# Housing and Property Chamber
First-tier Tribunal for Scotland

**First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") Property Factors (Scotland) Act 2011 ("the Act"), Section 19**

**The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations")**

**Chamber Ref: FTS/HPC/PF/18/1483**

**Property:** Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA **("the property")**

**The Parties:-**

Ms Lesley Cochrane, Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA **("the homeowner")**

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH **("the property factor")**

**Tribunal Members: -**

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

**Decision of the Tribunal Chamber**

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the property factor has failed to comply with sections 1.1 (a) f, 2.2, 2.4, 2.5, 3.3, 3.4, 5.5, 6.1, 6.3, 6.4, 6.9, 7.1 and 7.2 of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Act. The Tribunal finds no breach of sections 1.1 (a) j, 1.1 (a) l, 1.1 (a) m or 6.6 of the Code. The Tribunal determines that the property factor has failed to satisfy the property factor's duties

**Background**

1. By application dated 11th June 2018, the homeowner applied to the Tribunal for a determination on whether the property factor has failed to comply with sections, 1.1 a (f) 1.1 a (j) 1.1a (l) 1.1 a (m) 2.2, 2.4, 2.5, 3.3, 3.4, 5.5, 6.1, 6.3, 6.4, 6.6, 6.9, 7.1 and 7.2 of the Code imposed by section 14 of the Act and to carry out the property factor duties in terms of section 17 of the Act.

2. The homeowner intimated her complaint to the property factor, in compliance with section 17(3) of the Act by letter dated, 20th August 2018 by special delivery post. A copy of this letter (amongst others) was produced by the homeowner together with evidence of postage as part of an appendix to the application.

3. By decision dated 3rd October 2018, a convenor referred the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 10th October 2018. A hearing was assigned for 30th November 2018 in Glasgow. Due to various procedural

issues arising, the hearing was discharged. A fresh hearing was assigned to take place on 18th January 2019 in Glasgow. Reference is made to the Tribunal's direction dated 7th December 2018.

4. A hearing took place on 18th January 2019 at 10am within the Glasgow Tribunals Centre, 3 Atlantic Quay, Glasgow with a second day of evidence on 15th March 2019. In attendance at both hearings were the homeowner and her representative, Brian Gilmour and on behalf of the property factor, Ms Christine Davidson-Bakhshaee, Director and Mr Neil Cowan, office manager.

**Hearing of 18th January 2019: Day 1**

Section 1 of the Code

5. The homeowner alleged that there had been a breach of section 1.1 (a) (f) by the property factor. This section requires that the written statement of services should set out,

   *"what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion, this should be stated."*

   The homeowner referred to the title deeds. She claimed that the title deeds specify her proportion of the fees and charges to be 1/61st. This is the position whether an owner owns a flat or a garage. In situations where an owner owns both a flat and a garage then the homeowner was of the opinion that they would be required to pay 2/61 shares of costs. However, the homeowner alleged that the property factor was charging her on a 1/45th share. The homeowner referred to the terms of the written statement of services dated 21st September 2017. It provided,

   *"The apportionment of development costs you and your neighbours will pay is based on the Title Deeds for the Development. The charge shown on your invoice represents your proportion of the total charge to the Development; being 1/45."*

   The homeowner submitted that since 2012 when the property factor took over management of the development, she had been charged on a 1/45th share of total costs rather than a 1/61st share.

6. The homeowner alleged that there had been a breach of section 1.1 (a) (j) by the property factor. This section of the code requires the written statement to set out the frequency and the method by which homeowners will receive bills. The homeowner submitted that 5 or 6 months passed when she received no bill from the property factor and then she received a number of bills, at once. The homeowner referred the Tribunal to copy invoices produced in support of her application. Invoices dated 3rd, 4th and 5th February 2015 were in respect of costs incurred during the previous 7 month period. Invoices dated 27th, 30th November and 1st December 2015 were in respect of costs

from the previous 4 months. Reference was made to the terms of the written statement of services under the heading, *"Frequency of billing"* which provides,

*"We will send you a monthly invoice, detailing the charges applied for that period."*

The homeowner accepted that the written statement provided how often the property factor will bill homeowners and the method by which homeowners will be billed. However, her position was that the property factor fails to meet this obligation by its failure to issue invoices at regular time intervals. The homeowner referred to letters of which she had received from the property factor between 2014 and 2017 offering various explanations for invoices being issued late. This had caused her frustration.

7. The homeowner alleged that section 1.1(a) (l) had been breached by the property factor. This section of the Code requires the written statement of services to set out the property factor's in-house complaints handling procedure and how homeowners may make an application to the Tribunal if they remain dissatisfied upon completion of the procedure. The homeowner explained that she had received two separate written statement of services from her property factor. The second version did contain this information but the original document was silent. The homeowner alleged that the property factor failed to respond in writing to any of her written complaints. The homeowner claimed to have sent emails but did not receive email replies. Any contact by the property factor was usually over the telephone. Not every email which the homeowner sent prompted a telephone call by the property factor. The homeowner directed the Tribunal to a number of emails which she had sent to the property factor between June 2013 and January 2017 (production number 17 within the homeowner's inventory lodged on 26th November 2018). The emails related to various complaints. By way of response, the homeowner had received only one email from the property factor. That email, dated 20th June 2013 came from Mr Mitchell Davidson. Copied into the email was "christine@apexfactor.co.uk and neil@apexfactor.co.uk."

8. The homeowner alleged a breach of section 1.1(a) (m) by the property factor. This section of the code requires the written statement of services to provide the timescales by which responses will be issued to enquiries and complaints received by letter or email. The Tribunal referred the homeowner to the written statement of services. Under the heading, *"Customer service standard"* the written statement provides,

*"We aim to acknowledge all communications received within 14 working days of receipt. Our aim is to respond fully to enquiries within 21 working days."*

Under the heading, *"Complaint handling procedure"* the written statement provides,

*"We aim to resolve your complaint at the first point of contact and out staff will always check that you are happy with the outcome. A response will be given within 21 working days of receipt of the complaint."*

The homeowner accepted that timescales were provided in the written statement. However the homeowner argued that the property factor failed to meet these timescales. She gave the example of an email dated 30th January 2017 addressed to Christine Davidson-Bakshaee (within production 17 of the homeowner's inventory). The email was in relation to a complaint about roof repairs and pro form invoices. The homeowner had never received a reply to her email from Ms Davidson-Bakshaee.

9. In response to the allegations in respect of Section 1.1 (a) (f), the Tribunal chair referred Mr Cowan to the terms of the title deeds. Mr Cowan accepted that the title deeds provide that the costs are apportioned to the homeowners on a 1/61st basis. However this was taking into account the garages at the development in addition to the flats. Mr Cowan explained that the property factor does not manage the garages but the flats, only. As there is no management of the garages, the property factor had recalculated the share of costs between owners. Mr Cowan submitted that the owners had provided their agreement and authority to be charged on a 1/45th share. Mr Cowan had before him copies of what he termed *"written mandates."* These mandates, he submitted, provided evidence of a written contract between the property factor and the owners that factoring services would be provided to the flats on a 1/45th basis. Mr Cowan claimed that the terms of the title deeds need not be followed in light of this *"contract."* Mr Cowan gave an undertaking to provide the Tribunal and the homeowner with redacted copies of the mandates within 7 days of the hearing.

10. In respect of section 1.1 (a) (j) Mr Cowan disputed any breach by the property factor. He referred to the terms of the written statement of services which provides that homeowners will be billed, monthly, the intention being that bills would be issued at monthly intervals. The property factor did not dispute the evidence of the homeowner that multiple bills had been issued around the same date and that the homeowners had not been billed at monthly intervals. By way of explanation, Mr Cowan advised that issues arose which impacted on the bills being issued at monthly intervals. The property factor had experienced water ingress at its premises in 2014 which, he claimed, impacted on the property factor being able to issue invoices. Then there had been a series of IT issues, an upgrade of the computer system in 2016 and ultimately a complete replacement of the computer system in 2017. Mr Cowan submitted that these technical issues impacted on the ability of the business to issue invoices at monthly intervals. Also, Director Ms Davidson-Bakshaee, had been seriously ill for a number of months during 2015 and absent from work. Although there were people working in the accounts department during this time, only Ms Davidson-Bakshaee had authority to issue invoices. Her absence prevented invoices being issued to customers. The Tribunal chair enquired about how the property factor managed its other commitments during Ms Davidson-Bakshaee's absence, for example, paying salaries or bills. Mr Cowan advised that he was provided with authority to pay salaries but had no authority to issue invoices. Mr Cowan accepted that the property factor had not issued a letter to

customers providing an explanation for invoices not being issued and that this could have been done as customer relations are important to the property factor.

11. With regards to section 1.1 (a) (l) Mr Cowan denied any breach by the property factor. Rather, the written statement of services is clear on the complaints procedure and that homeowners should direct their complaint to the Tribunal if resolution is not reached.

12. In respect of section 1.1 (a) (m) Mr Cowan denied any breach by the property factor. Mr Cowan submitted that the practice of the property factor is to respond to emails by telephone call. He referred to the section of the written statement of services which provides, *"We aim to acknowledge all communications received within 14 working days of receipt."* The statement does not specify that the response will be in writing. Rather the practice of the property factor is to respond to an email by telephone within 14 days. He said staff time was limited and the company does everything through a debt management process. Evidence from telephone logs could be produced to show that the property factor had done this. Mr Cowan gave an undertaking to provide copy telephone logs within 7 days. Finally, in response to the allegation that she had failed to respond to the homeowner's email of 30th January 2017, Ms Davidson-Bakshaee claimed to receive many emails. She could not recall this email specifically and could not be expected to personally respond to every email she received.

Section 2 of the Code

13. It was alleged by the homeowner that the property factor had breached section 2.2 of the Code. This provides that a property factor,

> *"must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)."*

The homeowner alleged that Ms Davidson-Bakshaee had demonstrated *"nasty"* and *"aggressive"* behaviour towards her and had shouted at her on the telephone. The homeowner was unsure of the date but recalled that the incident had occurred in either 2016 or 2017. The discussion had been in connection with an insurance claim. No information was provided by the homeowner about what specifically Ms Davidson-Bakshaee had said which was, *"nasty"* or *"aggressive."* The homeowner referred to a letter from the property factor date 13th November 2014. The background to the letter was that repairs to the roof were required at the property, urgently. Specifically the property factor was seeking payment from the homeowner for her share of the cost of an engineer's report, the sum of which was £26.66. The homeowner directed the Tribunal to the section of the letter which read,

> *"Failing to meet your obligations may result in even further deterioration of the structure and the Local Authority becoming involved; they could declare the building*

*dangerous and unsafe. This would have a serious impact on the sale ability of your property and could even result in eviction."*

The homeowner considered the wording to be threatening. She was not of the opinion that she could be evicted from a property which she owned outright. The homeowner referred to another example from 2018. The homeowner had written to the property factor, 20th February 2018, following a vote to dismiss the property factor. The letter from the homeowner read,

*"On Monday 19th February 2018 an owners meeting was held to discuss the factoring at Inchinnan Court…As per the title deeds the meeting was called by me as an owner and supported by Mr Alastair Primrose and Mr Gary Hamilton with notification sent out on 25th January 2018 ensuring that the requisite notice of the meeting was provided. A total of 35 owners were represented in person or by mandatory and therefore the quorum of 23 was achieved. As convenor of the meeting I write to confirm that all 35 participating owners voted to dismiss Apex Property Factors Ltd and appoint Indigo Square Property Ltd as the new Factors."*

The homeowner submitted that her role in sending this letter was as a spokesperson for the other owners. In response, the property factor issued two letters to the homeowner both dated 22nd February 2018.

One letter read,

*"We refer to your letter dated 20th February… and note your comments. Based on the information provided by you, there is evidence that the meeting was not called in accordance with the Title Deeds; we would recommend that you seek appropriate legal advice."*

The other letter read,

*"We refer to our letter dated 22 February. We have taken legal advice regarding the situation. In the event that your unauthorised actions result in any losses by Apex Property Factor Ltd. then you would be personally liable for any such losses."*

It was the homeowner's position that the meeting to vote on the dismissal of the property factor was organised by 3 people (herself, Mr Primrose and Mr Hamilton referred to in her letter). The homeowner was the only female. She felt that she had been *"targeted"* and *"threatened*" by the property factor who had directed both letters on 22nd February solely to her. She felt that the property factor was targeting her for having arranged a meeting which she was entitled to do in terms of the title deeds. Neither of the other two owners received any correspondence from the property factor about the matter. Only the homeowner was threatened with court action. The homeowner perceived this as sexism and felt that she was being differentiated from the male owners.

14. The homeowner alleged a breach of section 2.4 of the Code by the property factor. Section 2.4 requires the property factor to 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)."*

In advance of works being carried out the homeowner submitted that the property factor does not share with owners a range of quotes from different companies. Rather, owners receive a pro forma invoice requesting payment, in full, in advance of the works being carried out. The homeowner submitted that around four years ago she had paid a sum of money in advance of proposed works which have never been completed. To date, the money has never been returned to her. The homeowner directed the Tribunal to an invoice within her bundle of papers. The invoice (number 9750) dated 21st July 2014 was for the sum of £220 (£183 plus VAT) in respect of repairs to the main door entry system. The homeowner claimed to have paid the sum due at the time. The work remains outstanding and creates a security issue. The homeowner explained that there are 6 flats within the building in which her property is situated. As far as she understood it, each of the 6 owners had been requested to pay £220 for their share of the works to the door entry system and had all paid, in full. As the works had never been completed, the homeowner had requested that the property factor return her money to her but has never received a refund. She submitted that the property factor does not request authorisation from owners and that she has never been consulted by the property factor on any proposed works or been given any updates on progress of work. The homeowner also referred to an invoice (number 8314) relating to a fee for an insurance valuation estimate for £4,500, she said she had no information on this prior to seeing it and considered this amount to be excessive.

15. In respect of section 2.5 of the Code, the homeowner referred to her submissions in respect of section 1.1 (a) (m) above. Section 2.5 provides that a property factor,

    *"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)."*

16. In response to the allegation of a breach of section 2.2 of the Code, this was denied by Mr Cowan. Since taking over management of the development, the property factor had identified that many major repairs were required. The property factor could not be expected to subsidise these repairs. A proportion of owners had been reluctant to pay their share. Turning to the wording of the letter of 13th November 2014, Mr Cowan submitted that the purpose of this was to highlight that the local authority could become

involved, potentially, should the works remain outstanding. Were that to occur then the local authority could carry out the repairs and recover the money directly from the owners. Alternatively the local authority could vacate a building if it deemed it a health and safety risk. Turning to the allegation that there had been sexism demonstrated to the homeowner or that she had been targeted by the property factor, Mr Cowan denied this. He accepted that there were 3 people involved in the attempt to dismiss the property factor. He accepted that letters were sent to the homeowner, only. The letters of 22nd February 2018 were directed to the homeowner in response to her letter of 20th February 2018. Mr Cowan identified that the homeowner was communicating with the property factor on behalf of the owners. Neither of the other two owners had communicated in writing with the property factor on this issue at this time. Mr Cowan accepted that the deeds provide a procedure by which owners can dismiss a factor but Mr Cowan was not of the view that this procedure had been followed here. Mr Cowan claimed that for the procedure to be followed properly, all owners required to be formally invited to a meeting. He said an owner who did not reside at the property did not receive an invitation although he admitted the tenant in the flat had passed the letter to the owner several days before the date of the meeting. This failure meant that the procedure set out in the title deeds had not been followed correctly. Turning to the reference to legal action, Mr Cowan explained that the practice is to pursue legal action to recover their loss where the property factor has been put to financial disadvantage by an owner. Mr Cowan added that he had sought legal advice from BTO solicitors before sending the letter to the homeowner. He said he had explained the circumstances to the solicitors but did not specify this particular development or instruct a formal legal opinion. Ms Davidson-Bakshaee responded to the allegations that she had demonstrated behaviour which may be considered, *"nasty"* or *"aggressive."* Ms Davidson-Bakshaee claimed to vaguely remember the telephone conversation to which the homeowner referred. She had found communication with the homeowner, *"difficult"* and added that this was the view of, *"the girls in the office."* Ms Davidson-Bakshaee denied having been rude to anyone.

17. In response to the allegation of a breach of section 2.4 of the Code, Mr Cowan explained that, once works are identified, the practice is to obtain three quotes. The most competitive quote is put forward to owners in a pro forma invoice. If an owner pays the sum due the property factor interprets this as the owner's authority to proceed with the works. The property factor cannot subsidise the works so they are not carried out until all owners in the development have paid. In respect of the main door entry system, only 62 % of the owners have paid for the works. Until payment is received from 100% of owners the security door will not be fixed. The Tribunal chair referred to the comments of the homeowner that all six owners within her building have paid their share. Mr Cowan explained that this does not mean that the door will be fixed, necessarily as the title deeds make no provision to isolate closes for common

maintenance. Mr Cowan confirmed that the cost of £220 for each owner in invoice (number 9750) was in respect of a repair and not a replacement of the door. In response to the homeowner's query of the insurance valuation fee Mr Cowan said quotes were received from several firms of surveyors but he did not name any of them. He said if homeowners want to see any quotes they can pay a charge of £10 per item.

18. Mr Cowan referred to his submissions to section 1.1 (a) (m) in response to the allegation that there had been a breach of section 2.5 of the Code.

Section 3 of the Code

19. The homeowner alleged a breach of section 3.3 of the Code. This requires the property factor, at least once a year, to provide,

*"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 and copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance."*

The homeowner referred to the property factor's position set out in their letter to her of 31st May 2018 in which they state that they,

*"issue all Owners (sic) with an analysis showing a detailed breakdown of all the works carried out at the Development. Furthermore, the monthly invoices itself shows a detailed breakdown of all charges."*

The homeowner stated that she has only ever received a list of works from the property factor. She also alleged that certain works charged for had not been carried out, namely cleaning of her close.

20. A breach of section 3.4 of the Code was alleged. This requires the property factor to,

*"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 of their share of the funds (for example, on sale of the property)."*

The homeowner made reference to her previous submissions around pro forma invoices being issued and full payment being requested ahead of proposed works. Despite requests, she has never been refunded money for works which never went ahead. The homeowner was unable to specify how much money she had paid but thought it was hundreds of pounds. She referred the Tribunal to the email from Mitchell Davidson of 21st June 2013. The homeowner had understood from the email that a refund would be received in 9-12 months. The email read,

*"The owners who have paid for work that will no longer be instructed due to lack of interest, will be reimbursed accordingly. We would normally wait until the validity of the contractor's quotation runs out- about 9-12 months. Where there is still money*

*outstanding on particular mandates, we will put pressure on the debtors so we can progress with the works required."*

Then the homeowner referred the Tribunal to a letter from the property factor dated 17th July 2017 in which confirmation is provided that a refund is made when no works proceed. This letter read,

*"Section 3.4 any such funds are accounted for separately. We issue all Owners (sic) with Pro-forma invoices; if works do not go ahead then Owners are refunded accordingly."*

However, in subsequent telephone conversations, the property factor refused to refund the money or allocate it to any money owed by the homeowner. The inconsistency created confusion. If the works were never to go ahead then the homeowner is unclear about when she might ever get her money back.

21. In response to the allegation of a breach of section 3.3, Mr Cowan denied this and explained that the property factor normally issues an annual update of charges made and works undertaken. The Tribunal was not directed to an example of the annual update. Also the property factor issues a monthly invoice to owners which details works and their costs. Mr Cowan also denied that cleaning and litter picking had not always been carried out.

22. Mr Cowan denied any breach of section 3.4 of the Code. The overall aim of the property factor is to get all necessary works completed. However, it can take a long time to ingather all funds to enable the cost of the works to be met. The level of debt is so high at the homeowner's development (between £20,000 and £30,000) that the property factors no longer proceed with works until they have all the money to cover the cost. Mr Cowan confirmed that money received from owners for repairs is ring fenced. Should an owner sell a property they will be given a refund. With regards to the letters referred to by the homeowner, Mr Cowan submitted that the information contained therein was, *"not wholly inconsistent."* The email from Mitchell Davidson was issued at a time when the debt at the development was lower than it is now. The level of debt is a deciding factor in whether the property factor proceeds with works. The procedure is for the property factor to take the level of debt as an indication of the percentage of owners that want the works to go ahead. If there is a majority paying their share of the proposed works then the property factor interprets this as the majority indicating that the works should proceed. In the absence of a majority of homeowners paying their share, then the remaining sums are held in the ring fenced account. Mr Cowan referred to a letter to the homeowner dated, 31st May 2018 which sets out the procedure followed by the property factor. The relevant section of the letter read,

*"we have procedures for dealing with payments in advance, All payments paid towards pro-forma invoices are ring-fenced separate. Payments for these pro-forma invoices are only refundable if the clients decide not to go ahead with the works. We confirm that we are still in process of collecting payments from all Owners (sic) and will proceed with the*

*proposed works once all Owners (sic) have contributed towards their proportion of the costs."*

Mr Cowan submitted that this satisfies section 3.4 of the Code.

Section 5 of the Code

22. The homeowner alleged a breach of section 5.5 of the Code by the property factor. Section 5.5 requires that the property factor,

*"must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow then to pursue the matter themselves."*

The homeowner referred to having made an insurance claim through the property factor in December 2015. The claim arose from water ingress to her flat. The water ingress was the result of damage in the roof of the building. Notwithstanding the claim having been submitted in December 2015, no repairs were carried out at her flat until March 2017. Mould growth and mushrooms developed in the homeowner's bedroom. The homeowner was unable to use the bedroom between December 2015 and March 2017 and required to sleep in the living room. She used a dehumidifier to attempt to reduce the moisture. The homeowner discovered that the property factor had received a compensation payment from the insurance company in 2016. The homeowner recovered this information in 2017 from loss adjustors investigating the claim. The homeowner submitted that she had not been kept informed of progress with her claim by the property factor as required by section 5.5.

24. Mr Cowan denied any breach of section 5.5 of the Code by the property factor. He explained that the property factor had brought in an independent loss adjustor to investigate the matter on behalf of the owners. Any delays which occurred in progress of the claim were out-with the control of the property factor. Mr Cowan confirmed that the property factor received a payment of £16,000 from the insurers in summer 2016 in respect of the owners' internal repairs. However he did not consider that there was much point in the internal works being carried out until the roof was fixed. Negotiations around the roof did not reach settlement until December 2016. The roof repairs were carried out in January 2017 and internal works were carried out to the homeowner's flat in March 2017. Mr Cowan submitted that the property factor had satisfied the requirements of section 5.5 of the Code by sending the owners letters with an update on the claim, *"periodically"*. Mr Cowan did not direct the Tribunal to any examples of these letters.

Section 6 of the Code

25. The homeowner alleged that the property factor had breached section 6.1 of the Code. Section 6.1 requires the property factor to 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."*

The homeowner made reference to various repairs she had highlighted to the property factor. These included the security door referred to earlier. Also, a pile of rubble had been present in the car park area for at least 3 years. The property factor knew of its existence but they had made no effort to remove it. The homeowner then referred to an outstanding roof repair. The property factor was aware of issues with the roof and claimed to have had repairs undertaken in 2015. They had arranged for a survey to be carried out and reported that a significant amount of work was required. Indigo Square, the current property factor, had arranged another survey (a copy of which was produced to the Tribunal) and detailed fewer repairs at a more competitive price. The homeowner referred to the property factor having arranged for gutters to be cleaned, late 2017. The homeowner had witnessed the contractors disposing detritus from the gutters into the river behind the property. She claimed that the detritus ought to have been removed and disposed appropriately.

26. The homeowner alleged a breach of section 6.3 of the code. This requires the property factor to be able to show, on request,

*"how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff."*

The homeowner claimed that she had requested sight of various pieces of documentation under cover of letter of 24th May 2017. The letter requested from the property factor,

*"Copies of the proformas not yet completed and the quotes relating to these uncompleted (sic) proformas. Copies of the completed proformas and the detailed invoices from the contractors used. Copy of the insurance claim for my property with regards to the water ingress of 5th December 2015. Copy of how much the insurance company paid out with regards to my insurance claim. Copy of the completed invoice and breakdown of how the expenses were charged. Copies of receipts for the materials for the insurance claim that were used on the repairs to my property. I am also asking for all bills and payments to be recalculated at one sixty first which is what is stated in the title deeds for my property and copies of these invoices sent to me with the recalculations. Any money that has been paid for proforma jobs that have been outstanding and not completed and returned to me. I would also like copies of the roofing quotes and invoices for work that has been done along with the job sheets for the roof work done in January of 2017. I would like detailed breakdown of what work has been done and by whom for this work. Please would you also send me a copy of what work you are proposing to carry out on Inchinnan Court along with any quotes for the proposed work."*

There was no response to the letter. The homeowner wrote to the property factor again repeating the request. By letter of 23rd June 2017 the property factor advised that the homeowner was required to pay £10 for each copy pro forma invoice, quote, invoice and claim form. A charge for copy information is not contained within the written statement of services as the homeowner understood it.

27. The homeowner alleged a breach of section 6.4 of the Code which provides,

    *"if the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works."*

    The homeowner alleged that the property factor undertakes to carry out inspections of the property at quarterly intervals, complete cyclical maintenance of landscaping and clean the common areas on a fortnightly basis. The homeowner disputed that the property factor satisfies these undertakings. There was no cleaning undertaken at the common close during March or April 2017 she submitted and this was observed by a number of owners. This coincided with the period when the homeowner was having internal repairs carried out. Dust and debris had accumulated in the common close area as a result of the repairs. The close was never cleaned during this period on a fortnightly basis in keeping with the property factor's commitment. Ultimately, the homeowner was forced to clean the common close, herself. The homeowner had never agreed a specific system of cleaning or cyclical maintenance with the property factor.

28. The homeowner alleged a breach of section 6.6 of the Code. This provides,

    *"If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners, on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance."*

    The homeowner qualified that she had never requested from the property factor any information in relation to tendering processes. Rather she has requested information in connection with the service and costs of contractors acting on the instruction of the property factor. The property factor has always insisted on a charge of £10 for copies of the documentation. The homeowner advised that she has never attended the offices of the property factor to inspect any documentation as the office is located in Kirkintilloch. Her ill health prevented the homeowner from travelling to the office.

29. The homeowner alleged a breach of section 6.9 of the Code. This provides that the property factor,

    *"must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor."*

By way of evidence, the homeowner referred to an incident which had occurred in December 2015. Mr Cowan and a contractor had attended upon her flat to assess the extent of the repairs required in the course of the insurance claim. The contractor from Real Building had broken a hinge on the bedroom window which prevented the window from being opened. There was a second window in the bedroom which could be opened to enable ventilation. The window was not fixed until 2017. The property factor had refused to take responsibility for the damage and had directed the homeowner to Real Building.

30. In response to the allegation of a breach of section 6.1, Mr Cowan confirmed that the procedure followed by the property factor was to carry out inspections of the development on a quarterly basis. He confirmed that staff clean common areas every two weeks. They report back any issues requiring repair or maintenance. Mr Cowan confirmed that the property factor was aware of the rubble in the car park and explained it was the result of a collapsed sewer in 2013. A temporary repair was carried out at the time but a more extensive repair could not be completed due to the failure of all owners to pay their share of the cost in advance of the works. Mr Cowan insisted that owners are informed of progress with works by way of the pro forma invoices and by *"periodic"* updates issued every 2 or 3 months. Mr Cowan did not direct the Tribunal to any specific examples of these updates. With regards to the roof, Mr Cowan accepted that there were extensive repairs required but, again, funds had not been forthcoming from all owners which had prevented the works proceeding. The property factors could not provide timescales for works unless the funds were in place to cover the works. The Tribunal chair enquired of the property factor the procedure followed in situations where there are insufficient funds but works are required, urgently (eg to address a health and safety risk). Mr Cowan advised that this becomes a *"balancing act"* for the property factor. They must weigh up the cost against the risk to health and safety. He gave an example of where the property factor had been prepared to incur the cost to replace light bulbs in a common close which was without lighting. He accepted that was an inexpensive repair. The property factor would not meet the costs of the works required to address the collapsed sewer, however, as this would be significantly more costly.

31. Mr Cowan denied a breach of section 6.3 of the Code. The property factor provides documentation upon request with an administration cost.

32. Mr Cowan denied a breach of section 6.4 of the Code and said all work to be provided at this development was agreed with the homeowners at the outset in 2012. His position was that staff attended the development for cleaning and landscaping at regular intervals. This attendance is a planned programme of works. The Tribunal acknowledges that a timesheet was provided by the property factor in written representations on 1 November 2018 (production 3) this showed the dates on which

staff had attended the development in 2017, the work which had been completed and how long the work had taken. There are entries on this timesheet showing cleaning at Inchinnan Court in March and April 2017. Mr Cowan did not specifically direct the Tribunal to this timesheet to highlight dates on which staff had attended to carry out cleaning or landscaping at the hearing.

33. By agreeing to provide copies of documentation for a charge, Mr Cowan was satisfied that the property factor was complying with section 6.6 of the Code. When asked to consider the homeowner's disability which prevented her from attending Mr Cowan's offices to inspect the requested documentation, his response was that there was no responsibility on the property factor to, *"deliver papers across the country."*

34. In relation to section 6.9 of the Code Mr Cowan confirmed that he had been present when the bedroom window at the homeowner's flat had been damaged by the contractor from Real Building. He confirmed that he had directed the homeowner to the contractor. He did not consider responsibility for the damage to rest with the property factor. In any event Real Building had not yet been instructed by the property factor at that time. The purpose of the visit was for Real Building to provide a quote. Mr Cowan was aware of the length of time the repair had taken. He understood this to be due to the fact that a replacement hinge could not be sourced easily. In the end a replacement was taken from the window in the common close which did not require to be opened.

35. Having reached 4pm, the hearing was adjourned and continued to a date, later identified as, 15th March 2019 at 10am. Formal intimation of the continued hearing was made to parties. The Tribunal ordered the property factor to produce the telephone logs and redacted mandates within 7 days of 19th January 2019.

**Hearing of 15th March 2019: Day 2**

Procedural matters

36. At the hearing on 15th March 2019, the homeowner was in attendance with her representative, Brian Gilmour. The property factor was represented by Director, Ms Christine Davidson-Bakshaee and Mr Neil Cowan, office manager. At commencement of the hearing the Tribunal chair addressed some house- keeping matters. Firstly, two students from Strathclyde University had requested that they observe proceedings. There being no opposition to this from either party, the request was allowed. Secondly, papers had been produced by the property factor on 24th January 2019. The homeowner had received intimation of these papers and did not oppose them being formally received by the Tribunal. The papers were received. Thirdly, the property factor was looking to have a further set of papers received by the Tribunal. These had been sent to the Tribunal's administration and to the homeowner by email at 17:09 hours on 14th March 2019. The Tribunal had received them on the morning of the hearing. The homeowner confirmed that she and Mr Gilmour had had the opportunity to read the papers the previous evening. There was nothing therein which they felt

disadvantaged them should they be received and the hearing were to proceed. There being no opposition, the Tribunal allowed the papers to be received. The hearing went ahead.

37. The Tribunal chair advised parties that the remaining parts of the application to be heard were the alleged breaches of section 7 of the code and the Property Factor's duties.

38. The homeowner alleged a breach of Section 7.1 of the Code. This provides that the property factor 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."*

    The homeowner referred to her evidence from 18th January that she had sent many emails to the property factor and (with the exception of the email of 21st June 2013 from Mitchell Davidson) had received no email replies. Copies of her emails referred formed number 22 of the homeowner's inventory of productions. The homeowner's position was that this failure to respond showed a breach of section 7.1 as the property factor had failed to adhere to the reasonable timescales set out in the written statement of services. The homeowner alleged that the written statement of services is silent on the property factor's procedure for handling complaints against contractors. She referred to the incident in December 2015 when her bedroom window had been broken by a contractor of the property factor. The property factor had not demonstrated to her any procedure for dealing with a complaint against the contractors.

39. The homeowner alleged a breach of section 7.2 of the Code. This requires that,

    *"when your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel."*

The homeowner referred to the written statement of services which sets out the timescales within which the property factor will respond to complaints and the procedure which will be followed. It provides that,

*"Complaints will be dealt with as quickly as possible….We aim to resolve your complaint at the first point of contact and our staff will always check that you are happy with the outcome. If we cannot resolve your complaint informally or you are unhappy with our response, we will refer your complaint to a manager who will investigate further and reply to you. If you are dis-satisfied with the response you should write to the Director of Apex Property Factor Ltd who will review your complaint and inform you of the conclusion of this review. If we have refused to resolve your complaint, or have unreasonably delayed*

*attempting to resolve the problems, you can make an application to the 'Homeowners Housing Panel.'"*

Again, the homeowner referred to the property factor's failure to respond to her emails. Specific reference was made to the homeowner's email to Director, Ms Davidson-Bakshaee of January 2017. No final decision was received from senior management. The homeowner submitted that the property factor had failed to follow its own complaints procedure.

40. In response, Mr Cowan denied a breach of section 7.1. Mr Cowan accepted that the written statement of services provided no procedure for dealing with complaints against contractors. However he relied again on his earlier evidence that (at the time the bedroom window was broken in December 2015) Real Building was not acting on behalf of the property factor. Mr Cowan confirmed that by the time the window was fixed by the Real Building in 2017 they were instructed to act on behalf of the property factor. Real Building was not a contractor in 2015.

41. Mr Cowan denied that there had been a breach of section 7.2 of the Code. The property factor had satisfied the requirements of section 7.2 by issuing letters to the homeowner from senior management. By way of evidence, Mr Cowan directed the Tribunal to production 11 within the property factor's inventory. Mr Cowan submitted that this letter, dated 31st May 2018, answered the homeowner's complaint. The author of the letter was, Saira Ali, property manager. It referred to the homeowner's, *"letter of complaint of 24th April 2018."* The letter provided a detailed response to each section of the Code which the homeowner alleged to have been breached. The letter referred to a copy of the statement of services being enclosed. The letter ended,

*"We trust this clarifies all matters and look forward to receiving your response in return so that we could resolve your issues. Should you have any further queries, please do not hesitate to contact the office…"*

Mr Cowan referred the Tribunal to a letter to the homeowner dated, 31st August 2018 written by him. It read,

*"We refer to your letter of 20th August 2018. All your queries were answered fully in our letter dated 31st May 2018. If you feel that there are some matters where you require further clarification, then perhaps a meeting would be advantageous."*

Mr Cowan claimed that this letter satisfied the requirements of section 7.2 by providing a final decision from senior management. Mr Cowan submitted that taken together, these letters show that a review of the complaint has been carried out. Whilst he acknowledged that neither of the letters were in the name of a Director, he submitted that Ms Davidson-Bakshaee knew of the homeowner's complaint and had provided Mr Cowan with authority to reply.

42. The homeowner alleged that the property factor was in breach of the property factor's duties in its failure to comply with the title deeds. The homeowner alleged that the property factor had never been formally appointed to provide factoring services at the development as provided by the title deeds. The homeowner directed the Tribunal to the burdens section of the title deeds. The title deeds provide,

*"The proprietors of any one of the flats, garages or storage area shall have the power at any time to call a meeting of the proprietors…….The quorum for a meeting of proprietors shall be 23 (ie one half of those proprietors entitled to attend. 45 in all). It shall be competent at any relevant meeting by a majority vote (c ) to appoint a qualified person, or company, or firm, who may be of their own number (hereinafter referred to as "the Factor") to have charge of and to perform the various functions to be exercised in the care, maintenance and management of the common parts."*

The homeowner argued that the deeds require a meeting of proprietors to appoint a factor but submitted that such a meeting had never occurred. Rather the property factor had acquired the business of a previous factor in 2012. They had simply issued letters to owners advising that they would be providing factoring services to the development. The homeowner argued that the property factor relies on the *"mandates"* as evidence that they have authority to act on behalf of all owners at the development. The homeowner argued that these documents provide contact details only. They do not provide the property factor with a legal authority to act.

43. In response, Mr Cowan argued that the *"mandates"* provide the property factor with legal authority to act on behalf of the owners. He directed the Tribunal to the documents lodged with the Tribunal on 28th January 2019. The documents bear the heading, *"Property contact details."* Thereafter, the documents provide the names, addresses, and telephone numbers of owners (albeit redacted). The mandates read,

*"It is very important that you complete and return this form, to ensure we have contact details for you, in the event of an emergency i.e. burst pipe, flood, storm damage etc. This information will be retained for the purpose of 'APEX Property Factor Ltd' managing your property and will <u>not</u> be provided to third parties."*

Mr Cowan accepted that the word *"mandate"* did not feature on the documents but this was of no significance. He argued that the words,

*"This information will be retained for the purpose of 'APEX Property Factor Ltd' managing your property"*

meant that (in signing and returning the document) the owner was providing authority to the property factor to provide factoring services to the development. When asked about whether the property factor was formally appointed in terms of the title deeds, Mr Cowan did not dispute the homeowner's allegations. Mr Cowan explained that the property factor had purchased a property portfolio from the previous factor in 2012. He claimed that prior

to the introduction of the Property Factors (Scotland) Act 2011 ("the Act") it was standard practice to take over the factoring services of another business and simply intimate this to the owners. Mr Cowan accepted that the property factor had not complied with the terms of the title deeds in its appointment but submitted that it was standard practice to not comply with the deeds. By not following the provisions of the title deeds at this development in 2012, Mr Cowan submitted that the property factors were doing nothing wrong as the Act was not in force. He claimed that the practice of his company is quite different now. A meeting of proprietors would be arranged and a vote taken.

44. The Tribunal chair enquired how this had affected the homeowner and what could be done to resolve her complaint. Coinciding with her complaint the homeowner had been in very poor health. She had received chemotherapy twice and has been admitted to hospital 7 times in the last year. It was not suggested that the homeowner's poor health was attributable to the actions or inactions of the property factor. Rather, the homeowner emphasised that the on-going dispute had been very stressful for her at a time when she was weak, physically. Being unable to use her bedroom for so long had not helped her poor health at the time. The homeowner wanted the property factor to recalculate all bills which she had paid to 1/61st; She wanted to know how much money the insurers had paid to the property factor for her flat as she suspected she had not received her full share; The homeowner wanted to know how much of her money was being held in the ring fenced account and wanted it back or for this money to be offset against any amounts owed by her; She wanted compensation for being unable to use her bedroom whilst the insurance claim was on-going and she wanted an apology for being, *"targeted"* by the property factor and threatened with court action.

45. In response, Mr Cowan submitted that the accusation that the homeowner had been *"targeted"* by the property factor was unfair. Mr Cowan said that the property factor does not, *"target people, as such."* Ms Davidson-Bakshaee submitted that the property factor has sympathy with the homeowner's medical condition but disputed any suggestion that the property factor was responsible for that. No medical evidence had been forthcoming and Ms Davidson-Bakhsaee expressed her opinion that the homeowner should not be considered a reliable witness by the Tribunal because of her poor health. The Tribunal chair indicated that the homeowner was represented throughout the proceedings, Citizen's Advice Bureau in preparing her application and by Mr Gilmour at each of the hearings. The homeowner had provided assistance to the Tribunal in a long and detailed application. The Tribunal had no reason to consider the homeowner's health impacted on her reliability as a witness in the proceedings.

**Findings in fact**

46. That the homeowner is the owner of the property.

47. That the property factor provided factoring services to the development in which the property is located from 2012 until 2018.

48. That the burdens section of the title deeds provides the detail of how proprietors of the flats, garages or storage areas at the development may appoint a property factor to have charge of and to perform the various functions to be exercised in the care, maintenance and management of the common parts of the development.

49. That the title deeds require a meeting of proprietors be convened in the appointment of a property factor. That meeting must be held at a convenient time and place, with at least 7 days' notice provided to all proprietors of its time and place and subject matter. That, at the meeting, a vote must take place on the appointment of a property factor with each proprietor entitled to one vote only, that the quorum of the meeting will be 23 and that the appointment of a property factor shall be competent by a majority vote.

50. That the title deeds set out the legal obligations to be followed in appointment of a property factor to the development.

51. That there was no meeting of proprietors or vote taken to appoint the property factor in 2012.

52. That the procedure set out in the title deeds was not followed to appoint the property factor in 2012.

53. That the property factor confirmed that they were aware of the requirements of the title deeds but chose not to follow them.

54. That the title deeds provide (page D3) that, *"The proportion of the total cost of the common charges (including common insurance) shall be a one-sixty first share per flat and a one-sixty first share per garage and storage area."*

55. That the written statement of services dated, 21st September 2017 states that, *"The apportionment of development costs you and your neighbours will pay is based on the Title Deeds for the development. The charge shown on your invoice represents your proportion of the total charge to the Development; being 1/45th."*

56. That the written statement of services set provides that each owner's share of management fees and charges for common works and services is 1/45th.

57. That the proportion of costs which the homeowner is due to pay is a 1/61st share.

58. That the written statement of services sets out that the property factor will send to an owner, *"a monthly invoice."*

59. That the property factor intended this to mean that bills would be issued at monthly intervals.

60. That the property factor did not issue bills to the homeowner at monthly intervals.

61. That the timescales set out in the written statement of services for issuing bills was not met by the property factor.

62. That the written statement of services at, *"Complaint Handling Procedure"* provides that an owner can contact the property factor, *"by email, by post, over the phone, or in person at our office."*

63. That the *"Complaint Handling Procedure"* sets out three stages: (i) that the property factor will provide a response to the complaint within 21 days of receipt of the complaint; (ii) that if the complaint is not resolved, the complaint will be referred to a manager and; (iii) if the owner is dissatisfied with the response, the owner*, "should write to the Director of Apex Property Factor Ltd. who will review your complaint and inform you of the conclusion of this review. A response will be given within 21 working days of receipt of the complaint.*"

64. That the written statement of services of 21st September 2017 provides the address, telephone number and email address for the Tribunal.

65. That the homeowner intimated complaints in relation to various matters to the property factor by email (amongst other forms of communication).

66. That there was only one email from the property factor produced in response to the various complaints.

67. That the written statement of services provides details of the property factor's complaints procedure as required by section 1.1 a (l).

68. That the complaints procedure set out in the written statement of services was not followed by the property factor.

69. That the written statement of services of 21st September 2017 provides a timescale of 14 days within which the property factor will acknowledge communications from owners and a timescale of 21 days within which a full response will be issued.

70. That these timescales were not been met by the property factor in response to the homeowner's emails.

71. That Ms Davidson-Bakshaee received an email from the homeowner on 30th January 2017; that the email related to a complaint by the homeowner.

72. That Ms Davidson-Bakshaee accepted that she did not reply to the email and in failing to do so, the property factor did not meet the timescales set out in the written statement of services.

73. That there was a telephone discussion between the homeowner and Ms Davidson-Bakshaee in relation to a complaint by the homeowner but the date of that discussion was unknown.

74. That Ms Davidson-Bakshaee was not abusive or intimidating or threatening towards the homeowner during that telephone discussion.

75. That the property factor issued two letters to the homeowner on 22nd February 2018, one of which read, *"In the event that your unauthorised actions result in any losses by Apex Property Factor Ltd. then you would be personally liable for any such losses."*

76. That this phrase may be perceived to be intimidating to a lay person, without legal knowledge.

77. That the homeowner had written to the property factor on 20th February 2018 in the role as spokesperson for herself and other owners at the development.

78. That the property factor replied to the homeowner, only, by 2 letters dated 22nd February 2018.

79. That both letters dated 22nd February 2018 were directed to the homeowner, as spokesperson.

80. That the property factor was not demonstrating sexism by communicating with the homeowner only.

81. That emails dated 20th June 2013, 14th June 2016, 23rd August 2016, 22nd September 2016, 3rd November 2016 and 30th January 2017 were in connection to various complaints by the homeowner.

82. That there was no call recorded in the log in response to the homeowner's email of 20th June 2013.

83. That an in-coming call from the homeowner only was recorded on the telephone log dated 14th June 2016. That there was no out-going telephone entry recorded on 14th June 2016.

84. That the property factor did not respond to the homeowner's email of 14th June 2016.

85. That there are no calls recorded on the log between 6th July and 7th December 2016.

86. That the property factor did not respond by telephone to the homeowner's email complaints of 23rd August, 22nd September or 3rd November 2016.

87. That incoming telephone calls from the homeowner, only, are recorded on 26th January and 9th February 2017.

88. That the property factor did not respond to the homeowner's email of 30th January 2017 by telephone.

89. That it was reasonable for the homeowner to expect an email response to each of her emails with an acknowledgement, at least.

90. That the monthly invoices issued by the property factor provide details of management fees, works and charges for works.

91. That the pro forma invoices provide details of sums due from an owner towards the costs of fees or repairs.

92. That the property factor did not provide the homeowner with a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for annually.

93. That payments made in advance by the homeowner were kept in a ring fenced account by the property factor.

94. That the practice adopted by the property factor is to retain monies from owners paid in advance of necessary works and to proceed with the works only when sums due from all owners are received.

95. That the security entrance door had required repair since 2014.

96. That the homeowner had paid her share of the costs to repair the door and that her money remains in a ring fenced account.

97. There is no timescale for when the door will be repaired or when the property factor will reach the decision that the works will not proceed.

98. That the property factor has no procedure for refunding money when required by owners

99. That an insurance claim was made by the homeowner through the property factor in respect of water ingress at her home in December 2015.

100. That the source of the water was damage at the roof of the building in which the property is situated.

101. That there was damage to the bedroom of the property as a result of the water ingress which prevented the homeowner from using the bedroom and which required repair.

102. That repairs to the property were carried out in March 2017.

103. That the property factor received a payment of compensation from the insurance company in the summer of 2016.

104. That this information was provided to the homeowner by loss adjustors, Cunningham Lindsey.

105. That the property factor did not inform the homeowner of the progress of her claim or with information to allow her to pursue the matter herself.

106. That the main security entrance door to the building has required repair since 2013; that a pile of rubble has been present in the car park of the development for some years and; there were issues with the roof between 2015 and 2018.

107. That the homeowner brought issues of disrepair to the attention of the property factor by email, letter and telephone call.

108. That there was no specific procedure in place for owners to notify matters requiring repair, maintenance or attention.

109. That matters requiring repair, maintenance or attention would only be addressed once funds were received from all owners.
110. That the homeowner requested various pieces of information from the property factor on 24th May 2017 but did not request how and why contractors were appointed.
111. That the property factor had the information requested.
112. That the practice of the property factor was to provide the information to the homeowner for a charge.
113. That there was no agreement between the parties of what the core service would include. That the homeowner did not request documentation from the property factor relating to any tendering process.
114. That Mr Cowan attended the property in December 2015 with a representative from Real Building for the purposes of providing a quote for works.
115. That Real Building was instructed to complete the works.
116. That during the visit to the property in December 2015 the representative from Real Building damaged a hinge at the bedroom window.
117. That Real Building was at the property to provide a service to the property factor.
118. That the property factor did not pursue the contractor to remedy the damage which occurred when the contractor was providing this service.
119. That the written statement of services provides a complaints resolution procedure which sets out a series of steps and timescales within which certain steps will be met.
120. That the written statement of services provides no procedure for handling complaints against contractors.
121. That the property factor failed to meet the provisions or timescales of the complaints procedure set out in the written statement of services.
122. That the complaints procedure set out in the written statement of services provides that the final review of any complaint will be carried out by the property factor's Director who will inform an owner of the conclusion of this review.
123. That letter dated 31st May 2018 was issued by a manager of the property factor.
124. That the letter of 31st May 2018 was in respect of the homeowner's complaint.
125. That the final decision from the property factor in respect of the homeowner's complaint was set out in letter of 31st August 2018.
126. That the letter of 31st August 2018 was issued by the property factor's legal manager.
127. That the property factor's Director did not inform the homeowner with the conclusion of the final review of her complaint.

128. That the letter of 31st August 2018 did not provide details of how the homeowner may apply to the homeowner housing panel.
129. That the property factor failed to follow its own complaints procedure as set out in the written statement of services.

Reasons for decision

130. The property factor was open about its failure to follow the requirements of the title deeds when they took over factoring services at the property in 2012. The property factor accepted that there was a procedure within the title deeds. The property factor made a decision not to follow this procedure in keeping with what they understood to be common practice. Their justification that the Act was not in force at the time does not remove their legal obligation to meet the requirements of the title deeds. In this failure the Tribunal finds the property factor to be in breach of the Property Factor's duties.
131. The written statement of services provides the proportion (as a percentage) of the management fees and charges for common works and services for each owner as a 1/45th share. The title deeds provide the relevant share to the homeowner as 1/61st per flat and 1/61st share per garage and storage area. Mr Cowan did not dispute the terms of the title deeds. Rather he said that the written mandates were the owner's authority to be charged on a 1/45th basis. The mandates contained contact details. They did not authorise the property factor to charge owners on a 1/45th share. There is no provision within the title deeds for a property factor to provide factoring services to the flats, only. There is no provision within the title deeds for a property factor to recalculate the owners' share of costs. The Tribunal finds that the proportion of costs set out in the written statement of services is incorrect at 1/45th. The Tribunal finds the actions of the property factor to be a breach of section 1.1 a (f) and a breach of the Property Factor's duties.
132. The written statement of services provides a method and timescale for billing as an invoice on a monthly basis. This satisfied section 1.1 (a) (j). However, it was accepted by the property factor that this commitment was not met in 2015. It was not reasonable for the homeowner to receive several bills closely together. It is accepted that technical issues arose but Mr Cowan's evidence was that the property factor was able to continue to operate other parts of its business during the same time period. There was no reasonable explanation for the property factor failure in meeting this commitment. It was not the intention of the Act for a property factor to issue a statement of services, the content of which satisfies the requirements of the Code but then fail to meet the commitments, therein. The Tribunal finds this to be in breach of the Property Factor's duties.
133. The written statement of services provides a three stage complaints procedure. There was evidence which supported this having not been followed by the property factor.

The Tribunal finds that the written statement of service complies with section 1.1 a (l) in that regard. However the failure on the property factor to respond to the homeowner's email complaints in the timescales set out in the complaints procedure is a breach of the property factor's duties.

134. The written statement of services provides specific timescales within which the property factor will respond to communications from owners. This satisfies the requirements of section 1.1 a (m) of the Code. There was no evidence to show that the property factor had responded to the homeowner's email complaints by any method of communication within these timescales. The Tribunal finds that this to be in breach of the property factor's duties.

135. The wording adopted in the letter from the property factor of 22nd February 2018 which read,

   "*We have taken legal advice regarding the situation. In the event that your unauthorised actions result in any losses by Apex Property Factor Ltd. then you would be personally liable for any such losses."*

   was likely to make a lay person feel intimated or threatened. More temperate language could have been adopted by the property factor. The Tribunal find this to be in breach of section 2.2 of the Code therefore.

136. It was a matter of agreement that the property factor took over management of the property in 2012. They issued a letter to owners advising of same. There was no evidence of any consultation process having been followed since 2012 to discuss with owners any works or services which may cost them money. There was no evidence that any written information was shared with owners about any proposed works. Rather, the evidence was that a fee is issued to owners. Should that fee be paid, the property factor interprets this payment as authority by the owner to proceed with the works. There was no documentary evidence to show that this practice was ever intimated to the owners or accepted by them. This is not what could be described as a procedure for consultation as is required by section 2.4. Accordingly the Tribunal finds no evidence that the property factor has complied with section 2.4 of the Code.

137. There was evidence that the property factor had responded to only one of the homeowner's email complaints. The Tribunal finds that the property factor has not complied with section 2.5 of the Code.

138. The Tribunal had before it copy invoices issued to the homeowner. There was no evidence that annually, since 2012, the property factor has provided the homeowner with a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. The Tribunal finds that the property factor has not complied with section 3.3 of the Code.

139. There was no dispute that the homeowner had paid money to the property factor for repairs which both parties agreed were required. It was accepted that the security door had required repair since 2014. There was no timescale for completion of the repair to the door. The property factor did not dispute that the homeowner had requested her money back and claimed that the money was held in a ring fenced account. There was no clear evidence of a procedure for refunding the money where the homeowner requires the refund and conflicting information had been provided by the property factor in this regard. Therefore the Tribunal finds that the property factor has failed to comply with section 3.4 of the Code.

140. There was no dispute that the homeowner discovered from a third party (Cunningham Lindsey, loss adjustors) that the insurance company had paid compensation to the property factor in summer 2016. The property factor referred to providing updates in writing "periodically" but failed to direct the Tribunal to any specific example. There was no evidence that the homeowner was kept informed of progress of her claim by the property factor. Therefore the Tribunal finds that the property factor has failed to comply with section 5.5 of the Code.

141. There was no evidence of a formal procedure existing whereby owners were allowed to notify the property factor of matters requiring repair, maintenance or attention. The informal practice was that the homeowner would communicate with the property factor by telephone, email or letter. The property factor was aware of the rubble in the car park from the collapsed sewers and the security door requiring repair. There was no evidence of the homeowner being provided with an estimated timescale for completion of either of these works. Therefore the Tribunal finds that the property factor has failed to comply with section 6.1 of the Code.

142. It was accepted by the property factor that the homeowner had requested information about (amongst other things) the contractors appointed to carry out various works. This was not provided because the homeowner had not paid the required fee. The property factor did not suggest that they did not have the information requested nor that it could not have been released for any reason. Section 6.3 of the code requires the property factor to be able to show information on request. It makes no provision for fees being charged. There was no evidence that the information could not have been provided to the homeowner electronically. The Tribunal finds that the property factor has failed to comply with section 6.3 of the Code.

143. There was no evidence which showed any agreement between the parties of the core service. The core service which existed included cleaning and garden maintenance. The property factor's evidence was that there were inspections of the property, quarterly. However there was no evidence of the programme of works prepared. Therefore the Tribunal finds that the property factor has failed to comply with section 6.4 of the Code.

144. It was a matter of agreement that the homeowner had requested copies of various pieces of documentation but she accepted that this was not documentation relating to any tendering process. The Tribunal considers section 6.6 of the Code to refer to documentation relating to tendering, only. In the absence of same, the Tribunal finds no evidence that the property factor has failed to comply with section 6.6 of the Code.

145. It was a matter of agreement that a contractor had broken a window hinge at the property. The contractor was there to provide a service to the property factor, that service being to assess the repairs required to make good the water ingress and to provide an estimate of the costs. Even if it is accepted that the contractor was solely responsible for the damage, section 6.9 of the Code requires the property factor to pursue the contractor to remedy the damage. It was open to the property factor to do that. The Tribunal finds that the property factor has failed to comply with section 6.9 of the Code.

146. The written statement of services sets out a clear, written complaints procedure (as set out at paragraph 152 above). The procedure is silent on how complaints against contractors will be handled. Therefore the Tribunal finds that the property factor has failed to comply with section 7.1 of the Code.

147. The property factor accepted that the letter of 31st August 2018 provided a final decision. The letter was written by the legal manager and not by a Director in terms of the written statement of services. The letter makes no reference to the homeowner housing panel (now the Tribunal). The Tribunal finds that the property factor has failed to comply with section 7.2 of the Code.

Decision

148. The Tribunal, having found the factor to be in breach of the Property Factor's duties and sections 1.1 (a) f, 2.2, 2.4, 2.5, 3.3, 3.4, 5.5, 6.1, 6.3, 6.4, 6.9, 7.1 and 7.2 of the Code, propose a Property Factor Enforcement Order ("PFEO") to accompany this decision.

149. The title deeds provide that the homeowner's bills should be based on a 1/61st share. The property factor has calculated the homeowner's share on a 1/45th basis since 2012 with no legal basis to do so. Accordingly, the property factor is ordered to re-calulate all charges and recompense the homeowner, accordingly.

150. Section 5.5 places a duty on the property factor to provide the homeowner with progress on an insurance claim. The Tribunal finds the property factor to be in breach of this requirement. The homeowner has not been provided with details of the outcome of her insurance claim despite this information being within the knowledge of the property factor. Accordingly, the property factor is ordered to produce information relating to the homeowner's claim and to pay to the homeowner any money from the compensation payment which she has not yet received.

151. The Tribunal recognises that the homeowner has been inconvenienced by the acts and failures of the property factor and that inconvenience should be recognised. The Tribunal quantifies the inconvenience at £500 per annum between 2012 and 2018, £3,000 in total.

Appeals

155. 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 within 30 days of the date the decision was sent to them.

………………………………………………………………………………………

Simone Sweeney, Legal member, 30th April 2019