Housing and Property Chamber
First-tier Tribunal for Scotland

Decision and statement of reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 19 of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/23/2830

The Parties:

Mrs Jane Calder Pyat Shaws Cottage Longyester Near Gifford East Lothian EH41 4PL, ('the Homeowner).

Charles White LTD 14 New Mart Road Edinburgh EH14 1RL ('' the Property Factor'')

2F1 Chilton Gracefield Court Mussellburgh EH22 ('the Property').

Legal Member: Lesley Anne Ward
Ordinary Member: Nick Allan

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act, in respect of compliance with the Property Factor Code of Practice, in relation to paragraph 2(1) of the 2012 Code of Practice, and in relation to paragraph 6(7) and Overarching Standards of Practice 2 of the 2021 Code of Practice.

The Tribunal made a Property Factor Enforcement Order to be read with this decision.

1. This was a hearing in connection with an application in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, ('the rules'), and section 17 of the Property Factors (Scotland) Act 2011, ('the Act'). The hearing took place in Glasgow Tribunal Centre however both parties participated by telephone at their request. The Homeowner attended the hearing. Her husband Mr Gary Calder attended as her representative. The Property factor was represented by Ms Sarah Wilson, director of the Property Factor. For ease of reference in this written decision, Ms Wilson will be referred to as 'the Property Factor'. A case management discussion took place on 14 February 2024 and the Tribunal made the following directions:

The Applicant (ie the Homeowner) is required to provide:

(1) A written list of headings summarising the main areas in which a breach of the Code of Conduct for Property Factors (effective from 1 October 2012) has occurred and the paragraph of the code to which the alleged breach as occurred, for example:

- Failure to arrange outstanding repair to x, paragraph x of the code.

(2) A written list of headings summarising the main areas in which a breach of the Code of Conduct for Property Factors (effective from 16 August 2021) has occurred and the paragraph of the code to which the alleged breach as occurred, for example:

- Failure to arrange outstanding repair to x, paragraph x of the code.

(3) Copies of the emails referred to in their application dated 13 March 2021, 12 February 2022 and 17 March 2022.

(4) A copy of their initial complaint or complaints to the Respondent and any replies received.
(5) Clean copies of the emails lodged of 15 January 2023, 20 January 2023, 2 February 2023, 17 February 2023 and 23 February 2023.
(6) Any other documents she has to substantiate her position.
(7) A list of witnesses she intends to give evidence at the hearing.

The Respondent (ie the Property Factor) is required to provide:

(1) A more detailed version of the 5 year list of the repairs carried out to Gracefield Court Development including the full value of the claim before the deduction of the excess and details of the excess applied in each case.
(2) A table of the insurance excess for the Gracefield Court Development for each year of the Applicant's ownership of the property.
(3) Copies of previous written statement of services prior 2021 which show a different method of apportionment of the insurance excess.

(4) Copies of any written complaints received from the Applicant and any written response made to the complaint.
(5) Details of the contractors used to carry out roof and other repairs to the Gracefield Court Development, the length of time the contractors have been used and the criteria used in selecting contractors.
(6) The system of inspection used for the Gracefield Court Development including the frequency of the inspections, who carries out the inspection and how outstanding repairs are organised and prioritised.
(7) Any other documents they have to substantiate their position.
(8) A list of witnesses who will be giving evidence at the hearing. The said documentation should be lodged with the Chamber no later than close of business on 14 March 2024. In terms of further procedure, in anticipation of the parties lodging further documents and written submissions and with a view to an evidential hearing taking place in June 2024, the Tribunal has decided that it would be helpful if the parties lodge their response to the other's submissions and complete their written submissions by 13 May 2024.

2. The Tribunal had the following documents before it:

- Application dated 20 August 2023.
- Copy emails from 5 January 2023 to 23 February 2023.
- Written statement of services.
- Letter to Respondent dated 20 August 2023.
- Respondent's submission dated 2 November 2023.
- Applicant's email to the Tribunal dated 14 November 2023.
- Respondent's email to the Tribunal dated 16 November 2023.

3. Both parties complied with the directions and the Homeowner had lodged a detailed written submission and bundle extending to 184 pages setting out the sections of the code that were at issue, and providing additional photographs. The Property Factor had lodged copies of their written statement of services for 2014, 2018, 2019, 2020, 2021, 2022 and 2023. They also lodged a copy of the insurance certificate for the property from 2019 until 2023, a copy of the Homeowner's first stage complaint and response, and the second stage response. The Property Factor also lodged a copy of the insurance claims history for the development from 21 April 2016 to 5 May 2023.

Preliminary matters

4. The Tribunal noted that the Homeowners application related to both versions of the code since the 2021 code came into force on August 2021 and the matter to which the application relates dates back to a written complaint made on 13 March 2021 and inquiries made from around March 2020 onwards.

5. The Homeowner has made several other applications to the Tribunal in connection

with the property. One matter broadly relating to a roof repair has already been decided and several other applications are pending. The Tribunal was therefore at pains to ensure that the discrete matter of this application was dealt with by the Tribunal. There were three broad strands to the application:

- the increase in insurance premiums and excess during the period of the Homeowner's ownership.
- whether this increase was due to the poor workmanship of contractors employed by the Property factor and the inadequate management style of the Property factor.
- the method of division of the excess and whether the Property factor had made a recent change to the method, and whether this change was out with their powers and not in accordance with the voting method set down in the title deeds.

6. The Homeowner proposed to lead Miss Sandra Dickson in evidence. Miss Dickson was the former owner of the property at Chilton and she was able to speak to the previous way the insurance excess was managed.

7. Findings in fact

- The Homeowner is the owner of the property at 2F1 Chilton Gracefield Court Musselburgh EH22.
- The property is on the second floor of a block of 6 flats known as 'Chilton'.
- There are 11 blocks in the Gracefield Court Development ('the development') and 72 properties in total.
- The Property Factor has been contracted to provide services to the property since the Homeowner bought the property in 2019.
- The Property Factor has acted as factor for the property and the development since around 2003.
- The Property Factor has operated under their current written statement of services ('WSS') since 2014, with some minor changes.
- The Property factor changed insurance broker for the property and the development in which it forms part in 2009 and again around 2013.
- The Homeowner's share of the insurance premium for the common insurance policy has increased from £204.98 in 2019 to £398.52 in 2024.
- The excess for a claim relating to water ingress increased from £100 in 2008 to £2500 in 2020.
- The Property Factors wrote to the Homeowner on 12 March 2020 notifying them of a 33 percent increase in the premium due to 13 claims on the policy over 3 years.
- When an insurance claim is made, the practice of the Property factor as set out in clause 6.8 of the WSS is to divide the excess between the 72 properties in the development.
- The Property Factor has used this method of division of the policy excess since

2003.

- The Homeowner contacted the Property Factor on several occasions from March 2020 onwards, to seek clarification in connection with the way the insurance excess is divided.
- The Property Factor responded on 12 March 2020 and 13 April 2021 by quoting the WSS which states that a change to the insurance arrangements can only be made by a majority of the owners in the development.
- On 3 July 2020 Miss Dickson, another owner of a flat in the Chilton block received an email from the Property Factor which stated 'A vote was not taken to change the way the insurance excesses were allocated when the broker changed to Deacon in 2009. Our current position on excesses is made clear in our WSOS'.
- The Homeowner contacted the Property factor on 15 July 2022 to ask for a copy of the title deeds for the development.
- The copy title deeds were never provided.
- There has been no change to the method of division of the excess since the WSS was drawn up in 2014.
- Until 2009 there was an exception to general rule of the excess being divided been all 72 owners in the development. Where accidental damage was caused by an individual owner, that owner met the excess themselves and it was not divided among the 72 owners.
- When Miss Sandra Davidson made a claim in 2008 she had to bear the entire excess which at that time was £100.
- In 2009 there was a change of broker and this exception was removed.
- The title deeds provide that the repairs to each of the 11 blocks shall be divided equally between the owners in the block.
- Clause 8 of the deed of conditions of the title deeds provides that each proprietor shall contribute an equal share to the expense of maintaining the common areas in each of the 11 blocks in the development
- Clause 23 of the deed of conditions of the title deeds provide that the insurance premium for the development shall be in accordance with the proportion that the replacement value of their flat and carparking space bears to the total replacement value of the subjects insured.
- Clause 19 of the deed of conditions of the title deeds provide that if owners wish to make a change to the insurance arrangements, it is done by a meeting of the owners in the block. One person from each of the 11 block is considered a quorum and the majority of the 11 owners can make a decision.
- The Homeowner was erroneously advised by the Property Factor in March 2020 that a majority of the 72 owners were needed to make a change.
- The Homeowner initially accepted that explanation and did not attempt to arrange a meeting of the other owners as a result of that erroneous information.
- A blocked down pipe in the Homeowner's block was brought to the Property Factor's attention in January 2022 at an inspection. This was causing damage to the roughcasting. The Property factor failed to take any steps to arrange a repair and the owners of Chilton arranged the repair themselves.

Sections of the Code at issue

2012 code

Section 1 Written statement of services

8. The Homeowner's issue was that paragraph 6.8 of the WSS did not comply with the title deeds because the method of division of the insurance excess was changed and the voting method set out in the title deeds was not followed. The Property Factor's position was that the excess has been divided between the 72 properties since they took over in 2003, long before the 2012 code was introduced. The Tribunal was not satisfied that the Property Factor made a unilateral change to the WSS. The Tribunal was not satisfied that the property factor had breached this aspect of the code.

Section 2 Communication and Consultation

Section 2.1

9. The Homeowner's positon was that the Property Factor refused to accept that they had changed the method of apportionment of the excess and they failed to provide a copy of the title deeds and they failed to provide accurate information regarding the voting rights as set out in the title deeds and that accordingly they had provided information which was misleading or false. The request for the copy title deeds postdated the 2012 code and will be referred to at paragraph 17 below. The first communication from the Property Factor in connection with the voting rights appeared to be on 10 March 2020 when, in response to their request, Ashleigh Wilson wrote that the current policy is to apportion the excess among the owners in the development. She also stated that as the deed of conditions is silent on the matter of excess, the Tenenment (Scoltand) Act 2004 would apply. There was a further email on 19 March 2020 when she wrote 'Should a majority of the owners in the development wish to change the way the excess is billed then this would need to be proposed and agreed by a majority of the owners'. The Property factor conceded that they gave the wrong information regarding the voting rights set out in the deed of conditions. This did not appear to be deliberate but taking it at its highest level was negligently misleading. The Property Factor was aware that the Homeowner was concerned about the apportionment of the insurance excess and was making inquiries about the terms of the title and a perceived change to the WSS and whether this had been done in accordance with the title deeds. They did not take any steps to organised a meeting of the owners as they were told that 37 owners would need to vote in favour of a change. Possibly the reason for the confusion was that clause 6.8 of the WSS provides that ''Unless so instructed by a majority of the owners, any excess applicable to the co-owners insurance policy will be apportioned between all the owners covered by that policy''. This was not what the deed of conditions said. The Tribunal considered this to be marginal breach of the paragraph 2.1 of the code.

Section 2.2

10. The Homeowner maintained that the Property Factor's communications had caused alarm and distress and were therefore abusive and threatening. The

Homeowner's view was that this is a subjective test and if they are upset and distressed by the communication they are therefore abusive and the code has been breached as a result. No specific examples were given and the emails and letters were all referred to for their terms The Tribunal had read all of the emails and letters the Homeowner had provided and was not satisfied that any communication was threatening or abusive. The Tribunal's view was that this has to be an objective test based on what is reasonable in all of the circumstances. The communications were all courteous and polite and nothing before the Tribunal could be described as threatening or abusive. There was no breach of paragraph 2.2 of the code.

Section 2.4

11. The Homeowner considered that this aspect of the code had been breached because the Property Factor uses a small group of contractors to carry out work to the properties in the development and the same contractors who carry out shoddy work are then given the work by the insurance company and this is a conflict of interest. The Tribunal did not consider this to be within the scope of paragraph 2.4 of the code and was not satisfied that this was a breach.

Section 2.5

12. The Homeowner considered that this part of the code was breached as in 2019 the Property Factor took 6 months to respond to a complaint about a roof repair. No documentation was provided and the Homeowner made reference to the bundle of documents provided in general terms but no specific evidence was provided. The Tribunal was not satisfied on the balance of probability that a breach of section 2.5 of the code had occurred.

Section 3: Financial Obligations

13. The Homeowner's position is that this aspect of the code has been breached as the Property Factor unilaterally changed the method of apportionment of the insurance excess. For the reasons set out in paragraph 15, the Tribunal was not satisfied that the Property Factor changed the method of division of the excess and the Tribunal was not satisfied that there had been a breach of this aspect of the code.

Section 6: Repairs and Maintenance

Section 6.1

14. The Homeowner made reference to a roof repair in 2019. He also referred to a blocked downpipe from 2022. Photographs were given at page 76 and 77 of the bundle. It appeared to the Tribunal that the roof repair referred to was the subject of an earlier complaint and application made to the Tribunal in 2019. It also appeared

that this was a matter not specifically referred to in the original complaint made to the Property Factor in 12 March 2021 or the application made to the Tribunal on 20 August 2023. In any event,the downpipe repair would require to be addressed under the 2021 code. The Tribunal was not satisfied that there had been a breach of this aspect of the code.

Section 6.7

15. The Homeowner's view was that the Property Factor does not use competent contractors and that this becomes a vicious circle. It was their position that the contractors are in effect rewarded by their incompetence by being asked to quote for work to rectify their own poor workmanship and that then they were further rewarded by getting the contract to do further work. This was disputed by the Property Factor who gave evidence about the various contractors used and the ones who do roofing work and the others who do internal work if a property is water damaged. The Property Factor also provided details of the insurance claims made over the time of the Homeowner's ownership. It appeared to the Tribunal that there has been a number of claims for water ingress and internal water damage but there was no evidence before the Tribunal about specific repairs and any poor workmanship. The Tribunal was not satisfied that there had been a breach of this aspect of the code.

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The 2021 code

Overarching Standards of Practice

OSP1 You must conduct your business in a way that complies with all relevant legislation

16. The Homeowner's position was that the Property Factor made a change to the apportionment of the insurance excess and accordingly breached this aspect of the code. As set out in paragraph 15, the Tribunal was not satisfied that the Property Factor made the change to the insurance arrangements and the Tribunal was not satisfied that that OSP1 had been breached.

OSP2 You must be honest, open transparent and fair in your dealings with homeowners

17. The Homeowner's position was that she has been pursuing the complaint since 2019 and there have been 6 members of staff dealing with it at various stages. The written complaint was made in 2021 however the Homeowner was in contact with the Property Factor before 2021 regarding the three main strands of the complaint. The Property Factor accepted that the Homeowner was given incorrect information in March 2020 regarding the voting arrangements in the title deeds. This has already been dealt with at paragraph 9 above as it relates to the 2012 code. It was also accepted by the Property Factor that a copy of deed of conditions was not provided

as they thought that copyright meant that they could not be provided. The Tribunal considered this carefully and decided that for the Property Factor to be fair in their dealings with the Homeowner they should have provided a copy of the deed of conditions and answered their reasonable inquiry in this connection. The Tribunal decided on balance that the failure to provide a copy of the deed of conditions answer the Homeowner's reasonable inquiry regarding the terms of the title was a breach of OSP2.

OSP3 You must provide information in a clear and easily accessible way

18**.** There was no evidence to suggest that the Property factor had failed to provide information in a clear and easily accessible way. There was some evidence that the information in connection with the voting arrangements in the title deeds was inaccurate as noted in OSP4 below. The Tribunal was not satisfied that this aspect of the code had been breached.

OSP4 You must not provide information that is deliberately or negligently misleading or false

19. The Property factor conceded that they gave the wrong information regarding the voting rights set out in the deed of conditions. This relates to the 2012 code as noted at paragraph 9 above. There was no breach of this aspect of the 2021 code.

OSP6 You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

20. The Homeowner argued that Property factor staff did not have sufficient awareness of the content of the title deeds for the development and the management of routine inspections, maintenance and remedial works was poor. The Tribunal considered the maintenance work to be outwith the scope of this part of the code and the other matter was already addressed under paragraph 2 of the 2012 code. There was no breach of this aspect of the 2021 code.

OSP8 You must ensure all staff and any subcontracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property.

21. The Homeowner reiterated their position regarding the error with the title deeds but the Tribunal was not satisfied that there was a breach of the code and that this was adequately dealt with under paragraph 2 of the 2012 code. There was no breach of the 2021 code.

OSP9 You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

22. The Homeowner has 7 separate disputes with the Property Factor (one of which has already been decided by the Tribunal) and they have been given contradictory responses to requests for information. The Property Factor has made reference to the complexity of the correspondence with the Homeowner and the volume of correspondence however there was no evidence before the Tribunal that the Property Factor had failed to maintain appropriate records and the Tribunal did not consider OSP9 had been breached.

OSP11 You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

23. The Homeowner invited the Tribunal to review the emails evidence provided and concluded that this aspect of the code had been breached. One of the reasons for the direction above was so that the Tribunal could see the emails sent and replies sent and understand the sequence of events. The Homeowner was unable to provide 'clean copies' of the emails as the matters in dispute had become factually complex. What was provided was emails with each party responding to each other in a series of colour coded paragraphs. It was impossible to see any delay or obfuscation on the part of the Property factor. The Homeowner did not provide any specific examples of the Property Factor's failure in this regard and instead made a general statement that the Property Factor constantly had to be chased for a response or gave an incorrect response or referred to an earlier response. The Homeowner did not accept the Property Factor's explanation regarding the title deeds or the insurance excess but it does not follow that they breached OSP11 as a consequence. The Tribunal was not satisfied there had been a breach of OSP11.

OSP12 You must not communicate with the homeowners in any way that is abusive, intimidating or misleading.

24. As set out in paragraph 10 above, there was no evidence to suggest that any of the communications between the Property Factor and Homeowner was in any way abusive, intimidating or misleading. There was no breach of OSP12.

Section 6 repairs and maintenance

25. The Homeowner's position that paragraph 6(7) of the code had been breached. There were photographs at page 77, 78 ad 79 of the bundle of a blocked downpipe and drain at the Chiton Block. The photographs were taken in January 2022 at a joint meeting with the Property Factor. The owners of Chilton decided to bypass the factor and arrange their own repair due to the failure on the part of the Property factor to take action. The Property Factor did not offer any explanation for this and the Tribunal decided this was a failure of paragraph 6(7) of the code.

Reasons

26. This was a complicated application due to the number of productions and

submissions and both versions of the code being at issue. There was a further complication as the Homeowners have made seven applications to the Tribunal. One has already being determined and although the Tribunal did not have details of the other applications there was likely to be a degree of overlap and the Tribunal endeavoured to deal with this application as discrete and separate from the rest.

27. The main thrust of Homeowner's application was that the Property Factor made a unilateral change in their WSS to the way the property excess is divided up between the owners in the development in breach of clause 19 of the deed of conditions in the title deeds and in breach of the code. The Homeowner also maintained that the method of division of the excess was inequitable and was introduced by the Property Factor to cover up for the fact that the excess had increased exponentially on their watch because of poor management of the development. In addition, the property Factor refused to provide a copy of the title deeds to enable the Homeowner to check the position. The Homeowner maintained that paragraph 19 of the deed of conditions sets out the method that the Property Factor should have used to make a change to the division of the excess and this was not followed.

28. It was the Homeowner's contention that around 2020 the excess was divided between the flats in each block rather than between the 72 flats in the development. If there was an insurance repair to the Chilton block for example, the excess would be divided between the 6 owners. It was the Homeowner's contention that the policy excess was increasing due to the number of claims on the policy. This in turn was due to the faulty workmanship of the contactors engaged by the Property Factor. It was the Homeowner's position that the Property Factor unilaterally changed the way the excess was divided up to spread the excess over the whole development rather than by the block. This means that the owners are less likely to complain about the huge increase in the excess. The Homeowner contended that the evidence of Miss Dickson was in support of this and the email from a former employee dated 3 July 2020 addressed to Miss Dickson confirmed this was the case.

29. The Tribunal heard evidence from a former owner of a flat in Chilton, Miss Sandra Dickson that in 2008 when she made a claim on the insurance policy due to accidental damage to her flat, she had to pay the whole excess which at that time was £100.

30. The Property Factor's position was that the excess has always been spread across all of the properties in the development since they began acting in 2003. Their records only go back to 2010 however the WSS of 2014 was drawn up by their solicitors to reflect the practice of dividing up the excess. It was the Property Factor's position that Miss Dickson's gave evidence about an exception to the practice which operated under a broker which changed in 2010 – namely that if accidental damage occurred in a property the owner would bear the excess themselves. The Property Factor also maintained that as the title deeds were silent on the method of division of the excess, it was a matter for the owners in the development to agree on. The Property factor did concede that Ashleigh Wilson was wrong when she stated that a majority of owners (ie 37 owners or 51 percent) are required to make a change to matters such as insurance provision. She accepted that clause 19 of the deed of conditions provides that a majority of 11 owners (one from each block) is required.

31. The Tribunal considered all of the available evidence in connection with the division of the policy excess. The Tribunal found that the division of the excess among the 72 owners pre dates the code coming into force in 2021. The Tribunal was not satisfied that there had been a unilateral change to the WSS in the way the excess was divided. The Tribunal found both Miss Dickson and the Property Factor credible. The Tribunal also found the Homeowner to be sincere in their views however Miss Dickson's evidence did not support the Homeowner's position about a change in apportionment. Her evidence was in line with the Property Factor's evidence that there was a change to the way accidental damage was dealt with in 2009. Had the property Factor made a unilateral change to the policy excess after the code came into force, this could constitute a breach of OSP1 of the code. The Tribunal was not satisfied on the balance of probability that a change to the method of apportionment of the excess had been made.

32. The method of division of the excess among the 72 owners of the development as set out in the WSS did appear to the Tribunal to be illogical. The provision predates the code coming into force in 2012 but the method of division of the excess does appear to contradict clause 8 of the deed of conditions of the title deeds which provides that ''each proprietor of the block shall contribute an equal share towards the expense of maintenance of the foregoing in the block of flats of which his flat forms part, one share being payable in respect of each flat owned'', 'the foregoing' being the solum, foundations, walls roof and so on. If owners are responsible for an equal share of any repairs to their block, the fact that the repair is being met by insurance rather than the owners seems beside the point. Logically the owners in the block should meet the excess rather than the 72 owner in the development. Indeed the Property Factor stated that if the repair is not covered by insurance (such as wear and tear to the roof) there is no question of the other owners in the other blocks being involved. The Property Factor submitted that the title and deed of conditions is silent on the question of division of the excess and therefor the Tenements (Scotland) Act 2004 is likely to apply. A tenement is defined in that Act as any building that is divided horizontally into two or more flats. The Chilton block would therefore be a tenement (as opposed to the development as suggested by the Property Factor. In the absence of any provision in the title and deed of conditions the excess should be divided between the owners of the tenement in the same way that repairs are divided in terms of clause 8.

33. The Homeowner submitted that the increase in the insurance premiums and increase in the excess from £100 to £2500 were due to the actions and inactions of the Property Factor. This was not characterised in terms of a breach of a specific paragraph of the code. The Tribunal was not satisfied on the available evidence that the increase in premiums was due to the action or inaction of the Property Factor.

Penalty applicable.

34. The Tribunal was satisfied that there were several breaches of the code for the reasons already given. The Tribunal went on to consider the penalty the appropriate penalty. The Tribunal decided that an award of £500 was fair proportionate and just in all of the circumstances to reflect the inconvenience the Homeowner had experienced, particularly in relation to the repair to the downpipe. The Tribunal also decided it was appropriate to order the Property factor to advise all of the owners of the voting details in the title deeds and to issue a written apology to the Homeowner.

35. Section 19 of the Act states: -

(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.

36. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence

4 June 2024

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Lesley A Ward Legal Member Date