – The Applicants reliance upon this section was based on the issues she outlined with the main door. The Applicant had reported this issue to the developer Places for People before the Respondent took over the management of the development. She had not however contacted the Respondent by email at any point regarding the issue. The Tribunal noted the emails produced by her which constituted announcements from the Respondent with updates on the door repairs however there was nothing to show that she herself had raised the issue. The Tribunal was therefore satisfied based on what both the Applicant and Respondent had produced in terms of documentation that the Respondent had responded timeously to reports it had received relating to the main door. The Tribunal further noted from the Respondent's written statement of service that procedures were in place for reporting repairs. The Tribunal was therefore satisfied that there had been no breach of this section of the Code.
- 54 **Section 7.1** – The Tribunal was satisfied having regard to the Respondent's Written Statement of Services that the Respondent has a complaints procedure in place. The Tribunal was also satisfied that the Respondent had sought to deal with the Applicant's complaints, albeit not to the satisfaction of the Applicant. It had been difficult for the Tribunal to fully follow the process through which the complaint had gone through as the procedure in the Written Statement of Services did not appear to have been fully followed by the Respondent, in that the complaint had not been referred to a Dispute Resolution Team. The Respondent appeared to suggest during the Hearing that complaints should go first to the Customer Contact Centre however this does not appear to be

reflected in the process outlined in the Written Statement of Services. Whilst the Tribunal accepted that the Respondent had provided a response to the complaint, the procedure had not been fully followed and there did not appear to be a final response in writing to the Applicant which confirmed the next step in terms of a referral to the Tribunal in the event that she was dissatisfied. The Tribunal therefore concluded that there had been a breach of this section of the Code, and it would therefore be useful for the Respondent to update their complaints procedure to reflect what they believe to be the process in place, and provide suitable training to staff.

### **2021 Code of Conduct**

- 55 **Section 2.6** - The Tribunal accepted that the roof repair outlined, which was the issue the Applicant was relying on in terms of this section, was an emergency and therefore under the Respondent's Written Statement of Services the Respondent had authority to carry out the repair. The Respondent had however failed to notify owners of the repair as it is required to do under its Written Statement. The Tribunal therefore found it to be in breach of this section of the Code.
- 56 **Section 2.7** – Reference is made to the reasons stated at paragraph 50. The Tribunal found there to be no breach of this section of the Code.
- 57 **Section 3.2** – Reference is made to the reasons set out in paragraph 52 of this decision. Based on the errors made in the handling of the Applicant's account the Tribunal concluded that the Respondent had failed to comply with the objective to provide clarity in all accounting procedures and therefore found them in breach of this section of the Code.
- 58 **Section 3.4** – Reference is made to the reasons set out in paragraph 51 of this decision. The Tribunal found there to be no breach of this section of the Code.
- 59 **Section 7.2** – Reference is made to the reasons set out in paragraph 54 of this decision. The Tribunal found there to be a breach of this Section of the Code.
- 60 Where the Tribunal finds there to be a breach of the Code it must consider whether to make a Property Factor Enforcement Order. The Tribunal thereafter considered what would be appropriate in the particular circumstances of this case. In respect of the breaches found as outlined above the Tribunal considered a payment in the sum of £250 would be reasonable and proportionate to compensate the Applicant for the stress and anxiety she had suffered as a result of the situation, along with an action for the Respondent to update their complaints procedure to reflect the process in place. The Tribunal is required to give notice of any proposed Property Factor Enforcement Order prior to making same and therefore determined to give notice to the parties of its intention to make an order in the above terms. Parties will have a period of

**fourteen days** from the date of the order to make any written representations which the Tribunal will consider prior to determining whether to make an order.

61 The decision of the Tribunal was unanimous.

**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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Ruth O'Hare  
Legal Member

9 April 2023