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

Decision on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/22/0871
FTS/HPC/PF/22/0874
FTS/HPC/PF/22/0932
FTS/HPC/PF/22/0933
FTS/HPC/PF/22/2390

Re: Properties at Lauderdale Mansions, 44 Lauderdale Gardens and 47 Novar Drive, Hyndland Glasgow ("the Property")

Parties:

Mrs Pauline Bourhill, Apartment 3/2, 44 Lauderdale Gardens, Lauderdale Mansions, Hyndland, Glasgow G12 9QT
Professor Sheila McLean, 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Robert Friel and Mrs Marion Friel, Apartment 3/1 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Mark McManus and Mrs Nadine McManus, 46 Lauderdale Gardens, Hyndland, Glasgow G12 9QT ("the Applicants")

James Gibb Residential Factors, 65 Greendyke Street, Glasgow G1 5PX ("the Respondents")

Tribunal Member:

Graham Harding (Legal Member)
Kingsley Bruce (Ordinary Member)

DECISION

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections 2.7, 6.6 and 6.12 of the 2021Code.

The decision is unanimous

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011

Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2012 is referred to as "the 2012 Code", the Property Factors (Scotland) Act 2021 Code of Conduct for Property Factors is referred to as “the 2021 Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as “the Rules”.

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

Background

1. Applications were submitted on behalf of Mrs Bourhill, Professor Maclean, Mr and Mrs Friel in respect of complaints against the Respondents under the 2021 Code and by Mrs Bourhill in respect of a complaint under the 2012 Code.

2. The Applicants’ representative Mrs Bourhill submitted written representations on behalf of the Applicants in support of their applications together with additional written representations dated 28 June, 2, 9 and 15 July 2022.

3. The Respondents submitted a written response to the complaints by emails dated 15 July 2022.

4. Mrs Bourhill submitted a further response by email dated 29 July 2022.

5. A Case Management Discussion (“CMD”) was held by teleconference on 4 August 2022. It was established at the CMD that the Applicants were no longer insisting in their complaints as regards Section 1.1, 2.10, 3.9, 3.10, 5.5, 7.2 of the 2021 Code. It was also confirmed that with regards to Mrs Bourhill’s complaint under the 2012 Code the relevant sections were 2.5, 6.1 and 7.2. The Tribunal determined to continue the applications to a hearing.

6. By email dated 4 August 2022 the Respondents provided at the request of the Tribunal a copy of the Deed of Conditions affecting the Applicants properties.

7. By application dated 13 July 2022 Mr and Mrs McManus submitted a further application to the Tribunal in respect of identical complaints under the 2021 Code. This application was accepted and conjoined with the other applications and continued to the hearing assigned to take place on 19 January 2023.

8. By emails dated 29 August, 9 and 14 September and 16 December 2022 Mrs Bourhill submitted further written representations on behalf of the Applicants.

9. By email dated 2 September 2022 the Respondents submitted further written representations.

Hearing

10. A hearing was held at Glasgow Tribunals Centre on 19 January 2023. The Applicants were represented by Mrs Pauline Bourhill and Mr Mark McManus. The Respondents were represented by Mrs Lorraine Stead and Mr Alasdair Wallace.

11. By way of preliminary matters, Mr McManus confirmed that he was in agreement that the issues in dispute were the same as the other Applicants and that the Sections of the 2021 Code that were the subject of the complaints were 2.4, 2.6, 3.1,4.7, 6.6 and 6.12. Mrs Bourhill also wished to point out to the Tribunal that although the title deeds referred to the car park as an "underground car park" it was in fact not underground but at street level.

Car Park Ventilation System

Section 2.4 of the 2021 Code

12. Mr McManus explained that the ventilation system had been installed when the car park was constructed 27 years ago and that for the past 18 years it had not been functioning. He said that owners had sought information from the Respondents regarding the scope of the project provided by the Respondents and requested that an HVAC engineer or qualified consultant provide a report on whether nothing should be done, there should be a like for like replacement or some alternative solution. He went on to say that to the best of his knowledge a ventilation contractor had been invited to quote for a replacement system but no attempt had been made to ascertain what might be the best solution. Mr McManus said that other than receiving the updated costs from the contractors' quote provided in November 2021 in November 2022 no other information had been provided by the Respondents. He submitted that there had been a lack of information despite repeated requests for carbon monoxide testing by himself and other owners. He said that insufficient information had been provided by the Respondents to show that the proposed replacement of the ventilation system was going to be best for purpose and future proofing requirements. He was of the view that a competent person needed to be instructed to provide confirmation that there was a need for the works to be done or to direct the best course of action going forward. He went on to say that technology had moved on in the last 25 years and cars had improved. He was also concerned about not only the cost of replacement but also future running costs. He said he did not have confidence in the project without an expert advising on the best way forward. Mr McManus referred the Tribunal to correspondence from Mr Wallace dated 24 August 2021 and to the protracted discussions that had taken place with the owners committee. Mr McManus suggested that the Respondents had been the recipient of repeated questions regarding the ventilation system that had not been properly addressed and that there had been a breakdown in communication with the owners committee.

13. Mrs Bourhill added that herself and Professor McLean had asked in a joint letter that a mandate was not sent out to owners until all necessary

information was available. She said it had been promised the mandate would not be sent out but it was. She said that she had never seen the proposal submitted by Ventium. She also said that she had asked repeatedly for the air quality in the car park to be tested but this had not been done. Mrs Bourhill said that about two months previously she had installed a CO monitor in the car park and it had never gone off. Mrs Bourhill said that she and some other owners had arranged for a ventilation expert to look at the car park and he had been very surprised at the proposed cost. He had said that it would need several owners to have their cars running for several hours before the ventilation system would kick in. Mrs Bourhill added that she had asked Mrs Stead in an email dated 23 February 2022 how many kilowatts the system would use and she had replied that it would not run at all unless there was carbon monoxide or dampness or someone used the manual override switch to remove any smell and the kilowatt usage would be minimal.

14. Mr McManus said that the Applicants felt it was not unreasonable that the Respondents substantiate the need to replace the system. He said he accepted that there may be building regulations but that it was understandable that the owners wanted value for money. Mrs Bourhill explained that the proposal had come about after one owner had complained of suffering from fumes in his property and suggested that this should have been checked out but it now appeared that this complaint was secondary. She felt that there must be an easier way to resolve the issue than spending £18000.00.

15. For the Respondents, Mr Wallace explained that at the November 2020 Owners Association AGM the issue of fumes was raised by an owner and the Respondents agreed to look into fixing or renewing the ventilation system in the car park. He said that not a lot of contractors undertook this type of work but he had managed to get Ventium to submit a quote. He said that the Respondents had not been asked to look into the best way forward. He went on to say that the Respondents had tried to obtain competitive quotes and another company, Colt, had asked for £1500.00 to provide a quote. Because of the cost they did not proceed with this. He said they then contacted The Ventilation Experts to see if the system could be repaired. They charged £571.00 for their inspection of the system. Mr Wallace said that as this was within their spending authority, they did not seek owners' approval and it had been hoped that a repair would have been a cheaper option. Mr Wallace went on to say that at the November 2021 AGM a decision was taken to ballot the owners and the Ventium quote was cheaper than the one from the Ventilation Experts. He said that the majority of owners were in favour of proceeding with the Ventium quote. Mr Wallace said that subsequently Ventium pulled out of proceeding with the installation so the Respondents went back to the Ventilation experts who because of inflation had increased their quote by £3000.00. He said at the AGM on 16 November 2022 a decision was made to delay proceeding with the work until the Tribunal issues its decision in respect of the applications.

16. Mr Wallace confirmed that the Respondents had only considered either repairing or renewing the ventilation system at the AGM in November 2020 and had not thought beyond that.

17. In response to a question from the Tribunal as regards the standing and authority of the Owners Association committee, Mr Wallace said that it had no real authority and the committee had to work within the terms of the Property Factors Act. He explained that the committee would ask the Respondents to do things but they had no authority and had no power but that the Respondents did talk to the committee.

18. Mr McManus advised the Tribunal that he had attempted to obtain information from the local authority building control with regards to the ventilation system but the only the certificates had been retained.

19. Mr McManus referred the Tribunal to the minutes of the Owners Association 2022 AGM and to what had been discussed with regards to the ventilation system. It was the Applicants position that the Respondents were in breach of Section 2.4 of the 2021 Code.

Sections 2.6 and 3.1 of the 2021 Code

20. Mr McManus went on to submit that the Respondents were also in breach of section 2.6 of the Code as they were not interpreting the terms of the title deeds correctly. The Tribunal was referred to what was said to be an ambiguity in the Deed of Conditions between Clauses SECOND MAINTENANCE Primo (Common Areas) and Quinto (Underground Car Parking). It was explained that in Clause Primo all 29 owners shared the cost of maintenance of the common areas that was said to include the underground car park equally between them whereas in Clause Quinto owners were due to pay a pro rata share of the maintenance of the underground car park according to the number of parking bays they had. The Applicants submitted that the Respondents ought to have obtained a legal opinion to confirm the correct interpretation of the titles but they had refused and had determined that Clause Quinto applied. Mrs Bourhill advised the Tribunal that the Applicants had sought their own legal opinion and had been advised that the deeds were ambiguous. The Tribunal noted that the opinion had not been lodged as a production.

21. For the respondents Mrs Stead submitted that it had been decided by the owners association that a legal opinion was not required and that in any event the Respondents were used to interpreting the terms of title deeds and that they were satisfied once the matter had been raised that the correct interpretation was that maintenance of the underground car park was to be allocated on a pro rata basis according to the number of parking bays an owner had.

22. The parties also discussed whether the ventilation system formed part of the underground car park or was an integral part of the building when it came to sharing the cost of maintenance.

Section 6.6 of the 2021 Code

23. Mr McManus submitted that any reports prepared on the instruction of the Respondents should be available for inspection. He said that when it came to considering what to do with the car park ventilation system there were a number of options that needed to be considered and that required the input from professional advisors. Without such input he said the owners did not have the clear information that was necessary to allow them to make a decision on what was a large capital project. He submitted that the requested information had not been forthcoming. he said that the only material that was available was the Ventilation Experts report which was in fact not a report at all but just a summary of what was in situ and a like for like replacement. Mr McManus said he would have expected there to have first to have been air quality testing and carbon monoxide monitoring before progressing to obtaining a quote for replacement.

24. The Tribunal queried with Mr Wallace if it was reasonable for the owners as lay people to rely on the Respondents for independent advice. Mr Wallace suggested that the Respondents were not experts in this field and that the system had been installed to remove carbon monoxide from the car park. The Respondent was also asked whether they recognised their duty in terms of the Act to recommend obtaining appropriate advice in matters outwith their "expertise".

Masonry Issues

Section 2.4 of the 2021 Code

25. Mrs Bourhill explained that defects in the masonry had been reported by her to the Respondents more than two years ago and repairs had still not been carried out. She said that the owners association committee had agreed the repairs should go ahead but that the work had not been considered important and that other areas of expenditure should be given higher priority. She went on to say that rainwater was getting in to the cracks in the stonework causing further damage. She said that she thought the Respondents should have stepped in and been more pro-active. Mrs Bourhill said that the report by Helix dated 13 August 2021 should have been made available to owners. She said she had contacted Arlene Robertson of the Respondents by email on 6 September 2021 and was advised by return email on 7 September 2021 that the report was with the owners committee. She said it remained with the committee until 19 July 2022. Mrs Bourhill went on to say that another company Render Mender had been involved and photographs of the stonework had been taken in December 2020 and in January 2021 Mr Wallace had sent the photographs to Helix but that Mr Sweeney of Helix had advised he could not tell from photographs and would need to inspect the property.

26. Mrs Bourhill said that she emailed Mr Wallace on 27 February 2021 and again on 4 March but did not receive a reply to either email. She said 11 weeks later

the owners committee agreed to a survey being carried out and on 7 June 2021 her neighbour agreed to Helix attending at her property and on 12 June 2021 Gary Sweeney from Helix attended and took photographs. She said that the Helix report was then issued on 3 August 2021. She said it remained with the owners committee until July 2022 and then a decision to proceed was reluctantly taken at the Owners Association AGM in November 2022.

Section 2.7 of the 2021 Code

27. With regards to a breach of Section 2.7 of the 2021 Code, Mrs Bourhill again referred the Tribunal to her emails to Mr Wallace of 27 February and 4 March 2021 to which she said he had not replied.

28. For the Respondents Mr Wallace explained that following their attendance at the property in 2020 Render Mender had suggested that a professional surveyor be appointed to inspect the masonry issues at the development and that had led to Helix being contacted. Mr Wallace did not take issue with the timeline presented by Mrs Bourhill and confirmed that the owners committee had met in June 2022 and it had then been agreed to progress matters at the November 2022 AGM. He said that he could only apologise if he had failed to respond to Mrs Bourhill's emails.

29. Mrs Bourhill referred the Tribunal to the quote she had received from Stonemasons and compared this to the cost of the survey being carried out by Helix.

30. Mr Wallace explained that the Owners at the 2022 AGM had decided to proceed with an initial intrusive investigation at a cost of £3000.00. he said the Respondents had not yet been given a full specification of the work that would be done.

31. Mrs Bourhill went on to say that when the development windows had been painted, she had been unable to have hers done as the repairs to her stonework would require to be done before the windows could be painted. It would therefore be more expensive for her to paint the windows in due course. She also thought that the value of her property had been reduced as a result of the repairs not being done and the Respondents were at fault for not having the work done more quickly. She felt the owners committee were not interested in the issue as none of them had the problem with their properties. Mr Wallace said there were cracks in the masonry elsewhere in the development but not as severe as in the Applicants' properties.

Section 7.2 of the 2021 Code

32. Mrs Bourhill submitted that following a complaint on behalf of the Applicants being submitted, 36 days had passed without it being dealt with. She said that she had tried phoning and emailing without success.

33. Mrs Stead explained that the Respondents complaints system had been updated in April 2022. The Tribunal was referred to the Respondents' written

response appendix 13. Mrs Bourhill's complaint had been submitted on 14 March 2022 and was dealt with under the previous complaints arrangement. A reply was sent to her from Mr Wallace on 1 April 2022. Further correspondence was sent to Mrs Bourhill on 10 May 2022 and Mrs Stead wrote on 7 June to Mrs Bourhill with a final response in respect of the complaint.

Fergmann Windows Complaint

Sections 2.4 and 6.12 of the 2021 Code

34. Mrs Bourhill referred the Tribunal to the specification dated 18 November 2021 from Fergmann windows that was incorrect as it referred to sash and case windows that were not installed at the development. She said that a corrected version with a reduced price of £900.00 had subsequently been issued .and she had agreed to the service going ahead. Mrs Bourhill went on to say that she had not been satisfied with the work that had been done and had contacted the Respondents to complain. She referred the Tribunal to the photographs that she had taken to highlight the issues.

35. Mrs Bourhill said that she had asked that someone from the Respondents come and look at the job that had been done by Fergmann and see for themselves that it was not up to standard. She said that a previous employee of the Respondents Siobhan had told her that someone had been out and had been told by a member of the owners committee that the work was fine. Mrs Bourhill said she had contacted a member of the owners committee and had been told that it was nothing to do with the owners committee and it was up to the respondents to deal with the issue. She said she then contacted Mr Wallace who said there was no note of anyone being out to inspect the work. Mrs Bourhill went on to say that the day before the November 2022 AGM she was advised by Mr Wallace that he had sent copies of the photographs to Fergmann windows and that their reply had been that "looking at one of the windows it was slightly rough and one window needed a slight repair that will be attended to". Mrs Bourhill explained that she had expected the Respondents to have some supervision of the works carried out. She said the contractors had returned to the development on the day the windows were to be painted to carry out remedial work.

36. Mr McManus submitted that whilst he appreciated that the Respondents had issues with property managers at the development it was not appropriate to just take the word of contractors when complaints had been made. The owners required further support with periodic inspections and if owners brought concerns regarding workmanship to the Respondents it was reasonable to expect some support. He said the Applicants were not happy with the remedy.

37. For the Respondents, Mr Wallace said he had not been personally involved. He said he was aware three or four committee members had assessed the work done by Fergmann and he was not aware of anyone from the Respondents attending a site meeting. He said the committee had reported

back to Siobhan a couple of small issues. He went on to say that the Respondents had experienced great difficulty with Fergmann Windows and would not use them in the future. He said that the painting contractors had said that the windows had been left in a good enough condition to allow the windows to be painted. Mr Wallace went on to say that he did take Mr McManus' point and although the Respondents could not physically site manage all jobs they looked after they should perhaps have been more involved on this occasion.

38. Mrs Bourhill said that she had not paid her share of the cost of the window works and Mr Mc Manus queried if the owners were being given value for money as he had seen paint being applied on woodwork that had mud on it.

Car Park Ceiling Tiles

39. Mr Wallace disputed that he had ever spoken to Mrs Friel with regards to the ceiling tiles in the car park. He said he was well aware of where to obtain replacement but that there had been a delay as a decision had to be made on whether to make a claim on the development insurance or not. He explained that the total cost of repairing a water leak in the car park including replacing the tiles would be about £1200.00 with the insurance excess being £1000.00. the owners had to decide whether it was worth making the claim and risking higher future premiums or bearing the full cost of the repair.

Closing Remarks

40. Mr Wallace advised the Tribunal that as Fergmann windows had not done the job properly the owners would be refunded the charge for that work.

41. With regards to Mrs Bourhill's complaint in terms of the alleged breaches under the 2012 Code the Tribunal noted that the same facts applied and these would be considered when reaching a decision and that the only live issue was the alleged breach of Section 2.5 of the Code. It was also accepted that the reference to the failure to carry out its property factor's duties was essentially covered under the alleged breaches of the Code.

Findings in Fact

42. Mrs Bourhill, Professor McLean and Mr and Mrs McManus are all proprietors of properties within the Development at Lauderdale Gardens, Glasgow ("the development") factored by the Respondents.

43. Mr and Mrs Friel were previously proprietors of a property within the development at Lauderdale Gardens, Glasgow but have now sold the property.

44. The owners of the development have formed an owners association.

45. The owners association has an elected committee and a constitution.

46. The owners association committee has no power to bind other owners except following a vote of owners in accordance with the provisions of the deed of conditions burdening the development.

47. The development is subject to conditions set out in a Deed of Conditions by Adam Scotland Limited, Registered in the Land Register for Glasgow on 14 August 1996.

48. A mechanical ventilation system was installed in the car park under part of the development when it was constructed.

49. The ventilation system has been inoperative for about 18 years.

50. In about 2020 an owner complained of fumes in his property and at the owners association AGM in November 2020 the Respondents were asked to look into fixing or renewing the ventilation system.

51. The Respondents did not consider any alternatives to fixing or repairing the ventilation system at that time.

52. The Deed of conditions at Clause Quinto (Underground Car Parking) that the cost of maintenance shall be shared among owners pro rata according to the number of car parking spaces they own.

53. The ventilation system was only installed in the car park because the area was used for parking cars.

54. The Deed of Conditions provides at Clause THIRD for the calling of meetings of owners and the making of decisions on maintenance of the development.

55. There is cracking and defective masonry to cills at some properties within the development.

56. The Respondents were made aware of the issues in about 2020.

57. The firm Render Mender recommended that the Respondents obtain authority from owners to instruct a building surveyors report in about January 2021.

58. The Respondents obtained authority to proceed to obtain a survey report following the owners association AGM in November 2022.

59. Work carried out by Fergmann Windows at the development in 2022 was not to an acceptable standard.

60. The Respondents have agreed to reimburse the owners at the development the charges incurred in respect of the work done by Fergmann windows.

61. Ceiling tiles in the car park under part of the development have not been replaced pending a decision by owners on whether to submit a claim to the development insurers for repairs to a water leak.

Reasons for Decision

62. The Tribunal could understand why the Applicants were concerned at being faced with a not insubstantial cost of replacing the ventilation system in the car park particularly when as owners of two parking spaces they were being asked to contribute twice as much as some other owners both to the capital costs and to the future running costs. The Tribunal could also appreciate that with the passage of time it was possible that there may be alternatives to a simple replacement or repair of the existing ventilation system.

63. The Tribunal has considered the information before it from the quite extensive productions submitted on behalf of both the Applicants and the Respondents. It appears that at the November 2020 Owners Association AGM when the issue was first raised the only instruction given to the Respondents was to look into repairing or replacing the existing system. At that meeting it was not suggested that any alternatives be considered or that any independent consultant engineer be approached for advice. It is therefore not surprising that the Respondents adopted the approach they took and contacted contractors to see if they would provide quotes for repairing or replacing the system.

64. Over the following two years the Applicants have raised their concerns about proceeding with the replacement of the system and despite there apparently being a mandate in place the replacement is on hold pending the outcome of these proceedings.

65. The owners association committee has no authority to instruct the Respondents unless following a properly constituted meeting of owners in terms of the Deed of Conditions a decision is taken and owners agree to a proposal. It did appear to the Tribunal that this was not always closely observed in the Respondents dealings with the committee and owners.

66. It also appeared to the Tribunal that the Applicants while keen to highlight their differences with the committee failed to take advantage of the powers that they had within Clause THIRD of the Deed of Conditions to call a meeting of owners to discuss issues of importance affecting the development.

67. With regards to the liability for the cost of maintenance of the car park under part of the development referred to in the Deed of Conditions as the Underground Car Park the Tribunal was satisfied from the clear terms of Clause SECOND MAINTENANCE Quinto that liability amongst owners fell to be determined on a pro rata basis according to the number of parking bays owned. Although Clause SECOND MAINTENANCE Primo made reference to the underground car park forming one of the common areas with an obligation to maintain along with the other owners there was no significant ambiguity as Clause Quinto specifically allocated the way in which costs were to be allocated. The Tribunal was therefore satisfied that the Respondents had correctly interpreted the title deeds in this regard.

68. The Tribunal considered that although there may well be building regulations determining the provision of mechanical ventilation in car parks such as that at the development, given that concerns have been raised about the cost of proceeding with the replacement of the installation without first ascertaining if there may be a suitable alternative solution the Tribunal considers that it would be in the interests of all the owners that the Respondents first obtain an independent report from an HVAC engineer or suitably qualified ventilation consultant to report both on the legislative requirements and practical solutions before proceeding with a like for like replacement. Section 6.6 of the 2021 code provides that a property factor must have arrangements in place to ensure that a range of options on repair are considered and where appropriate recommend the input of professional advice. The Tribunal was satisfied that in this respect the Tribunal was in breach of this section of the 2021 code. The Tribunal consider in the circumstances that it would be appropriate for the Respondents to obtain an independent report from a suitably qualified person to identify the best way forward and that the cost of obtaining the report should be met by the Respondents.

69. With regards to the masonry issues, it does appear to the Tribunal that this matter had been allowed to drift for too long. That may well be because members of the owners committee are not particularly affected by the issue and therefore have not given the matter the priority it deserved. That highlights the problem that the Tribunal has identified in these applications in that it appears that the Respondents rely quite heavily on matters being progressed by the owners committee who of course have no legal standing or authority. It was apparent to the Tribunal that there had been a failure on the part of the Respondents to communicate with Mrs Bourhill in response to her queries in February and March 2021. Mr Wallace has apologised for that omission and whilst confirming that there has been a breach of Section 2.7 of the Code the Tribunal did not consider any further sanction would be necessary. It is however clearly important that progress is made to identify the cause of the masonry issues and subsequent remedial works undertaken as soon as possible before the issues worsen or injury is caused to third parties from falling masonry. From evidence before the Tribunal in the form of photographs, it appeared that loose or defective masonry presented a Health and Safety risk. It is therefore important that the intrusive survey is carried out as soon as possible and any approval for subsequent proposed remedial works is not delayed.

70. The Tribunal was not satisfied from the evidence presented by Mrs Bourhill that any loss of value in her property had been established due to the delay in proceeding with the masonry works or that it would not have been possible to proceed with the painting of her windows along with the other windows at the development.

71. The Tribunal was satisfied from the submissions that the work carried out by Fergmann Windows was inadequate and it would have made a finding against the Respondents in this regard in respect of the way in which they dealt with the Applicants complaint were it not for the fact that the Respondents had agreed to reimburse the owners with the charges.

72. The Tribunal was satisfied from the explanation provided by Mr Wallace that there was a reasonable explanation for the delay in replacing the car park ceiling tiles and that this did not constitute any breach of the Code.

73. Having considered Mrs Bourhill's application under reference FTS/HPC/22/0871 in that it referred to alleged breaches under the 2012 Code and alleged failure on the part of the Respondents to carry out their property factor's duties the Tribunal was satisfied that the complaints were effectively dealt with under the remaining applications and did not require a separate determination.

Proposed Property Factor Enforcement Order

The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member and Chair

9 February 2022 Date