



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/LM/24/1848

Re: Property at 36 The Village, Archerfield, Dirleton, North Berwick, East Lothian EH39 5HT (“the Property”)

Parties:

Mr Ronald Porteous and Mrs Magdalene Porteous, both 36 The Village, Archerfield, Dirleton, North Berwick, East Lothian EH39 5HT (“the homeowner”)

Archerfield House Hotel Management Limited, incorporated in Scotland (SC272735), having their registered office at 46 Charlotte Square, Edinburgh EH2 4HQ, and a place of business at Archerfield Golf Club, Dirleton, North Berwick EH39 5HQ (“the property factors”)

Tribunal Members:

George Clark (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the property factors have not failed to comply with the Property Factors Code of Conduct effective from 16 August 2021 and have not failed to carry out the Property Factor’s Duties.

Background

1. By application, dated 18 April 2024, the homeowner complained under Section 17(1) of the Property Factors (Scotland) Act 2011 that the property factors had failed to comply with the Code of Conduct for Property Factors effective from 16 August 2021 (“the 2021 Code”) and have not failed to comply with the Property Factor’s duties.
2. The complaint was made under OSP2, OSP3, OSP4, OSP9, OSP11, OSP12 and Sections 1A, B, C, D, E and F, 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 3.1, 3.2, 3.11, 6.7, 7.1, 7.3 and 7.4 of the 2021 Code. The homeowner also alleged a failure to comply with the property factor’s duties.

3. The applications were accompanied by a copy of the property factors' Written Statement of Services ("WSS").
4. The homeowner's complaints included her contention that there had been inappropriate recharging to owners in the Development of the countryside Ranger's costs and charges for emptying bins on the John Muir Pathway to Yellowcraig beach to owners in the Development. These elements of the application were withdrawn by the homeowner after the Case Management Discussion, so are not considered further in this Decision.
5. On 4 June 2024, the homeowner advised the Tribunal that the additional purpose of their request for invoices was that a considerable number of Village residents had intimated that they wished to explore exercising their right to change their Facilities Management Company and that, before approaching an alternative Factor, it would be essential for them to have sight of exact figures and a complete breakdown of fees for facility management. They provided a copy of an email of 27 May 2024, in which they asked for a detailed breakdown of activities and works under fifteen headings.
6. On 24 June 2024, the property factors provided written representations to the Tribunal. This included a detailed response of 31 May 2024 to the homeowner's email of 27 May, concluding with the property factors' comments that they had identified that the homeowner's request indicated a requirement to provide copies of seven invoices and asking the homeowner to confirm that was the case. For ease of convenience, the homeowner's complaints in the application are summarised below, with the property factors' responses added:
 - a) Charging for handling complaints, including legal fees, each homeowner having been charged £6 with no explanation given.

The property factors' response was that there are no charges for handling complaints, but over the past few years, they have received multiple requests and demands from the homeowner for information on a wide variety of issues, and several of these quoted legal terms or disputed the property factors' interpretation of the title conditions. Where necessary, legal advice had been sought and the cost of it included as an outlay. They instanced the fact that, in an email of 24 October 2023, the homeowner had made reference to the "Four corners" and praedial rules and suggested that the title burdens were no longer enforceable because of a change of circumstances. It was reasonable for the property factors to have taken legal advice on legal issues raised with them.

- b) Huge discrepancies between actual and budgeted costs. The Flowvac actual costs for 2021/2022 were £14,353.04 against a budget of £37,333.04 and no invoices were available. The year 2021 budget was £27,540, with the actual cost being £9,138. There had been increases in security costs to £37,540 and motor vehicle costs had risen from £342.03 to £10,733.23, again with no invoices available.

The property factors responded that the actual summary of costs provided to each homeowner sets out expenses incurred over the year, the supplier, invoice reference, description of the work and charge. Documents explaining fluctuations between actual and budgeted costs are provided when explanation is necessary. Actual costs for repairs to equipment such as Flowvac can vary from budget depending on whether there is a breakdown. Invoices are available and they provided a copy of an email of 25 January 2024, in which they stated that the information the homeowner was seeking remained available for inspection as previously offered at a mutually agreed time and date.

The property factors stated that they were unaware as to where the homeowner had derived the figures for security and vehicle costs. The budget for vehicle costs for November 2022 to October was £10,000 and the actual cost was £9,107.51. Security costs for the same period were budgeted at £13,000 and the actual cost was £11,281.50. All invoices were available, and, in the email of 25 January 2024, the property factors had invited the homeowner to attend and view them.

- c) The homeowner stated that the property factors do not have a delegated authority relating to financial thresholds yet, without consultation, in 2023 they carried out services which incurred substantial additional costs. Both the title deeds and the WSS stipulate that the property factors will notify homeowners in advance of any additional costs.

The response of the property factors was that they are the Facilities Manager, whose authority comes directly from the Deed of Conditions affecting the whole estate and there is no need for any delegated authority. The WSS says that the property factors will consult with homeowners if they consider it necessary to do so prior to instructing common works and services, but that is rarely the case as all services are as described in the Deed of Conditions and the WSS. This had been explained to the homeowner in an email of 2 November 2023, a copy of which they provided to the Tribunal.

- d) The homeowner complained that there is evidence of the property factors sharing financial information and accounting with Archerfield Golf Club, an unrelated business. For example, a recent payment for the property factors' fees had been paid into Archerfield Golf Club account.

The property factors responded that Archerfield Golf Club bears a 26.92% share of the common charges and is, therefore, entitled to receive the same information as homeowners in relation to budgeting and cost of services. On occasion, if a homeowner wishes to make a payment by card, it can be done using the card reader facility of the golf club. The Accounts team processes any card payment and immediately transfers the funds to the appropriate facilities management account. Card payment of facilities management charges is extremely rare, and it is impractical and costly to have a separate card machine for it.

- e) The homeowner complained of inappropriate recharging for maintenance of Links golf course mounds.

The response of the property factors was that the WSS includes maintenance of landscaped areas. These include the mounds facing houses within the estate which if not trimmed, would become unsightly. The cost to each homeowner is less than £4 per year. They also provided a copy of an email from the homeowner of 14 June 2024, requiring that the mounds be trimmed.

- f) The homeowner complained that the property factors had ignored, for lengthy periods, queries sent by email. The property factors had also failed to respond to formal complaints sent to both their Facilities Manager and one of the Respondent company's Directors.

The property factors stated that all queries had been responded to, although in many instances they were entirely repetitive of previous request and ignored or sought to argue with the answers previously given.

- g) The homeowner alleged that the property factors had lobbied residents to support them by visiting them at home and also at a meeting, lobbying against a survey put in place by concerned residents following the notification and demand for payment for an undercharge.

This was denied by the property factors. From time to time, the Facilities Manager had sought the opinion of residents as to whether they were satisfied with the manner in which the factoring is conducted and had taken into account their responses in seeking to meet their needs and improve services.

- h) The homeowner complained of unprofessional comments made at an informal meeting in October 2023 and of disparaging comments regarding homeowners who sought to seek transparency from the property factors. The comments were also noted in the Minutes of the meeting.

The property factors' response was that the complaint was lacking in any specification. They provided a copy of an email to the homeowner dated 19 January 2024 in which they stated that they did not accept that anything said at the meeting of 25 October 2023 was insulting or offensive to any person.

- i) The homeowner complained of a failure by the property factors to explain an email sent to a resident and copied to The Village residents threatening to resign.

The property factors did not consider that this amounted to a legitimate complaint. On 29 June 2021, by email to another resident, copied to the property factors, the homeowner had indicated that the suggestion the factor had offered to resign had been based on a "rumour" told to in passing her by another resident. They provided a copy of that email, in which the homeowner said "Obviously it is just a rumour."

- j) The homeowner contended that the property factors charged for responding to queries.

This was denied by the property factors, who referred to their answer in relation to paragraph a) (above).

- k) The homeowner complained that there are no target times relating to routine and emergency repairs and no menu of service.

The response of the property factors was that in their WSS, under the heading “Notes on Services”, the last bullet point explains times within which the factor will endeavour to report different types of repair or other matters. They did not understand the reference to a “menu of services”. The services performed are set out in the Deed of Conditions and in the WSS.

- l) The homeowner complained that there was no review of management fees and no transparency regarding details of recent additional charges for road maintenance, landscaping, maintenance of the Flovac system, and the facilities manager and security staff vehicles.

The property factors responded that there is no requirement that management fees be reviewed independently, and that any homeowner has the right to query them and request information. Costs for road maintenance, landscaping and Flowvac are set out in the annual statement and fully explained, with reference to the invoices. Flowvac costs and repairs were separately explained in the document which accompanied the 2023/2024 budget, and the factors also met with the homeowners to discuss facilities management matters on 25 October 2023 and explained costs by emails of 19 January 2024 and on 8 March 2024.

- m) The homeowner complained that the property factors had refused or delayed in supplying hard copies of documents, such as invoices requested by them and there were failures to respond or delays in responding to requests for financial transparency.

The property factors accepted that the 2011 Act requires them to provide information in a clear and easily accessible way and that, whilst information can be made available in digital format, “in order to meet a range of needs”, a paper copy should be provided in response to any reasonable request by a homeowner. Their view was that the homeowner appeared to be well able to deal with information provided in digital format. In addition, the property factors had offered to provide paper copies by arrangement at their office, which was very close to the homeowner’s house. In several respects request for information had not been reasonable. Copies of multipole documents going back for several years had been request and the cost of making these copies would have been a legitimate management charges to which all owners would have to contribute, which was not reasonable, purely to satisfy requests from the homeowner.

- n) The homeowners stated that they had requested a copy of a 2016 supplement to the Deed of Conditions, which had not been provided, and that the property factors had failed to make a declaration that their Facilities Manager and one of their Directors are residents in the Fidra Development, known as King’s Cairn. The variation benefited that Development.

The property factors responded that the Supplementary Deed of Conditions did not modify the burdens affecting the homeowner. The Supplementary Deed of Conditions had been necessary as more properties than originally envisaged were being built at King's Cairn, so the share borne by each of the houses there was reduced. There had been no change to the share paid by The Village. This was explained to the homeowner in emails of 2 November 2023 and 19 January 2024. The fact that the Facilities Manager and one of the Directors stay in King's Cairn was irrelevant.

- o) The homeowner complained that the property factors had not updated the Property Factors Register. In 2024 it shows 98 properties, which is inaccurate.

The property factors' response was that the Register requires them to list occupied properties, not undeveloped plots. The figure of 98 is correct.

- p) Following a demand for undercharge on 23 June 2023, the homeowner asked the Facilities Manager for transparency regarding bank accounts and invoices relating to The Village. There were prolonged delays before a response was received. The homeowner repeated the allegation that the property factors charged for responding to questions and failed to respond in line with the WSS and the title deeds.

The property factors responded that it has been repeatedly explained to the homeowner that the Facilities Manager operates a separate bank account for that service and any information requested had been provided. There has been no charge for responding to questions. They referred to their response at paragraphs 2) and 12) above.

- q) The homeowner contended that their request for hard copies of bank details and invoices had been ignored and that the property factors did not respond when asked about dispute resolution. The homeowner had been accused of burdening homeowners with charges for answering their questions and requests for disclosure.

The property factors stated that requests had not been ignored and that the homeowner had been invited to make an appointment to view hard copies, if they wish to do so. Dispute resolution is the Complaints Procedure in the Appendix to the WSS. Homeowners throughout the estate have borne a small share of the cost of legal advice required to answer legal points repeatedly made by the homeowner, but found to be without legal merit and it is only right that the other homeowners should know that this forms a small part of their annual charge.

Case Management Discussion

- 7. A Case Management Discussion was held by means of a telephone conference call on the morning of 5 September 2024. The homeowner Mrs Porteous was present. The property factors were represented by Mr Ian Everard and by Mr David Wilson of Ennova Law, Edinburgh.

8. Part of the discussion related to the recharging to owners in the Development of the Countryside Ranger's costs and to fees charged for emptying bins on the John Muir Pathway to Yellowcraig beach. These items of complaint were subsequently withdrawn.
9. The homeowner had complained that the property factors had failed to comply with their request to see copy Invoices and other documents. The property factors repeated that they had repeatedly offered and remained happy to make documents available at their office at an agreed time.
10. In relation to charging for answering queries, the homeowner pointed out that the only charge made for legal fees had been long before they asked any legal questions. She stressed that what she is looking for is transparency on such issues as how long it takes to cut the grass and how the cost is then apportioned. She had contacted the property factors after seeing their written representations, but when she went to their office, she was only shown 9 invoices. Apart from invoices, the homeowner was asking why owners were never notified prior to work being instructed or carried out, so did not know if any of it had been put out to tender and what warranties, if any, had been obtained.
11. Mr Everard told the Tribunal that there is a worklog link to a system called Clockify and that no charges for the golf course are included within the fees, as the Golf Club employ their own staff for that work. Some of the figures requested by the homeowner related to budget items, not to invoices. The property factors had identified 9 requests that were covered by invoices and had provided copies of them.
12. Mr Wilson concluded the Case Management Discussion by saying that if the homeowner wants to check any documents they have not already seen, the property factors will provide them for inspection at their office. He added that the fact that there is shared banking for the whole estate does not mean there is no separate accounting.
13. The Parties told the Tribunal that they were content for the application to be decided on the basis of their written representations and the evidence they had given at the Case Management Discussion and that neither of them wished to have an evidential Hearing.

Findings of Fact

- i. The homeowner is the proprietor of the property, which is a house erected on the portion of Archerfield Estate known as The Village.
- ii. Archerfield Estate comprises a country house hotel, two golf courses and a golf clubhouse, a number of other recreational facilities and two significant areas of modern residential properties, known as The Village and King's Cairn.
- iii. The owners of Archerfield Estate are bound by a Deed of Conditions by Caledonian Heritable Limited registered in the Land Register on 30 August

- 2005 and the owners of each house or house plot later sold off are taken bound to observe the Management Obligations specified in the Deed of Conditions.
- iv. The property factors, in the course of their business, manage the common parts of the Development of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
 - v. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
 - vi. The property factors are registered on The Scottish Property Factor Register.
 - vii. The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
 - viii. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 18 April 2024, under Section 17(1) of the Act.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing. The Parties had also stated that they were content that the application should be decided without a full Hearing.
15. The Tribunal considered carefully all the evidence and documentation before it. There was a large amount of written material to examine. The application is made under a large number of Sections of the 2021 Code of Conduct without, in many instances, specific evidence attributed to them. This made the work of the Tribunal extremely challenging, but the Tribunal has considered everything presented to it, even if not every adminicle of evidence is set out or referred to in this Decision. It is not the function of the Tribunal to “allocate”, at its own instance, factual evidence to specific Sections of the Code of Conduct.
16. The view of the Tribunal was that the accounting systems employed by the property factors are, understandably, complex, because there are a number of discrete groups of owners, namely The Village, King’s Cairn and the Golf Clubhouse and golf course. The common areas are very extensive, but there was no evidence to indicate that the systems used to record time spent and to allocate costs across the relevant groups were not accurate or effective. The Tribunal did not find that any information had been inappropriately shared with the Golf Club. The Golf Club owners bear part of the cost of maintenance of the common parts, so have the same rights to information as owners at The Village and King’s Cairn. The Tribunal did not regard as improper the fact that homeowners could settle their factoring charges by card at the golf Clubhouse. There is a card reader machine there and there was no evidence

to suggest that any such payment was not then properly allocated to the appropriate factoring account.

17. The homeowner had contended in an email to the property factors of 23 October 2023 that a decrease in the percentage of fees due by residents in King's Cairn had meant that those in The Village were burdened with extra facilities fees. This change had been carried out without any consultation or agreement of estate residents and showed an intentional lack of transparency on the part of the property factors. The Tribunal did not accept that this was the case. The Supplementary Deed of Conditions which gave rise to the change did not alter in any way the share that was due by the residents of The Village. There was no change made to the proportion of costs due collectively by the owners of King's Cairn, merely a reduction in the share payable by each owner there, reflecting the fact that the fixed percentage was divisible amongst a larger number of owners, with more houses and plots having been developed than was envisaged when the original Deed of Conditions was drawn up. The change had no impact on any of the owners of properties in The Village.
18. The Tribunal noted that there is a process whereby the property factors prepare a budget for each year and the homeowners are sent a statement showing the budget items alongside the previous year's budgeted and actual costs.
19. The Tribunal was of the view that, in offering to make invoices and other documents available for inspection by the homeowner at their office, which is understood to be located close to the Property, the property factors had acted reasonably.
20. The Tribunal accepted the statement by the property factors that the mounds between some of the houses and the golf course form part of the common areas. The homeowner had stated their view that they belonged to the Golf Club, but this was at odds with the fact that on 14 June 2024, the homeowner asked the property factors and not the Golf Club to deal with weeds on the mounds.
21. The Tribunal then considered the complaints in detail.
22. OSP2 states "You must conduct your business in a way that complies with all relevant legislation". The Tribunal found no evidence to support the complaint under OSP2 and **did not uphold** it.
23. OSP3 states "You must provide information in a clear and accessible way." The Tribunal **did not uphold** the complaint under this Section. The homeowner had concerns that the property factors had failed to provide them with hard copies of Invoices that they had requested, but the Tribunal noted that the property factors had offered to make them available for inspection in their office, which is located close to the homeowner's property and that the homeowner had inspected certain documents there.

24. OSP4 states “You must not provide information that is deliberately or negligently misleading or false.” The Tribunal had no evidence before it to suggest that information provided by the property factors had been misleading or false. Accordingly, the Tribunal **did not uphold** the complaint under OSP4.
25. OSP9 states “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.” The Tribunal was not provided with any evidence in support of this complaint and **did not uphold** it.
26. OSP11 states “You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure”. The Tribunal noted that, in their WSS, the property factors state that they will endeavour to respond to enquiries received in writing within 7 working days of receipt.
27. On 5 August 2023, the homeowner asked for clarification regarding a number of items included in the recent breakdown of actual costs for 2020/2021 and the budgeted costs for 2022/23. The Tribunal was not provided with any evidence of this request having been responded to, but on 23 October 2023, the homeowner asked for a number of items to be added to the Agenda for a meeting of the property factors with residents, due to take place two days later. On 24 October 2023, the homeowner emailed one of the Directors of the property factors, referring to the “Four Corners” and “Praedial” rules in Scotland. On 2 November 2023, the Facilities Manager responded in detail to the various issues raised in the homeowner’s email of 23 October. On 13 November, the homeowner replied to an email she appears to have received from the Director, to say she was not satisfied with the responses she had received, some of which she regarded as intentionally misleading and lacking in clarity and transparency. She stated her intention to take her complaints to the Tribunal. The Tribunal has not seen a copy of the Director’s email.
28. In an email of 20 December 2023, the homeowner thanked the property factors for their email of the same day and referred to her “formal complaint” of 14 November 2023. It is not clear to the Tribunal whether this is in fact a reference to her email of 13 November 2023 to the property factors’ Director. The Tribunal has not seen the email referred to on 20 December 2023 but has assumed that it told the homeowner that their queries would be forwarded after the Festive period, as the homeowner referred to that response in an email of 6 January 2024. In that email, the homeowner said that they believed the property factors had failed to comply with the 2011 Act by not acknowledging receipt of her formal complaint of 14 November 2023. She made further allegations regarding breach of confidentiality, demands for payment that were incorrect, and failure to respond to queries, including requests for invoices and bank statements. This email is headed “Formal Complaint and Request for Further Information.”

29. On 19 January 2024, the property factors responded to the homeowner's email of 6 January. They asserted that all the previous questions had been answered and it was not clear to them that there were any valid outstanding complaints. They denied that they had breached confidentiality or disclosed the terms of private correspondence to any other parties. They also provided a response to the points raised in the homeowner's email of 13 November 2023 and confirmed that copies of any invoices could be shown to a resident who raised concerns about specific cost items. On 25 January 2024, the property factors repeated that the information sought by the homeowner remained available for inspection at a mutually agreeable time and date. The homeowner was asked to confirm the particular information required in order that it might be made available at the time of the meeting.
30. On 6 February 2024, the homeowner advised the property factors that they were in the process of collating documents regarding their request for further information related to the Facilities Management Services bank accounts and the costs of internal and external services provided to the residents of The Village by the property factors.
31. On 11 February 2024, the homeowner emailed a request for disclosure and further information. The covering email is dated 11 February 2024, but the document detailing the request is dated 12 February 2024.
32. On 2 March 2024, the homeowner emailed the property factors again, seeking a response to her email of 6 February.
33. The property factors provided their response on 8 March 2024 to the homeowner's requests of 11/12 February. It was a lengthy and detailed response. After referring to each item in turn, they stated their view that to distribute all requested invoices would be unsustainable and unreasonable, but that a reasonable request for a particular invoice or invoices to be inspected could be arranged at a suitable time. They added that continual demands on time and resources to provide answers and documents, most of which had been provided previously in various forms, was a costly exercise and it was unfair that the vast majority of residents have to contribute to the somewhat unreasonable request of individual owners. They repeated that if the homeowner wished to see any particular invoices, and it was deemed to be a reasonable request, they would arrange for the homeowner to have sight of them.
34. On the same day, the homeowner replied that, as the property factors had made it clear that their "continual and unreasonable demands" were both costly and a burden on the other residents, they had no option but to conclude that the Parties had reached deadlock and that the only way forward was to progress their application to the Tribunal.
35. The Tribunal considered carefully the course of correspondence between the Parties. The WSS does not say that they will respond within 7 days. It states that they will endeavour to do so. It is not clear whether they acknowledged

the homeowner's email of 5 August 2023, but otherwise, in considering the periods between emails and responses, the Tribunal had to have regard to the volume of issues raised and to their complexity. In particular, the homeowner asked questions with a specific legal content regarding the interpretation of the Deed of Conditions and the "Four corners" principle of the law of contract in Scotland. It would not have been reasonable to expect a swift response, as it was almost certain that the property factors would require to obtain legal advice. The property factors replied in detail on 2 November 2023 to the points raised by the homeowner on 24 October 2023. The homeowner's response was that she was not satisfied with the answers and that she intended to apply to the Tribunal. The homeowner's email of 6 January 2024 was responded to on 19 January 2024 and her further requests in an email of 11 February 2024 were answered on 8 March 2024.

36. The view of the Tribunal was that, whilst the property factors had not managed to answer a number of requests within the timescales that, in terms of their WSS they said they would endeavour to meet and that were set out in their Complaints Procedure, the homeowner's queries were often lengthy, complex and raised multiple issues. The delays were' understandably, frustrating for the homeowner, but the Tribunal decided that they were reasonable in all the circumstances and **did not uphold** the complaints under OSP11.
37. OSP12 states "You must not communicate with homeowners in any way that is abusive, intimidating or threatening." The Tribunal did not have before it any evidence of abusive, intimidating or threatening behaviour by the property factors and **did not uphold** the complaint under this Section.
38. Section 1.5(A)(3), under "Authority to Act" states that the WSS must set out "where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners." The Tribunal **did not uphold** the complaint under this Section, The Parties were agreed that there is no level of delegated authority in the WSS.
39. Section 1.5(B)(4) requires that "Services Provided" must include "the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service)". The Tribunal **did not uphold** the complaint under this Section. The WSS sets out in detail the Core Factoring Services to be provided, the response times that they will endeavour to meet for enquiries and telephone calls from homeowners and the process they will follow in relation to reported works and services, both routine and emergency. Property visits are not part of the core service.
40. Section 1.5(D)(13) requires that the WSS states "how homeowners can access information, documents and policies/procedures that they may need to understand the operation of the property factor." The Tribunal **did not**

uphold the complaint under this Section. The property factors provided the homeowner with copies of their WSS and Complaints Procedure. The WSS makes reference to the property factors having procedures for debt recovery and for dealing with insurance claims. It states that the latter procedure is available on request.

41. Section 1.5(D)(14) requires that the WSS sets out “Procedures and timescales for responding to enquiries and communications received from homeowners in writing and by telephone (including details of the property factor’s standard working hours). The Tribunal **did not uphold** the complaint under this Section. The WSS sets out the timescales within which the property factors will endeavour to deal with enquiries and communications.
42. Section 1.5(D)(15) requires that the WSS sets out “the property factor’s complaints handling procedures.” The Tribunal **did not uphold** the complaint under this Section. The homeowner included with the application a copy of the property factors’ Complaints Procedure.
43. Section 1.5(E) requires that the WSS contains a declaration of any financial or other interests which the property factor may have in the common parts of property and land to be managed or maintained” and add “If no interest is declared, then this must be clearly stated”. The Tribunal **did not uphold** the complaint under this Section. The WSS clearly states that the property factors do “not receive any commission, fee, payment or any benefit from any contractor or service supplier appointed by them on behalf of homeowners.” The Tribunal did not consider it necessary or relevant for the property factors to disclose that their Facilities Manager and one of their Directors each own a property at Archerfield. There was, in any event, no evidence provided to indicate that the interests of the homeowner had been compromised by their ownership. The homeowner had referred to the reallocation of the proportions of common repairs costs amongst the owners of the King’s Craig development and the Golf Club and Clubhouse, reflecting the fact that more houses had been built on the King’s Craig development than had been envisaged when the Deed of Conditions was registered, but this had no impact on the proportion of costs payable by the homeowner and the other owners at The Village.
44. Section 1.5(F) requires that the WSS contains information about the 2011 Act and the duties it places on property factors, including the duty to Register, the use of a Property Factor Registered Number and the duty to comply with the Code. The Tribunal **did not uphold** the complaint under this Section. The WSS clearly shows in its heading the Property Factor registration number and in its opening paragraph states that the WSS sets out that it is issued in accordance with the 2011 Act requirements.
45. Section 2.1 states “Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect, It is the homeowners’ responsibility to make sure the common parts of their building are maintained to a good standard, They therefore need to be consulted appropriately in

decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations". The Tribunal **did not uphold** the complaint under this Section. The WSS sets out in considerable detail the Core Factoring Services and provides that "Where a service is to be provided by [them] which will incur additional fees, over and above those included within the Core Factoring Services, [they] will consult homeowners in writing for consent prior to incurring expenditure." No evidence was provided to indicate that the property factors had expanded their service beyond the Core Factoring Service. It was also a matter of agreement that there was no delegated authority limit.

46. Section 2.3 states "The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner." The Tribunal **did not uphold** the complaint under this Section. The WSS states that the property factors have procedures in place for debt recovery and for submitting insurance claims. It provides that details of the latter procedure can be requested from them and, whilst the WSS does not specifically set out how homeowners can access the debt recovery procedure, the Tribunal was satisfied that a request to access the policy would be covered by the general obligation undertaken by the property factors to deal with homeowners' communications and enquiries.
47. Section 2.4 states "Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is a good reason not to." The Tribunal **did not uphold** the complaint under this Section. The property factors have made available at their office on the Development various documents requested by the homeowner and have offered to make available at their office any further invoices or documents that the homeowner wishes to see. Given the proximity of the office to the Property, the view of the Tribunal was that the property factors have complied with Section 2.4.
48. Section 2.6 states "A property factor must have in place a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of conditions or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner". The Tribunal **did not uphold** the complaint under this Section. There is no level of delegated authority, but no evidence was provided that the charges which the property factors sought to recover from owners do not relate to the core service.

49. Section 2.7 states “A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timetable”. Accordingly, the Tribunal **did not uphold** the complaint under this Section. The Tribunal’s reasoning is full set out in paragraphs 26-36 of this Decision.
50. Section 2.8 states “A property factor must take all reasonable steps to ensure that their property factor register number is included in any document sent to a homeowner”. The Tribunal **did not uphold** the complaint under this Section, as no evidence in support of it was provided. The number is clearly stated in the WSS.
51. Section 3.1 states “While transparency is important in the full range of services provided by a property factors, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment request are included in any financial statements/bills.” The Tribunal **did not uphold** the complaint under this Section, which does not impose any specific obligations on property factors.
52. Section 3.2 states the overriding objectives of Section 3 (“Financial Arrangements”). The overriding objectives do not impose any specific compliance obligations on property factors, so the Tribunal **did not uphold** the complaint under this Section.
53. Section 3.11 states “Homeowners’ floating funds must be accounted for separately from the property factor’s own funds, whether through coding arrangements or through one or more separate bank accounts.” The Tribunal **did not uphold** the complaint under this Section. No evidence was provided to suggest that owners’ floats were not accounted for separately through coding arrangements or through separate bank accounts.
54. Section 6.6 states “A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balance with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.” The Tribunal **did not uphold** the complaint under this Section. No evidence was provided to indicate that the property factors do not comply with Section 6.6 of the Code.
55. Section 6.7 states “It is good practice for periodic visits to be undertaken by suitable qualified/trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure a property is maintained

appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works” The Tribunal **did not uphold** the complaint under this Section. It is applicable primarily to property factors who maintain common parts of buildings, rather than amenity grounds. The property factors are, in effect “on site” and there does not appear to be a planned programme of cyclical maintenance, which, again, would be applicable to common parts of buildings, such as tenement blocks.

56. Section 7.1 states “A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code...that the property factors must provide homeowners with a copy of its complaints handling procedure on request.” Section 7.1 goes on to set out various things that must be included in the procedure, namely the series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps, information on how a homeowner can make an application to the Tribunal if their complaint remains unresolved when the process has concluded, how the property factor will manage complaints against contractors or other third parties used by the property factor to deliver services on their behalf and, where the property factor provides access to alternative dispute resolution services, information on this. The Tribunal **did not uphold** the complaint under this Section. The homeowner provided the Tribunal with a copy of the property factors’ Complaints Procedure, which sets out the series of steps to deal with a complaint, including a complaint against a contractor and states that if the complaint is not resolved to a homeowner’s satisfaction, they may apply to the Homeowner Housing Panel, whose address, telephone number and email address are provided. The version of the Complaints Procedure is attached to the WSS (updated April 2015) and the information was, at that time, correct. The Homeowner Housing Panel has, since then, become the Tribunal, but no evidence was provided to indicate that the Complaints Procedure has not been updated to reflect that change.
57. Section 7.3 states “A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles”. The Tribunal **did not uphold** the complaint under this Section. The property factors’ Complaints Procedure clearly states that “We will not charge you any fees for dealing with our in house complaints procedure” and no evidence was provided that they had made any such charge.
58. Section 7.4 states “A property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner’s complaint for a period of at least 3 years from the date of the receipt of the first complaint.” The Tribunal **did not uphold** the complaint under this Section, as no evidence was presented to indicate that the property factors had failed to retain such correspondence. Their Complaints Procedure states that they will retain all correspondence relating to a complaint for a minimum of 3 years.

Property Factor's Duties

59. In addition to their complaints under numerous Sections of the Codes of Conduct, the homeowner contended that there had been a failure to carry out the property factor's duties. No complaints containing specific references to a failure to carry out the property factor's duties were made by the homeowner and the Tribunal, therefore **did not uphold** any such complaints.

60. The Tribunal's Decision was unanimous.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member

30 September 2024
Date