



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(1)(a) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/22/0625 and FTS/HPC/PF/22/1127**

**Re: Property at 46 Brisbane Street, Greenock, Inverclyde, PA16 8NP (“the Property”)**

**Parties:**

**Joanna Chapman and Daniel Vliet, 46 Brisbane Street, Greenock, Inverclyde, PA16 8NP (“the Homeowner”)**

**Morison Walker Property Management Ltd, 23 Patrick Street, Greenock, PA16 8NB (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Carol Jones (Ordinary Member)**

**DECISION**

**The tribunal found that in terms of Application C1 the Factor failed to comply with Section 4.1 of the 2021 Code of Conduct and breached the property factor duties (2), (3), (5), (6), (12), (14) and (17); and in terms of Application C2 the Factor failed to comply with Sections 4.4 and 7.1 of the 2021 Code of Conduct. The tribunal found that it does not require to make a Property Factor Enforcement Order. The decision is unanimous.**

**BACKGROUND**

1. In these applications 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 effective from 1 October 2012 is referred to as "the 2012 Code"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 16 August 2021 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”.

2. The Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Codes arising from that registration.
3. The Homeowner brought two applications against the Property Factor in relation to the same Property. The applications have been conjoined and were heard together as they relate to the same issues.
4. By application C1 dated 19th February 2022 the Homeowner complained to the tribunal that the Property Factor was in breach of the written statement of services sections 1.1 aBc, 1.1 aFp, 1.1 aCe; Sections 2.1, 2.2, 2.5; section 3.3; sections 4.1, 4.3, 4.8; sections 6.1, 6.4, 6.6, 6.8, 6.9; sections 7.1, 7.2, of the 2012 code; and that the Property Factor had also failed to carry out its Property Factors duties. As the Homeowner did not properly notify the Property Factor in relation to 1.1aBc, 1.1aCe, 3.3, 4.3 and 6.6 the tribunal did not consider alleged breaches under these sections.
5. By undated application C2 the Homeowner complained to the tribunal that the Property Factor was in breach of OSP 4, OSP 12, OSP 11; section 2.7; section 3.4; section 4.4; sections 6.4, 6.7, 6.11; section 7.1 of the 2021 code of conduct; and that the Property Factor had also failed to carry out its Property Factor duties.
6. By notice of acceptance dated 30th May 2022 a legal member of the tribunal with delegated powers accepted both applications. The application proceeded to a case management discussion.
7. A case management discussion took place on 11 November 2022. A note of the case management discussion dated 28th November 2022 was issued to parties. A direction was also issued after the case management discussion regulating further procedure.
8. The applications proceeded to a hearing held over the following dates:-

- a. 15th June 2023 (hearing adjourned on that date as the Homeowner had not received all papers).
  - b. 17th August 2023.
  - c. 29th November 2023; and
  - d. 3rd June 2024.
  
9. The Homeowner submitted a number of documents with the application including,
  - a. written statement of services
  - b. title deeds
  - c. subject access request dated 15th February 2022
  - d. e-mail of 7th May 2021 making a formal complaint regarding guttering and roof, copy of end e-mail regarding complaint dated 6 January 2022
  - e. copy notifications from the Land Register dated 25th October 2021
  
10. The Property Factor had submitted a written response to the complaint dated 14th July 2022 with appendices 1 to 13.
  
11. As part of the direction dated 28 November 2022 issued after the case management discussion on 11 November 2022 the Property Factor by way of e-mail dated 13 December 2022 requested further information from the Homeowner.
  
12. On 15th January 2023 the Homeowner provided information in response to the Property Factors e-mail of 13th December 2022
  
13. On 31<sup>st</sup> January 2023 the Property Factor provided further written response in respect of the Homeowner's complaint.
  
14. On 10th February 2023 the tribunal received from the Homeowner a further written response with an inventory of productions in support of their application.
  
15. Copy emails from the Homeowner about the replacement windows (14 and 24 May 2021 and grass-cutting payment were also submitted and allowed to be received.

16. On 16th November 2023 the Homeowner submitted further written representations in support of their application with further productions.
17. On 21st November 2023 the Homeowner submitted further written representations in support of their application.
18. On 20th November 2023 the Homeowner made a further direction request seeking planning certification from the Property Factor in relation to communal windows at the property. The tribunal granted the direction request. The Property Factors submitted information on 18th January 2024 in response to the direction request.
19. The tribunal allowed the Homeowner to submit all said documentation in support of their application.
20. There were several postponements due to the availability of parties during the course of this application. There were a number of directions in response to issues raised by the Homeowner during the course of this application. The Property Factor attended on day two of the hearing (17<sup>th</sup> August 2023) and advised that they would not take any further part in relation to the proceedings as they had confirmed their position in response to the application.
21. In attendance at the hearing on 17 August 2023 were the Homeowner, Joanna Chapman and Daniel Vliet, and the Property Factors, Florence Gallacher and Gordon McPhail. At the end of the hearing on 17 August 2023, the Homeowner advised that they had other evidence that they had not submitted in support of their claim, but they wished to rely on. There was discussion about whether further hearings were required. The Property Factor considered that they had presented their evidence in relation to the complaints. The Homeowner considered that further dates were required to set out her case. The tribunal agreed to further hearing dates.
22. At the subsequent hearing dates, the Homeowner Joanna Chapman and Daniel Vliet attended. The Property Factors did not attend.

23. The Homeowner advised that the Property Factor had ceased being the Property Factor on the 8th of December 2023.

## HEARING

**24. Section 1.1aFp - how to end arrangement, clear information on how to change or terminate the service arrangement including signposting to the applicable legislation. The information should state clearly any cooling off period, period of notice or penalty charges for early termination**

25. Homeowner Reason: No signposting; no information on how to change; no cooling off period; no penalty charge information.

26. The Factor advised that as far as they were concerned there was no penalty charge if owners wished to terminate the contract with them. As for cooling off if owners want to go in less than the three-month period, they will let them go. The Factor advised they would not hold them to the three-month period.

27. *DECISION: The Written statement of services has a section on termination of Factoring services. It confirms that the appointment of the Property Factor may be terminated by the majority of Homeowners giving not less than three months prior notice in writing. Given the terms of the written statement of services, we consider there is sufficient information contained within it as to how owners can end the agreement with the Factor. As it has no information about a cooling-off period or penalty charges, then such provisions do not apply to this written statement of services. Such provisions are only required if they form part of the contract. We do not find that there is a breach under this section of the code.*

**28. Section 2 - communication and consultation**

**29. 2.1 you must not provide information which is misleading or false**

30. Homeowner Reason: The Factors have misled first claiming no repairs had been reported and then in the same conversation stating that they had been asked to take on the replacement windows and had agreed. The Factor falsely claims two owners

are happy to proceed with work for the replacement windows, when in fact they have expressed concern and disagree with the contractor. The Factor claim to have carried out tasks they clearly have not.

31. That the Property Factor misled owners stating that the gardening contract was already in place and would continue but had failed to notify owners of a 50% increase in cost.
32. The Property Factors claimed to have no record of the electrician returning to switch the lights back on despite a job line being produced.
33. The Homeowner said that the new owners were not happy about the replacement windows, and did not want to have the new windows. She referred to an email from one of the owners of 28 April 2021 in support of her position that the other owners were unhappy with the replacement windows. The Homeowner also referred to emails dated the 14th of May 2021 from the other new owner.
34. The Homeowner stated that the Factors claimed to carry out tasks, but they do not do so, she stated that there are lots of examples of this. She referred to papers for the application for planning permission for the new windows. She highlighted that the owners had not been notified about the planning application which had been made. She had made multiple requests to the Factor for the planning notice, and it had never been received. The Property Factor had also advised that they had submitted the application on a certain date but on investigation by the Homeowner, showed this turned out to be incorrect.
35. The Homeowner referred to the error made by the Factor regarding brown bins. The letter referred to the service provided the year before, but the Factor was not in place the year before. They also said they intended to charge VAT, but it was not chargeable, they could charge VAT on fees but not for the bin that was VAT free.
36. The Homeowner advised that they wanted a contract for the gardener in April, but the Property Factor sent a quote in August 2021. The Homeowner said the quote was not sufficient. In one invoice the Factor had claimed the gardener had carried out work to the shrub beds, the Homeowner advised that they had emailed to advise no work had been done on the shrub beds.
37. The Homeowner complained that someone had reported to the Factor, that the Homeowner had their fridge freezer on constantly in the common cellar area. The Factor had contacted them about this. The Homeowner was unhappy as she advised that no one was charged for common electricity and therefore she did not understand what the concern was. The Homeowner considered the Factor was trying to intimidate her telling her to remove items from communal areas. As far as she was concerned there was nothing wrong with putting items in that area. She advised that it was not uncommon for a power company not to issue common charges [HO D1 and D2].

38. The Homeowner referred to the fact that the planning consent was granted for the windows subject to certain conditions. She advised that these conditions had never been satisfied. The Homeowner said that the Property Factor had made mistakes in applying for the planning permission. The Homeowner was concerned because the windows installed were UPVC and not sash windows. She advised that they stay in a conservation area. She considered that the windows should have been sash windows. She had raised this issue with the Factor but there was no response.
39. The Homeowner referred to discussions she had had with the Factor and the window installer. The Factor had accused her of telling the workmen to down tools. She said she had not said this. She had asked the window fitters for a copy of the contract for the windows. The Homeowner had found the planning application to be in a shambles from the beginning.
40. The Homeowner referred to correspondence from the Factory advising that they would be charging for the planning consent on the April invoice, but then this was not done until the next invoice in July, invoice of the 31st of July 2023.
41. The Homeowner stated that she also requested contact details for the replacement window company. She advised that she had been told they were going to be starting the work immediately, but planning permission was only granted with conditions on the 13th of March 2023. She believed that the planning condition had never been discharged and is still outstanding. She has not seen any information to show that the planning condition has been discharged.
42. The Property Factor advised that the proposal to replace the windows was in place before the Factor's appointment. The Factors stated that they were referring to any new repairs when they responded to this question. They did not think that they had misled the owners. There were two new owners who had bought properties after the previous owners had agreed to and paid for the new windows. The new owners had some concerns about the new windows, but those issues were clarified with the Factor. The Factor advised that the windows had been paid for and are now in. The Factor advised they had had to get new estimates for the windows when they were appointed, there was a difference in costs. One of the original companies who had quoted for the work did not provide a further quote. The two new owners paid the difference for the new windows. The Factor advised that all owners had paid for the windows except for the Homeowner who still did not agree with the replacement windows and had not submitted their funding. The Property Factor advised that the previous owners had paid for the windows. They spoke to one of the new owners and in their opinion, she accepted their advice. The Property Factors e-mailed the other new owner and were of the opinion that she was happy with the new windows. The

Factors had submitted copies of letters about the replacement windows including that one owner had raised a concern about installing UPVC and suggesting wooden would be better and asking owners to voice any concerns. It was not the Factor's intention to be misleading.

43. In relation to the allocation of tasks, the Factor claimed to have carried out but did not. The Factor advised that they wrote out to the owners regarding brown bins service; this was a general letter sent to a list of other owners they Factored for. The list was created in 2020. The Factor had taken on 46 Brisbane Street in 2021. Brisbane Street should not have been added to that list and the owners should not have received the letter regarding brown bins. They had apologised to the Homeowner for this error in their e-mail of 1<sup>st</sup> March 2021.
44. In relation to the grass cutters contract the Factor advised that they had sent a copy of the contract to the Homeowner on the 4th of August 2021 and a further copy on the 15th of August 2022; and a copy had also been picked up from their office together with other paperwork. The estimate was dated 22nd May 2021 but covered the period from March - October 2021.
45. The written statement was sent out to owners and wrongly indicated the last valuation for insurance was carried out in 2018 by the previous Factor, the Factor apologised for this. They confirmed the insurance section does not apply to this property.
46. They did not report the Homeowner to Scottish Power for using common area electricity.

47. *DECISION: The tribunal considers that the Factor had made mistakes with some of the information provided to the Homeowner. We consider some of these errors to have been oversights on the part of the Factor and would not have caused any significant prejudice to the owners, for example the issue of the brown bins letter and the insurance section. We also consider that the Factor was taking over the development and may have needed some time to settle in. While mistakes should always be avoided, they are also to some extent to have been careless mistakes rather than any intent to mislead. The Homeowner was conscientious in assessing all documentation and the standard she expected from the Factor had been exacting.*

48. *In relation to the replacement windows which were to be installed. We did not hear from the two other owners regarding whether or not they were happy to proceed with the installation of the new windows. Further the Homeowner was not representing the other owners. We note the correspondence lodged by the Homeowner, however, we also understand that those two owners paid for the additional costs for the windows,*



*so it does appear that any concerns they may have had were addressed or were accepted by them.*

49. *We consider that the Factor's failure to ensure the written statement of service was up to date and the list regarding the brown bins was up to date was unfortunate as it caused some confusion. We consider these actions to be inadvertent and careless with the recent appointment of the Factors to the property rather than an intention by the Factor to be misleading or false. We did not consider the actions of the Factor to cause detriment to the Homeowner.*
50. *We heard and considered a significant amount of information regarding the planning application for the replacement window. We know that planning consent was obtained and further that the Homeowner had raised concerns with the planning department regarding the planning consent process and the accompanying application. We consider this matter is outwith the jurisdiction of this tribunal. We consider that it falls within the remit of the planning department. The planning department do not appear to have taken any action in relation to the replacement windows. We do not consider it would be appropriate for this tribunal to make any finding about misleading or false information on this issue, as it is a planning matter and is not within this tribunal's jurisdiction. For the reasons set out above we do not consider that the Property Factor breached the section of the code in any material way.*

**51.2.2 You must not communicate in any way which is abusive, intimidating, threatening**

52. The Homeowner advised that the Factors had threatened further action against them with regards to the communal cellar area, and then received no legal action after the threat.
53. The Property Factor advised that there had been a backlog of court actions due to COVID, which had caused some delay. They also assumed that the Homeowner would not pay for the replacement windows and the Factor intended to include this in any subsequent court action. The windows then took longer to install than the Factor had thought, due to increased costs and this led to delay in taking further action against the Homeowner.
54. *DECISION the tribunal does not find a breach under this part of the code. Where there has been a failure to make payment for invoices and accounts, the Factor advising the*

*Homeowner that they intend to take legal proceedings is normal practice. We do not consider that such conduct and communication is in any way abusive intimidating or threatening. It puts a party on notice, and it allows that party to take steps to address matters and therefore potentially avoid subsequent court proceedings.*

**55. 2.5 You must respond to enquiries and complaints by letter or email within prompt timescales; your response times should be confirmed in the written statement**

56. Homeowner Reason: timescales not adhered to and not advised when additional time is required. The Factors have regularly and repeatedly failed to respond to correspondence. The Factors repeatedly and regularly failed to respond within the timescales stated in their written statement. Sometimes taking 9 weeks. The Factors also failed to carry out repairs within their timescale of 30 days (105 days) resulting in emergency repairs as a result.
57. The Homeowner spoke in detail and referred to emails and letters about contacts she had had with the Property Factor. She indicated that there were occasions when the Factor had not spoken to her.
58. The Homeowner referred in detail to an email trail regarding cleaning out the back and front gutters and also a leak around the front gutter. She advised that there was a request in March 2021 to repair and clean out the gutters, but it had taken 105 days to complete the works. She noted that this exceeds the time set by the Property Factor to complete this work. She had submitted a number of emails setting out the correspondence about this issue. The Homeowner was concerned that the Factor had manipulated the situation regarding the gutters, as the guttering had been replaced recently, there appeared to have been new mastic applied to the front guttering, but the roofer had claimed that the issue had nothing to do with the guttering but was a loose tile. Also, the roofer had billed for two separate jobs done to the roof on the same date, she said that this was one job and not two.
59. The Homeowner complained about issues with the clearance of gutters. She advised that the contractor Quintin Tannock had not cleared out the gutters. It was claimed that he had cleaned out the full length of the gutters by the Property Factor on the 14th of May 2021. The Homeowner sent the Property Factor a photo of the gutter showing it had not been cleaned. The Homeowner stated that she went back to speak to one of the workers cleaning the gutter and he confirmed that he had not cleaned out the whole of it, only a proportion of it.

60. On 3 May 2021 it had rained heavily, and she could not get a hold of the Property Factor. The Homeowner had agreed to call Quintin Tannock, and he came out and resolved the issue with the rear gutter. The Homeowner did not agree that the Homeowner should have to pay for his attendance as a Property Factor should have had the gutter cleaning work carried out within 30 days which would have avoided this problem and she was also claiming it was a bank holiday and therefore an emergency call out. The Homeowner stated she should not have to pay for this as it should have been cleared much earlier. The Property Factor had breached their contract as they had taken 105 days to get the work carried out, they should have had it done within 30 days as per the written statement of services.
61. The Homeowner advised that she had been trying to get the gutters cleaned on a 2 yearly basis. The Homeowner advised the first time she spoke to the Property Factor after their appointment was on the 11th of March 2021, she was trying to get something established with the Factor that would be meaningful factoring, instead of getting the Property Factor to come and change the light bulbs which they could do themselves. She wanted a Factor who would establish a more comprehensive maintenance system. She wanted to know what the level of specification was for cleaning the gutters. She called to make an appointment to find out what maintenance might be, and they said they would send somebody over.
62. The Homeowner complained about the delay in the gutter being cleaned, the complaint was responded to on the 5th of November 2021. The Homeowner claimed calling out Quintin Tannock was the consequence of the previous roofer not doing his work properly. The Homeowner thought 105 days to carry out the work was too long. She did not agree that she had to pay for that account.
63. The Property Factor had accused the Homeowner of harassing the contractors when they had been out to look at the roof. She said there was no evidence that this was the case.
64. Quintin Tannock was called out on a bank holiday. The Homeowner advised that the Factor had not indicated that their office was closed on the Early May Bank Holiday. The Homeowner referred to the list of emergency numbers listed which excluded the bank holiday on 3 May. She advised that they were required to call an emergency number because the Property Factor was closed on that date.
65. The Homeowner advised the Property Factor had failed to respond to correspondence. There was a failure to send out agreed correspondence. The letter the Factor sent out when appointed referred to the fact that the other owners had provided a letter with a signed form, the Homeowner was not sure what this referred to, she had not seen this letter. She asked the Factor about it. The Property Factor had told the Homeowner

she would let her have a copy of the letter; the Homeowner was concerned about GDPR. She was concerned about the Property Factor's control of data protection. The Factor did not send the letter out though.

66. The Homeowner advised that they had been asking for copy invoices from the Factor and made two further requests in March and April 2022. She did not receive the information until the 26th of April 2022. The Homeowner advised she did not attend the Factor's office because they were taking her to court. The Property Factor had therefore been emailing her.
67. The Homeowner referred to an invoice regarding plastering on the 27th of January 2022, (this was in the first inventory of productions regarding charges), in her opinion such work did not make sense to her as the windows were still to be put in and she considered that windows should be installed first and then plastering work carried out.
68. One of the owners had asked for an estimate for top floor works but was told all had been put on hold. The Property Factor had written out to all owners to advise that the plastering had been put on hold, this was shortly after the Homeowner had written about the plastering.
69. The Homeowner contacted the Factor, about various matters, including asking the Factor if she could put out a letter to other owners regarding small repairs. The Homeowner said that the Factor did not respond to a number of their emails.
70. There was an Electrician job line, someone contacted the Property Factor about the lights being on. The Homeowner emailed and sent photos and came home from work and in the morning the lights were on. The owners reported no lights on in the basement and requested the matter be investigated and repaired. The Homeowner did not believe the electrician had turned the lights on.
71. The Factor advised there was a lot of correspondence requesting the same information that had already been explained to the Homeowner. The Factor stated that there may have been one or two emails that went unanswered or were slightly late in the first six months.
72. However, the Factor said that the Homeowner had paid no management fees since their appointment in February 2021, and yet the Factor had responded to 42 emails and spent a considerable amount of time talking to the Homeowner on the telephone. The Factor advised that in accordance with their terms of service, the late payment section stated that nonpayment of common charges and float may prevent us from delivering some or all of our Factoring services. This was the position that they were in.

73. The Factor advised that their written statement highlighted that they would endeavour to have repairs carried out within 30 days. The Factor stated there was a backlog of work due to COVID however, the gutters would have been cleared earlier if the Homeowner had not frightened the contractor away.
74. The Factor advised that they did not respond to one email on the 5th of November 2021 and one on the 17th of December 2021, the Factor advised they could not trace the 5 November e-mail and the 17th of December e-mail was not responded to. The Homeowner said she sent a few emails on 5th November and the Factor said she thought there were five received. The Factor advised that the invoices are available. The Homeowner attended at the office and reviewed them there. The Property Factor advised that they could not trace the invoice request and that maybe it had been missed. They had received the request again in March and they sent the information out in April.
75. The Factor also stated that they had originally been approached by two owners in October 2020 asking about the Factoring services. Paperwork was passed to all owners of the property and one of the owners confirmed to the Factor that the majority had agreed to their appointment, and he would hand in a letter to the office at that time. The owner also advised that by majority vote they were proceeding to install new Windows. The Factor wrote to all owners on the 6th of January 2021 seeking a deposit and on the 12th of February 2021 wrote again confirming receipt of seven out of eight deposits. The Factors had been informed there was an ongoing problem with the owners of one flat not paying common charges. It was only after they were appointed it became apparent the problems these owners were causing within the tenement. The property had been self-factored for 37 years. However, one of the owners could no longer handle the ongoing emails and letters from one homeowner and had been finding it difficult to get tradesmen to attend due to interference from this owner. The owner had raised two simple procedure claims against this owner as they had paid no common charges for over 4 1/2 years. The remaining seven owners funded the common costs.
76. The Factor stated that since their appointment the Homeowner had paid no management fees to the Factor but were expecting to receive a full service. They had paid no float and only parts of invoices were paid for example 1/8 of replacement tile but nothing towards the labour charge. The Factor supplied copies of the correspondence and invoices in support of their position.

77. *DECISION: We found the Homeowner to have been exacting in their attitude towards the Factors and tradesmen. The level of correspondence sent to the Factor would have taken a lot of time to deal with. We found some of the Homeowner's correspondence towards the Factor has been challenging and rude in tone. We think it would have been difficult to meet the standards expected by the Homeowner. There appears to have been a background of non-payment of common charges and refusal to accept a majority vote for repairs. We do not know the basis for this, but we think that this history set the tone for both parties going forward. We found the Homeowner to have been frustrated with what happened to repairs at the building, she had felt that she had not been listened to and this appears to have been going on for much longer than the Factors had been appointed for. We consider that the job being asked of the Factor in managing the development had been difficult given the background of unhappiness among the owners. We believe that the Homeowner's conduct towards any common repairs has been continually challenging and would be difficult to manage for the Factor and tradesmen. We appreciate that the Homeowner was frustrated by some mistakes that they noted, but against that, their expectation of what the Factor should do in responding to frequent correspondence from them seems unreasonable. There was a history of not paying for management charges, the float and refusing to pay for many invoices. We note the Homeowner's own correspondence shows them to challenge a significant amount of work done and fee charges. We consider that the Homeowner's conduct was unreasonable to an extent. We do not find that the Factor failed to respond to enquiries and complaints by letter or email within prompt timescales in this case given the high volume of detailed correspondence that they had received from the Homeowner.*

78. *More particularly,*

79. *The Homeowner stated that she had not received a number of responses from the Property Factor. The Factor accepted that there were some responses that may have been missed but concluded that the majority of them had been responded to. The Property Factor also advised that they had not received any fees from the Homeowner and they considered that they were able to reduce service in such circumstances due to the non-payment of fees. The evidence does show that many of the emails were responded to. We would find that any failure to respond to the Homeowner would be de minimus given the number of responses that were received. We note that the Property Factor's written statement of services does refer to services not being provided where fees are not paid. As no fees had been paid, we are prepared to accept*

*that the Factor did not breach this aspect of the code given the number of times that they had replied to the Homeowner.*

80. *In relation to the work on the gutters, we would note that the email correspondence submitted by the Homeowner were copies of emails from two other owners regarding the gutters. The first owner's emails show emails between her and the Factor, we note that there was an issue as to whether the front guttering was under guarantee. There is a reference to a roofer coming out to the property. There is also an email from the Property Factor to the Homeowner dated 14 May 2021 explaining what had happened in terms of the instruction of two different roofers to fix issues with the front and back guttering. The Factor advised that the guttering would have all been fixed earlier had the Homeowner not interrogated him, and he refused to do any work at the property. The Tribunal had no evidence to determine the merits of this allegation. It is not clear when the Homeowner herself raised the issue about the gutters. It appears that this issue more directly affected other owners, and it was they who had raised the matter with the Factor. The Homeowner was not acting on behalf of other owners in this application. In relation to a duty owed to the Homeowner about the guttering, we are not able to find there is a breach in terms of the repairs to the guttering as it appears that the original report was made by a different owner. It appears from the correspondence lodged that the emergency callout also came from a different owner.*
81. *We are not prepared to find that there is a breach of this section of the code for the reasons set out.*

## **82. Section 4 – Debt Recovery**

**83. 4.1 You must have a clear written procedure for debt recovery which outlines the series of steps which you will follow unless there is reason not to. Essential that the procedure sets out how you will deal with disputed debts.**

84. Homeowner Reason: failure to advise how disputed debt dealt with. The Homeowner advised that there was a failure to check all invoices in accordance with the terms of the written statement and she suggested there were errors in the invoices issued by the Property Factor. She referred to the Inverclyde charges as being incorrect, the Property Factor indicated it had to do with VAT. The Homeowner said this was not correct and explained that VAT was not billable for council charges.
85. The Homeowner said the annual statement should relate to payments and administrative charges, but the charges were not previously invoiced [she referred to C4-21 and C4-24]. The Homeowner did not pay the late payment charges; she could

have not been aware of them. The Homeowner advised that the late payments were in relation to disputed debt. She advised that she paid her bills, and the charges related to a disputed charge.

86. The Homeowner submitted that there should be a clear procedure in place for advising her of charges. Further, she submitted that the Property Factor does not specify what the charges are for. There's nothing telling the Homeowner how disputed debt is dealt with. The Property Factor referred to the written statement of services. The Homeowner said they addressed matters in terms of the written statement, but the Property Factor did not deal with the issue after that. The Homeowner queried how the Property Factors and the Homeowner could move on with disputed debt as she had challenged it.

87. The Property Factor said there had been an account query, they tried to resolve it and if not resolved it moves to debt recovery. If seven people pay that points to a satisfactory service. The Property Factor accepted that one of their gardening invoices was incorrect and had been missed by them.

88. *DECISION: the Factor attached to their written submission a copy of their debt recovery procedure. Paragraph 3 confirms if the Homeowner is disputing an element of their common charges account, they must indicate specific details of the dispute as soon as possible and pay the remainder of their account. There is no further information set out in the debt recovery procedure for the procedures in place where a debt is disputed by an owner. The Homeowner has made reference to several issues regarding the invoices which she was disputing. She was not able to understand how those disputes would be dealt with by the Factor as there is nothing in the written statement of services or of the debt recovery procedure which explains what would happen. We find therefore that is a breach of this part of the code as the written statement of services provides no explanation about how to deal with disputed debt.*

**89. 4.8 You must not take legal action against a Homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.**

90. Homeowner Reason: reasonable steps to resolve the disputed issues have not been taken; notice of legal action was given on 2 August 2021 and 5 November 2021 but nothing was received from the courts.



91. The Homeowner advised that legal action had been raised against her without taking reasonable steps to resolve the matter and without giving notice of their intention to bring action. She did not consider that reasonable steps had been taken to resolve the disputed issues. She advised that notice of proposed legal action was given on the 2nd of August 2021 and the 5th of November 2021, then she had received nothing from the court. She suspected that the Property Factor did not take reasonable steps after they had sent those letters.
92. Furthermore, the Homeowner submitted that reasonable steps had not been taken to resolve the issue in the first place. She advised that a roofer had come out to the property and replaced a tile when the water had been coming into one of the apartments, at that time the gutter was under guarantee as it was new. She advised that while the roofer was there, she had noticed that there was black mastic on the guttering, and it was fresh and soft (this was April time). She reported this to the Property Factor because there could be no charge for fixing the guttering, as it was under guarantee, and this was a joint in the guttering. She advised that the contractor had replaced the tile and had put mastic on the guttering right beneath the tile that he said he had to replace. The Homeowner told the Property Factor this and she was sent a response back saying that the roofer had taken a preventative measure.
93. The Homeowner considered that the Property Factor sided with the contractors, and had not investigated the Homeowner's concern on this occasion. The problem appeared to be with the gutter, and she did not think the tile was the issue. The Homeowner sent the Property Factor a picture of the new mastic, there was however no further investigation.
94. The Homeowner advised that she had the same issue with the gardener, who was scalping the grass. The Property Factor did not investigate the concerns that she had raised about the gardener. The Property Factor said the gardener had been working for 24 years and nobody had complained previously.
95. The Homeowner referred to the notice of potential liability (NOPL) put on her title deed on around 25 October 2021, she advised that the Property Factor apparently sent her a first notice for not paying their bill, the Homeowner said she never received this.[C3-27] The Property Factor said they sent a second formal reminder notice to the Homeowner. The Homeowner confirmed she had received a second remainder [C3-28]. The Homeowner emailed the Property Factor to say she had never got the first notice [C1-62].
96. She received a response from the Property Factor [C2-61]. She advised that the Property Factor said she gives owners seven days' notice, but on day five of the 7 days, the Property Factor had submitted the NOPL. The Homeowner advised that

therefore the Factor did not give 7 days' notice to the Homeowner. The Homeowner advised that at the first reminder, the debt was only about £150. She considered that the Property Factor was heavy-handed as the price of the NOPL was also £150. The Homeowner advised that these charges arose from the repairs to the window. She said the Factor wanted to raise court action for all matters. She said that she would pay for the tile, but she will not pay for other work on the roof. The Homeowner advised that she would pay what she considered a reasonable charge.

97. The Homeowner said that she made complaints, and they should be investigated before charges were put on her account. The complaints had not been investigated. She referred to correspondence regarding the guttering. She stated that reasonable steps were not taken and there was no proper investigation. She gave another example of no reasonable steps being taken in relation to the grass cutting. She advised that she had complained that the gardener was scalping the lawn and the response she received was that the grass was cut every two weeks.

98. The Property Factor advised that they had checked with the contractors, and they felt they had done all they could to resolve the Homeowner's dispute. They considered all the issues had been answered on more than one occasion, now legal action was going to be taken as the windows had been done but not paid for.

99. *DECISION: the code states that you must not take legal action against a Homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention. We note that the Homeowner does not consider that reasonable steps were taken to resolve the matter but that the Factor felt that they had done all they could. We consider that there is evidence of correspondence about the complaints made to the Factor, and there is also evidence of the Factor responding to those complaints. We do not consider that the Factor ignored the issues raised. What is difficult in this case, is that it appears that the Homeowner considered almost all works done to have been done to an unsatisfactory standard by the Factor and their contractors. The assessment to be undertaken is in effect against every action taken by the Factor. In addition, the Homeowner refused to pay any of the Factor's fees. While the Homeowner did appear to have knowledge and an opinion about aspects of repair works and appears to have been frustrated at repair decisions made, she seems to have been in the minority of the owners, who appear to have accepted the work done by the Factors and contractors. We find that reasonable steps were taken by the Factor to try and deal with the matters raised by the Homeowner. The Homeowner said that two letters had been sent, and although she said that she had not received the first*

*letter, she said that she had received the second one. So had received at least one of the letters. We also understood that she had received an initial request to pay for the float in around February 2021 which she had not paid. We also understand that she had received the first quarter invoice on 24 May 2021 and we note the Homeowner replied to it on 24 June 2021. We also understand that she had requested shortly after the Factors were appointed a copy of the debt recovery procedure. She was, therefore, aware that there were sums that they were due to pay, and that administration charges would be added to her account if she did not pay the items on the invoice which she accepted or which she was not entitled to dispute. Accordingly, we do not find that there has been a breach under this section of the code we consider that reasonable steps were taken to try and resolve the matter, and notice was given to the Homeowner about legal action. We consider that attaching a notice of potential liability was reasonable as the debt recovery procedure states that "when an owner is in debt, we may be required to record a notice of potential liability for costs ... ." The procedure for attaching the notice of potential liability sits separately to the procedures for raising court action. As of the date when the notice was put on the title deed, the owner was in debt with matters which she was not entitled to dispute for example the float. It appears to the Tribunal that Factor did not fail to follow their procedure in this respect.*

**100. Section 6 - carrying out repairs and maintenance**

**101. 6.1 You must have in place procedures to allow the Homeowner to notify you of matters requiring repair, maintenance or attention. Requirement to inform of progress, including estimated timescales for completion, unless you have agreed with the Homeowner a cost threshold below which job-specific progress reports are not required.**

102. Homeowner Reason: not updating Homeowner of the progress of work; replacement windows; moss clear, guttering, garden quotes, quotes for lighting in the basement, leaking guttering, fencing repairs.

103. The Factor failed to accept the Homeowner's reporting of leaking guttering to be true and had not investigated fully the matter.

104. The Homeowner suggested that the Property Factor had not kept them up to date with the progress of repairs. By way of example, she noted that the moss clear quote had been £5000 but it had taken time to provide the quote. There was also a quote for lighting. She referred to the moss clear emails and lighting emails. She

submitted that one of the other neighbours had made a request to the Factor to have the moss cleared as it was rolling off the roof and into the gutters. She advised that the moss clear was requested in March 2021, but no response until August 2021.

105. The lighting in the basement was on a timer and there was different lighting upstairs, a quote for work was sought. The quote was received in January 2022 seven months later. The Homeowner gave the lighting example [C2-61]

106. The Homeowner asked the Property Factor to get garden quotes as the Homeowner was not happy with the gardener. The Property Factor did nothing about this.

107. The Property Factor in their written submission advised that there were letters regarding the replacement windows, etc., showing the owners had been updated on works. There were also other letters showing quotes obtained.

108. *DECISION: The complaint is that that Factors did not update on the progress of works.*

109. *The papers show that works were carried out on the instruction of the Factor, for example, the gutter works (not emergency one). It is noted that the evidence refers to other owners raising this issue. Where the matter relates to another owner, we are not in a position to determine that matter. The moss clear and guttering repairs were requested by different owners, and we will not determine those matters.*

110. *The Factor has provided letters about the replacement windows and also about other proposed works, setting out quotes and asking for majority consent before the works commenced. It appears that a number of these proposed works did not progress past the quotes being provided as there was not agreement among the owners that the work be commenced. The written statement of services details the core services provided. It provided details about quotes being provided. It states that routine repairs will be instructed within 48 hours of being notified, and the Factor will endeavour to have the work commenced within 30 days from first notified. There are no timescales about how long it would take to provide a quote. We do not find any breach in relation to the replacement windows as there is evidence of further quotes being sought. We found that there was a quote regarding the lighting in the basement. We have seen no evidence of the quote for fence repairs. We were not clear who asked for a fence repair to be carried out. We note the complaint about the gardener. We note that the Factor had indicated that they considered that the gardener was carrying out a satisfactory service.*

111. *In the event that the Homeowner asked for an alternative gardener to be appointed, we consider that the Factor could have consulted with other owners about this matter. It does not appear that they did so. This part of the Code relates to having a procedure in place and as noted we do find that the factor had a procedure in place and we do not therefore find that there has been a breach of the Code as there were procedures in place. We consider the Factor's actions under its duties later on in this decision.*

**112. 6.4 If the core service agreed with the Homeowner includes periodic property inspection and or a planned programme of cyclical maintenance, then you must prepare a programme of works.**

113. Homeowner Reason: no property inspection has been carried out to date. The Factors failed to agree to a meeting with the Homeowner. It was rejected, and another response was ignored, no response.

114. The Homeowner said an inspection should have been carried out soon after the Factors took on Factoring duties and then further inspections every 18 months as per the written statement. No inspection has been carried out to date despite numerous requests.

115. The Homeowner submitted that a property inspection was carried out in May 2022, however the Property Factor should have inspected the development when it had been appointed. The Homeowner asked the Property Factor numerous times to do the inspection before one was done. The Homeowner submitted that when the inspection was carried out half of the information was missing.

116. The Property Factor took over the role in February 2021. The inspection was not done until May 2022.

117. The Homeowner suggested that in terms of setting up a meeting, the Property Factor failed to give a time and date for a meeting she asked for a meeting and no meeting took place. She had asked the Property Factor for their availability.

118. The Property Factor wrote to the Homeowner on 2 August 2021 advising that the condition report would be carried out within 18 months.

119. *DECISION: Section 6.4 explains that if the core service agreed with the Homeowner includes periodic property inspection and or a planned programme of cyclical maintenance, then you must prepare a programme of works. There is no reference under this section to having a meeting. We do not make a finding on that*

*point. In terms of the written statement of services, it stated that the Factors would carry out a visual inspection report and provide a written report thereon. It states that they would endeavour to provide a report approximately every 18 months. While we may agree with the Homeowner that you would expect an early report when a Factor is appointed, we consider that the terms of the written statement gives the Factor scope as to when the first report is completed. We do not consider that there was a breach as it was completed within 18 months of the appointment.*

120. *We also note that the inspection was carried out after the application was made to the tribunal and the Factor was not notified in accordance with the Act and we are not therefore in a position to consider any issues arising from the inspection report.*

**121. 6.8 You must disclose to the Homeowner in writing any financial or other interests that you have with any contractors appointed.**

122. Homeowner Reason: Calkton Limited also of 23 Patrick Street, Greenock. Buying and Selling Real Estate. Other letting and operating of own or leased real estate. Nothing declared.

123. The Homeowner advised that the Property Factor was using tradesmen for her work as a Factor, she considered that the Factor could use the same tradesmen for the other business interests she had. She was also concerned because the Factors' office address was the same address for another business she had. She considered that there was a conflict of interest and a potential abuse of her position.

124. The Factor advised that the company referred to by the Homeowner, Calkton Limited is a totally different company.

125. *DECISION: We do not uphold this part of the complaint. There is no evidence before the tribunal that the Factor had a conflict of interest in her dealings with her professional business interests. We also do not consider that it is unusual for more than one business to operate from the same premises, we do not consider, without evidence that there is an abuse of process by the Factor in this regard.*

**126. 6.9 You must pursue the contractor or supplier to remedy any defects in any inadequate work or service.**

127. Homeowner Reason: gardener, grass scalped; RF Watters - leaking gutter. The Factors have also failed to look into the standard of work in the property, which was carried out by their contractors, that she had reported as below standard.

128. The Homeowner said that the Property Factor did not pursue the contractor or supplier to remedy any defects in any inadequate work or service. The Homeowner referred in support of this position to the gardener scalping the grass and the Property Factor not pursuing her complaint. Further, the Property Factor did not pursue the issue of the leaking gutter. The Property Factor failed to look into the standard of work at the property.

129. The Property Factor advised that they did raise the Homeowner's concerns with the gardener. The gardener advised the Factor that the Homeowner had already approached him on several occasions, and he had explained to her his reason for cutting the grass on a fortnightly basis. The Factor advised that the other owners within the development appeared to be happy with the gardener and the only complaint they had received was from the Homeowner. They alleged that the Homeowner continued to harass the gardeners at the property. They advised they had sent copies of all contractor's invoices to the Homeowner.

130. They advised that the gutters were replaced prior to their appointment, although they understood that the Homeowner had not paid their share for the replacement gutters that had been funded by other owners. They advised that they had raised the Homeowner's concerns about the gutters with RF Watters. They had submitted his written response dated 24th June 2021. It stated that the roofer spoke to the Homeowner on the 6th of April 2021 advising her there was no issue with the gutter and the issue was a broken roof tile, the tile was photographed and shown to the Homeowner as well as being submitted with their invoice. Further, the photograph the Homeowner submitted related to a visit by the roofer on the 30th of September 2020 when he sealed the gutter above the front door at no charge.

131. *DECISION: We consider that the Property Factor has submitted evidence and explained what they have done to pursue complaints of inadequate work or service. We do not find a breach under this section of the code.*

**132. Section 7 - complaints and resolution**

**133. 7.1 You must have a clear written complaints resolution procedure.**

134. Homeowner Reason: the Factor has failed to follow the dispute procedure and has failed to try and find an amicable resolution to the disputed invoices. The Factor has failed to follow their complaints procedure. Do not state how complaints against contractors will be handled. Timescales state 10 working days, 3 working days, 14 working days, 3 days, 14 days, timescales are not followed, procedure is not followed.

135. The Homeowner said that the written complaints resolution procedure is not clear. The Homeowner advised that they were not told the name of the property inspector. The Homeowner advised that they did not follow the complaints resolution procedure and further the Property Factor did not provide the housing and property chamber details.

136. *DECISION: the duty under this part of the code is to have a clear written complaints resolution procedure. The written statement for services contains a section on formal complaints handling procedure. It advises that the formal complaint should be made in writing by letter or e-mail. It asks that the complainer provides as much detail as possible giving rise to the dissatisfaction and what may resolve the matter. It aims to resolve within 10 working days of receipt and if more time is required the Factor will advise the complainer. If still dissatisfied, then a review can be requested. The Factor will endeavour to respond within 14 working days. If the owner is still dissatisfied then the complaint and response will be reviewed by a director, the director will provide a final written decision within 14 days. Finally, the written statement of services confirms that if the written decision does not resolve the complaint, then the complainer can apply to the first-tier tribunal housing and property chamber and the contact details are provided. We consider the terms of the complaints procedure to be satisfactory. We do not consider that there is a breach under this section of the code.*

**137. 7.2 The final decision should be confirmed with senior management before notifying the Homeowner, and the letter should provide details of how the Homeowner may apply to the Housing and Property Chamber.**

138. Homeowner Reason: the final email bringing the complaint procedure to an end did not contain details of how the Homeowner may apply to the First Tier. "I will not enter into any more correspondence in this connection." Florence Gallagher Director. The Factor also advised the Homeowner that their complaints would be addressed at a directors meeting on 27 January 2022 and a response sent to them.



No response was received. The Homeowner submitted that the final complaint letter did not refer to the Housing and Property Chamber.

139. *DECISION: The Homeowner refers to an email from the Property Factor of 6 January 2022 in response to a number of complaints raised by the Homeowner, it confirms that the Factor will not enter into any further correspondence about the matters in that email. On 13 January 2022, the Homeowner wrote to the Factor advising that they took that email as the Factor's final written decision and therefore the email should have referred to the housing and property tribunal. The Factor emailed the Homeowner on 17 January 2022 attaching the complaints procedure and advising if the Homeowner did not consider the complaint resolved, she should provide details of her formal complaint, and it would be addressed at the directors meeting on 27 January 2021 [sic] and a response would be sent out. It appears to us that the email of 6 January 2022 was not the final stage in the complaints process. The Factor confirms this in her email of 17 January 2022, and she also attached a copy of the procedure. Accordingly, the complaints procedure had not been exhausted, and therefore we do not find that there is a breach of this section of the code.*

**140. Breach of the Property Factors' duties.**

141. In setting out their complaint they narrated again sections of each Code which they considered had been breached but thereafter provided details for believing that there had been a breach of the Factor's duties. In terms of the breach of the Property Factor's duties as they relate to the 2012 Code they allege:-

142. **(1) The Factors have failed to respond to correspondence within the timescales in their written statement (9 weeks etc.)** The Homeowner said that this is already covered by evidence of delay.

143. *We do not find a breach under this duty for the reasons provided in section 2.5 above.*

144. **(2) The Factors have failed to look into work properly which was carried out by their contractors that the Homeowner has reported as below standard.**

Refers to grass cutting and leaking gutter.

145. *We consider that the Factor did look into complaints of poor standards of workmanship and we do not find that there is a breach in this regard. However, in the event that the Homeowner asked for an alternative gardener to be appointed, we consider that the Factor could have consulted with other owners about this matter. The Factor should have confirmed to the Homeowner that they would not undertake a quote for an alternative gardener. We find that there is a breach of their duties in relation to failing to provide notice about the request to have an alternative gardener.*

146. **(3) The Factors have failed to follow their complaint procedure.** The Homeowner said that there was no rhyme or reason to it was just dismissed without an investigation.

147. *We find a partial breach under this duty. We would also note that there were responses to complaints, and the Factor had gone to tradesmen to raise issues with them and those replies were advised to the Homeowner. We take the view that the Factor was following their own procedure to an extent. The Homeowner also advised us that she received an email from the Factor advising that "I will not enter into any more correspondence in this connection." Florence Gallagher Director. The Factor also advised the Homeowner that their complaints would be addressed at a director's meeting on 27 January 2022 and a response would be sent to them. No response was received. Given this, the Tribunal finds that the Factor did not fully follow its own complaints procedure and we find that there is a breach of this duty.*

148. **(4) The Factors have failed to follow the dispute procedure and have failed to try to find an amicable resolution to the disputed invoices**

149. *We do not find a breach under this duty. We would note that there were responses to complaints, and the Factor had gone to tradesmen to raise issues with them and those replies were advised to the Homeowner. We take the view the Factor was following their procedure. We also note that other owners had paid the invoices. Where matters cannot be resolved between an owner and a Factor, then the Factor would be entitled to raise legal proceedings and the owner could defend the action.*

*There will be situations where an amicable resolution cannot be found and in those cases recourse to court to determine the matter would be required.*

150. **(5) The Factors have failed to check all invoices as per their written statement.** The invoices are missing for example the late charges were missing from the invoices and also the bin charge was incorrect.

151. *We find a breach under this duty, there were mistakes in some of the invoices, for example, the bin charges and late payment charges were not included in the invoices.*

152. **(6) The Factors claimed to have carried out tasks they clearly have not.** They claimed to have carried out tasks regarding bins and insurance.

153. *We find a breach under this duty, there were mistakes in some of the information supplied. We consider that these issues occurred newly after the Factor was appointed. They were acknowledged by the Factor.*

154. **(7) The Factors have failed to send out agreed correspondence and claim that they did not agree to, which is untrue.** This is the signed letter from the other owners and the Property Factor would not let the Homeowner have a copy of it, also the windows correspondence.

155. *The Factor states that they did not agree to send out the signed letter from other owners. We are prepared to accept that the Factor would not agree to send this letter out and therefore there is no breach of this duty. The Homeowner states that they did not get planning correspondence. The Factor did not attend subsequent hearing dates. As noted earlier we consider that these matters are planning issues, and any complaint should be taken up with the planning department. We are not prepared to determine this question, therefore.*

156. **(8) The Factors have misled owners that a contractor already in place would simply continue and failed to notify owners of a 50% price increase.**

Contract for the gardener, the Factor said he would continue and if there was to be an increase this should have been advised.

157. *We do not agree that this is a breach the Factor's duty, if a contractor changes his prices the Factor cannot control that. They should have ensured that parties were advised if required to do so in terms of the written statement of services. The statement of services does not oblige the Factor to notify the owner where the cost of any one item is less than £400. The cost of the gardener increased from £40 to £60 per month. It does not appear that this breached the written statement of services. The Homeowner could raise it when receiving and considering the invoices from the Factor.*

158. **(9) Homeowner meeting.** The Factors have failed to agree to a meeting with the Homeowner, it was rejected, another request was ignored, no response.

159. *The written statement of services states that Factors will attend a meeting of the Homeowner as and when required. Further, they will meet Homeowners and any third parties as necessary. There is evidence that the Homeowner had a lot of email and telephone contact with the Factors. There is also correspondence that the Factor was not prepared to meet early on due to COVID. It does not appear that the Homeowner had set up a Homeowner's meeting. Relations between the Homeowner and the Factor became strained as time progressed. The Factor states that the failure to pay their fee may reduce the service provided. Since the Homeowner was not prepared to pay the Factor's fees; we are not prepared to find the Factor in breach of this issue as the Factor may take the view that this was a service that they were reducing due to non-payment of their fees.*

160. **(10) The Factors have misled the Homeowner, first claiming no repairs had been reported and then in the same conversation stating that they had been asked to take on the windows and had agreed.** Windows are new jobs, the Homeowner said she did not say repairs she said "jobs". She asked if there had been any jobs reported.

161. *The Homeowner was aware of the agreement about the replacement windows before the Factor was appointed. The tribunal considered that whatever word was used, there was no breach under this provision, as the windows were matters*

*discussed and agreed to by the majority of owners before the Factor was appointed and the Homeowner knew this.*

162. **(11) The Factors have failed to carry out repairs in their timescales of 30 days (actual 105 days) to** clear the gutter. Waiting from 8 March 2021 until 2 August 2021 for a quote (147 days) and she still needed a second quote for moss clear on the roof reported by another owner.

163. *We have set out above that as these matters were reported by other owners, we are not able to determine them in terms of this application.*

164. **(12) The Homeowner requested invoices but only some were received.** They had to e-mail the Factor and the one that was missing was the emergency one.

165. *The Factor stated that copies of all invoices were sent out, except for the Q Tannock Emergency Repair which was omitted but sent out when highlighted to them. They also advised that the invoices for October 2021 account were not sent out until 27 April 2022. Given what is admitted by the Factor we are prepared to find that there is a breach of this duty.*

166. **(13) The Factors have failed to accept the reporting of leaking guttering to be true.**

167. *We are not prepared to find a breach of this duty. The Homeowner raised concern that the guttering had not been fixed properly. The Factor investigated this and the tradesmen's responded to this matter. We consider the action of the Factors reasonable in this regard.*

168. **(14) The Factors threatened legal action in relation to the communal cellar area.** The storing of bikes and use of electricity and they told us we had to have it removed. The Homeowner said that the Factor had nothing to do with the electricity and it was not part of their services. [D1 and D2]

169. *We note that the Factor did write to the Homeowner about these matters. It is not clear that this is a matter that falls within the Factor's duties. We wonder if it could have been better dealt with by the Factor. We find that there is a breach of this duty due to the fact that it is not clear the basis upon which the Factor was acting in this matter.*
170. **(15) The Factors claimed that they had no record of the electrician returning to switch lights on but a line was added.**
171. *We do not find that there was a breach of the Factor's duty. The Factor advised that they had received a call on 27 April 2021 from an owner to investigate lights in the building; Electra attended on 6 May, the Homeowner emailed the Factor on 7 May to confirm there were no lights in the basement, an order was raised to deal with that matter. The Factor emailed the Homeowner on 10 May 2021 explaining the findings that Electra didn't put the lights back on 24 April 2021 and therefore there was no charge.*
172. **(16) On 7 May 2021, the Homeowner made an official complaint regarding the time it was taking to clean the rear gutter. The job was reported on 8 March 2021 together with the request to clean moss off the roof. The contract states that work less than £400 will commence in 30 days from the date of notification. The Guttering was cleaned 21 June 2021, 105 days later.**
173. *We do not find a breach under this duty as the matter had been originally raised by another owner.*
174. **(17) On 3 May 2021, water was coming into the top flat because the guttering was blocked. The Factor was contacted but there was no answer at their office. Opening hours are 9-1 and 2-5. On 6 January 2021 Homeowner received notice of the appointment of Property Factor in their introduction letter, with various items for information including opening hours, there was nothing that stated that they would be closed on 3 May 2021. RF Watters were contacted again but no one answered. Quinton Tannock answered. Emergency arrangements were made for him to attend resulting in a bill for £220.00. Had the**

**routine maintenance of the gutter been carried out as per the written statement this bill would have been avoided. The Homeowner holds the Factor responsible for the bill.** Opening hours were 9-5pm, the Factor should have been open but was not. The opening days' list showed this date to be one when the Factor was open.

175. *We have already indicated that the complaint about the rear guttering was raised by other owners, and we do not consider that we can consider this question. In respect that this issue relates to a matter that has an impact on the Homeowner as it relates to the payment of the emergency bill, the Homeowner considers that she should not have to pay an emergency fee as the work should have been completed earlier.*

176. *The Factor does not explain why it took so long to have the guttering cleaned when the issue had been raised in March 2021. We consider that there is merit in the Homeowner's complaint that she should not have to pay for the emergency call out charge. Although we consider that the Homeowner would have a duty to pay for the remainder of the costs incurred in that matter. We find that there is a breach of this aspect of the complaint.*

**177. The Homeowner complained to the Tribunal that the Factor was in breach of the Property Factors Code of Conduct 2021**

**178. Overarching Standards**

**179. OSP4 you must not provide information that is deliberately or negligently misleading or false.**

180. Homeowner Reason: the Factors falsely claim that they would not use any contractors that take advantage of owners.

181. The Homeowner advises this is not the case with the grass cutter. The Homeowner has repeatedly advised that the grass cutter is scalping most of the lawn and leaving other parts untouched. When the Factor was appointed, she said she would continue with the gardener, and then she said she was not aware of his increase of £40 to £60. The Homeowner submitted that the grass cutter was taking advantage of the fact that a Property Factor had been appointed.

182. She also referred to the issues with Quintin Tannock. She submitted that the roofer had split his bill into two parts for work done on 30 March 2023, each less than £400 but together more than £400. He had worked in the morning and charged one invoice and then charged for the second invoice in the afternoon. She considered that in fact this work should have been put out to tender in accordance with the written statement of services. The Homeowner had asked for tradesman's invoices, and she was seeking [C4-34]. When the Homeowner asked the Property Factor about it her reply was there had been two phone calls and two different job numbers and both had been on the roof and therefore, they were put through separately. The Homeowner does not accept that explanation.

183. Adding VAT to the bins invoice.

184. The Factor accuses the Homeowner of continually putting the communal lights on permanently. She advised she did not do this.

185. The Homeowner says the Factor says that the Homeowner has not complained about workmanship, the Homeowner says this was not true she had complained about the standard of workmanship with the gardener. [C2-61] The Factor said they would not use contractors who take advantage of owners. The Factors also said she had not specified what work was unsatisfactory work carried out by the contractors. Also, the Homeowner claimed that the Property Factor had lied at the hearing about the electrician. The electrician had put a sensor in when the Homeowner did not need it. The Homeowner did not use a sensor and did not want to pay for a sensor that was not required. The Homeowner stated that she was not refusing to pay for the lighting, but she was refusing to pay for the sensor.

186. *DECISION: We do not find that there is a breach under this part of the code of conduct in relation to the gardener putting his prices up. In relation to the standard of his work. The Factor investigated this and also noted that other owners were satisfied with the service as they paid the bill. We do not know when the Factor became aware that the gardener had put his price up, however, we do not see that the Factor could be said to have provided information deliberately misleading or false or negligent.*

187. *We do not consider the complaint about Quintin Tannock as this event occurred after the applications had been made to the tribunal and were not notified to the Factor.*

188. *The Factor accepted that they made a mistake about the VAT.*

189. *We also agree that the Homeowner had told the Factor that in her opinion the gardening was not satisfactory. However, we note the statement by the Factor on this*



*point was in response to the non-payment of invoices and in the context of a long email responding to various different matters. The Factor had investigated the gardening and come to a conclusion on the matter. We do not think that the statement by the Factor is entirely correct but we do not consider that it was deliberately or negligently misleading or false.*

190. *In relation to the comments by the electrician, this was a statement made by the Factor based on advice from the electrician and therefore we do not find that there is a breach under this part of the code.*

191. *We are prepared to accept that there are some things said by the Factor that were wrong, however, we find that they would fall into a category of careless mistakes rather than breaches of the terms of OSP4.*

**192. OSP11 you must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedures.**

193. Homeowner Reason: timescales not adhered to; not advised when additional time is required; the Factors have repeatedly failed to respond to correspondence within the timescales stated in the written statement; the Factor refused to answer the Homeowner's emails until their account is paid. This carried on and then they refused to correspond with the Homeowner until the Homeowner paid her account. There was nothing in the written statement of services that said they were entitled to refuse to deal with the owner while she was disputing the account.

194. *DECISION: we found that the Factor had a clear written complaints resolution procedure. It sets out timescales. We note that the Homeowner states that they refused to correspond with her until she paid her account. We note that the Homeowner has paid no fee to the Factor for any of the Factor's services The Factor referred to their written statement of services which advises that failure to pay fees may result in reduction of service. We consider that that gave them the right to respond outwith a timescale or not at all in some of the circumstances of this case. That said, we find that the Factor had spent a lot of time dealing with correspondence from the Homeowner and they had not therefore failed to respond to enquiries and complaints from the Homeowner. We do not find there to be a breach of this part of the code.*

**195. OSP12 you must not communicate with the Homeowner in any way that is abusive, intimidating or threatening, bullying and trying to intimidate her.**

196. Homeowner Reason: the Factor sent emails singling the Homeowner out; they have sent emails that the Homeowner finds offensive. The Homeowner submitted that the Property Factor had been trying to intimidate her. The Property Factor told the Homeowner to remove her plant pots in the garden, her garden furniture, and bikes from the communal cellar. The Homeowner said there was nothing in the title deeds which said she couldn't keep plants or furniture in the garden area. [D1, D2, C2-51]

197. *DECISION: We do not uphold this aspect of the Homeowner's complaint we did not see evidence of the Factor communicating with the Homeowner in any way that is abusive, intimidating or threatening, bullying and trying to intimidate her.*

**198. Section 2 communication and consultation**

**199. Section 2.7 a Factor should respond to enquiries and complaints received orally and or in writing within the timescales in the written statement.**

200. Homeowner Reason: enquiries and complaints are not responded to within the timescales and are regularly not responded to at all. The Homeowner submitted that the Factor had not responded within the time scales [C2-90].

201. *DECISION: We note that the Homeowner has paid no fee to the Factor for any of those services The Factor referred to their written statement of services which advises that failure to pay fees may result in a reduction of service. We consider that that gave them the right to respond outwith the times scale or not at all in some of the circumstances of this case. That said, we find that the Factor had spent a lot of time dealing with correspondence from the Homeowner and they had not therefore failed to respond to enquiries and complaints from the Homeowner. We do not find there to be a breach of this part of the code.*

**202. Section 3 financial obligations**

**203. Section 3.4 A Factor must provide to a Homeowner, in writing at least once a year a detailed financial statement showing a breakdown of charges made and a detailed description of the activities.**

204. Homeowner Reason: the sending of contractor's invoices is very hit-and-miss. Sometimes she got them all, and sometimes she got some of them and sometimes got none.

205. [C4-24 and C4-25.] This is the annual statement. The Homeowner did not consider this to be sufficient. The Homeowner did not consider that she had received all the contractors invoices. The Homeowner submitted that she had received around 1/4 of the invoices, and she could not tie them all in they should match up however the late fees do not tie in with a quarter of the invoices.

206. *DECISION: This section states a Factor must provide to a Homeowner, in writing at least once a year a detailed financial statement showing a breakdown of charges made and a detailed description of the activities. The Homeowner had lodged a copy of the annual statement, and we therefore find that the Factor had complied with this section of the code. This section does not require the Factor to provide contractors invoices. However, we note that the written statement allows for owners to attend at the Factor's office and view all invoices and they could therefore be viewed.*

**207. Section 4 debt recovery**

**208. Section 4.4 A Factor must have a clear written procedure for debt recovery which outlines a series of steps which the Factor will follow. The procedure must be consistently and reasonably applied. The procedure must set out how the Factor will deal with disputed debts and how, and at what stage, debts will be charged to other Homeowners in the group of they are jointly liable for such costs.**

209. Homeowner Reason: not consistent and is not reasonably applied (title deed attachment for £152) there is no transparency (charges hidden in the invoice and not listed) Unreasonable and excessive charges related to the disputed bill. £152 is excessive and premature. The Factor has failed to be reasonable and has been

heavy-handed with the debt recovery process they have used on disputed invoices. This process is not in their written statement. Reasonable steps to resolve the disputed issues have not been taken and notice of legal action was given on 5 November 2021 but nothing received from the courts to date. NOPL was taken out prematurely on day 5 of 7. The Homeowner contacted the Factor about specific details of the dispute as soon as possible. On the 3rd of December 2021, she received the second reminder about non-paid debts. The first letter was for £167, (C3-27) and the second letter was for £493 (C3-28). The Written statement of services does not explain how the Factor deals with disputed debts. The Homeowner considered the charges were hidden in the invoices or not transparent. [C4-15]. This was an August to October bill, and it was received in December.

210. *DECISION: the written statement of services deals with late payment. It confirms that the Factor's debt recovery procedure is attached and will be issued with the Factor's second remainder notice. The Factor sent a second reminder notice to the Homeowners by letter dated 3rd December 2021. The letter states in bold that they're attaching a copy of their debt recovery procedure and asks the Homeowner to pay particular attention to the administrative fees involved.*
211. *The debt recovery procedure refers to the administration fees. Further, it also states that when an owner is in debt, we may require to record a notice of potential liability for costs against the title of the defaulter's property. It highlights that there are financial implications involved in this legal process which is currently £80 and an administration fee currently £60 plus VAT and that this is charged to the defaulter account where it is considered necessary to take this action.*
212. *The Factors were appointed in February 2021. They issued 3 monthly invoices. The payment terms on the invoice refer to administration charges.*
213. *By e-mail sent from the Homeowner on the 1st of July 2021 to the Factor she confirmed that she'd looked over an invoice dated the 24th of May 2021, and she highlighted the invoices she wishes to dispute. She concludes by confirming that she's struggling to find anything on this bill that she's happy to pay for but that she is prepared to pay a total of £2.26 for a tile plus VAT. The Homeowner also confirms that she will not be paying the Factor's float. She states I will pay the invoices when they come in. As I have advised you previously, I am with you under protest see the previous e-mail.*
214. *Section 4.4 provides that a Factor must have a clear written procedure for debt recovery which outlines a series of steps which the Factor will follow. We find that the Factor had such a policy. We find no evidence that the procedure was not*

*consistently and reasonably applied. The procedure did not set out how the Factor would deal with disputed debts, but it did advise the owner to pay all other items. Further as noted earlier we find that the Factor did engage with the Homeowner over disputed debts. The Homeowner however remained dissatisfied about the debt. It also sets out at what stage; debts will be charged to other Homeowners in the group if they are jointly liable for such costs.*

215. *We find that there were certain charges that the Homeowner advised the Factor she would not pay from at least the first invoice she received, e.g. the float. She also disputed almost all other charges. She also had a history of not paying common charges. The Factor knew all this. Given this background, we do not find that the Factor failed to follow its procedure consistently or reasonably. The reference to the NOPL in their procedure is not restricted to a timescale in which they can seek it. The debt recovery procedure was attached to the written statement of services. The written statement of services was sent to the owners on 6 January 2021. Given that the Homeowner advised that she had no intention of paying certain charges from at least 24 June 2021, we do not see that the Factor was acting unreasonably. We do not find any breach under this section of the code in terms of those matters.*

216. *We do find that the invoices were not clear or transparent in terms of what administration charges had been added and what it was for. We agree that the Property Factor's written procedure so far as it added late payment charges to Invoices was not clear. We do not know if the administration charges were reasonably applied and for that reason, we find that there is a partial breach under this section.*

**217. Section 6 carrying out repairs and maintenance**

**218. Section 6.4 where a Factor arranges inspections and repairs this must be done in an appropriate timescale and Homeowners informed of the progress of this work, including estimated timescales for completion.**

219. Homeowner Reason: not updating Homeowner of the progress of work; replacement windows, moss clear, plastering, garden quotes, quotes for lighting in basement, leaking guttering the Factor failed to accept reporting of leaking guttering to be true.

220. *DECISION: we refer to our findings set out in Section 6 - 6.1 of the 2012 Code.*

**221. Section 6.7 It is good practice for periodic property visits to be undertaken by suitable qualified/trained staff/contractors and or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with Homeowners a Factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.**

222. Homeowner Reason: no property inspection carried out to date. The Factors have failed to agree to a once yearly meeting with the Homeowner, it was rejected another request was ignored, no response.

223. *DECISION: The property inspection was carried out in May 2022. The Factor had a period of 18 months from that date to complete the next inspection, until November 2023. The application was made in February 2022. The tribunal does not have jurisdiction to deal with a complaint under this section as the Factor had not breached that section at the date the application was made.*

**224. Section 6.11 a Factor must disclose to the Homeowner, in writing, any financial or other interests that the Property Factor has with any contractors appointed by them.**

225. Homeowner Reason: Calkton Limited; buying and selling real estate, other letting and operating of own or leased real estate; nothing declared.

226. *DECISION: we refer to our findings set out in Section 6.8 of the 2012 Code.*

**227. Section 7 Complaints resolution**

**228. Section 7.1 Complaints Handling Procedure. Must have a written complaints procedure. The procedure should be applied consistently and reasonably.**

229. *Homeowner Reason: the Factors have failed to carry out their complaint's procedure; does not state how complaints against contractors will be handled, timescales are: 10 working days, 3 working days, 14 working days, 14 working days, 3 days, 14 days, timescales are not followed procedures are not followed.*

230. *DECISION: the 2021 Code sets out a requirement that the Factor must include a procedure for the Factor will handle complaints from the Homeowner against contractors. We do not consider the terms of the Complaints procedure adequately explain a procedure for dealing with such complaints we find that there is a breach under this section.*

**231. The Homeowner complained to the Tribunal that the Factor was in breach of the Property Factors duties in relation to:**

**232. (1) The Factor had sent emails singling the Homeowner out; and also sent emails which she found offensive, bullying and trying to intimidate her**

233. *DECISION: we refer to our findings set out in Section OSP 12 of the 2021 Code. We do not find a breach of duty.*

**234. (2) The Factor failed to be reasonable and has been very heavy-handed with the debt recovery process they have used on disputed invoices. Their process is not within their written statement**

235. *DECISION: we refer to our findings set out in Section 4.4 of the 2021 Code. We do not find that there is a breach of this duty. Although we did not find the Factor's invoices to be clear in relation to the administration charges which had been applied.*

236. **(3) The Factors falsely claim two owners are happy to proceed when in fact they have expressed concern and not agreed to the contractor**

237. *DECISION: we refer to our earlier findings that we do not have jurisdiction to consider this complaint as it relates to two other owners.*

238. **(4) Request a copy of the quotation nothing received until additional request, contractor H Murdoch**

239. *DECISION: we refer to our findings set out in Section OSP 11 and Section 2 of the 2021 Code. We do not find any breach.*

240. **(5) The Factor falsely accused us of continually putting the communal lights on permanently**

241. *DECISION: we refer to our findings in relation to the complaint regarding the electrician. We do not draw any conclusions about the alleged allegation by the Factor and the communal lights being put on. We note that a complaint about the lights was made to the Factor, and the Factor sent an electrician out to investigate the matter. It is not clear to us that the Factor made any such allegation against the Homeowner. We do not find any breach.*

242. **(6) The Factor refuses to answer my emails until my account is paid**

243. *DECISION: we refer to our findings set out earlier, the Factor stated that the Homeowner had not made any payments for their fees and given this they were entitled to reduce their service. We do not find that this was an unreasonable approach by the Factor as they are entitled to take such action in terms of their written statement of services.*

244. **(7) The Factor is singling the Homeowner out regarding removal of items being stored on the common ground, e.g. plant pots**

245. *DECISION: we refer to our earlier findings on this issue. We do not know if the factor wrote to other owners about this issue and if the Homeowner was therefore singled out. We are not in a position to determine this question. That said, it was not clear why the Homeowner had to remove plant pots from a communal garden area*



*and if it related to allowing the gardener access to carrying out his work, then perhaps that could have been made clear to the Homeowner.*

246. **(8) The Factor claims the Homeowner has not reported unsatisfactory work by the contractors to them**

247. *DECISION: we find that Homeowners had complained to the Factors about poor workmanship of contractors, for example the gardening had been complained about. We believe that the Factor would accept that they had received such complaints. We do not find a breach under this duty.*

248. **(9) The Factors falsely claim that they would not use any contractor that takes advantage of owners**

249. *DECISION: we refer to our earlier findings regarding the gardener. We do not consider that there is a breach of their duties in relation to this issue.*

## **RESOLUTION SOUGHT BY HOMEOWNER**

250. In terms of resolution, the Homeowner advised that they did not want the Factor to keep doing what they are doing to other owners. In terms of compensation, the Homeowner advised they did not think the Factors had done anything to earn their management fee. The Homeowner advised that they constantly chased the Factors and sorted things out that the Factor had done wrong. They had contacted the planners and told them that the planning application was not being handled properly.

251. The Homeowner sought compensation. They wanted the NOPL removed. The Homeowner's position is that they do not have any undisputed debt with anyone, and they did not think the Property Factor's actions have been fair. The Homeowner doesn't consider they should pay for a gardener; or the guttering work, which was done on an emergency basis, as this was a consequence of the Property Factor's negligence because the gutter had not been cleaned in a timely manner. They were also concerned over Quintin Tannock's bill. They don't want to pay for the lighting as the sensor was not needed. They will not pay for the windows as they are not needed, they are not the correct ones. They are not paying for the bin as this issue is not subject

to a majority vote it is classified as improvements, and they need 100% at a vote. The owner can use the black bins. They can remove their fees. They are disputed debts. The RF Watters bill they are not paying.

## **FINDINGS IN FACT**

252. The Property is Basement Right, 46 Brisbane Street, Greenock, Inverclyde, PA16 8NP.
253. The Homeowner is Joanna Chapman and Daniel Vliet, 46 Brisbane Street, Greenock, Inverclyde, PA16 8NP (“the Homeowner”)
254. The Property Factor is Morison Walker Property Management Ltd, 23 Patrick Street, Greenock, PA16 8NB (“the Respondent”)
255. The Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Codes arising from that registration.
256. The Homeowner has brought two applications against the Property Factor in relation to the same Property. The applications have been conjoined and heard together as they relate to the same issues. The application C1 was dated 19 February 2022; C2 was undated.
257. The Homeowner had written to the Factor to notify them of her complaints in letters dated 17 April 2022.
258. The Homeowner advised that the Property Factor had ceased being the Property Factor on the 8th of December 2023.
259. The title deeds for the property provide a right of property in common with the proprietors of the other dwelling houses in the said tenement; the rights in common are set out in the title deeds and include the solum, the front and back walls, Gables, foundations, roof, chimney, common entrance, and close, stairs, landings, common doors, gates and pathways, lighting, pipes, drains, the drying green, and other ground including the wash house.
260. The title deeds also contained burdens including a burden set out in a disposition by John Gallagher registered on the 16th of September 1983.

261. That disposition has a burden condition FIRST which obliges owners with the remaining houses in tenements 46 and 46 A to maintain and repair the common parts, and these are set out in detail in that burden.
262. That disposition has burden condition SIXTH which states that a majority of the proprietors of the houses shall be entitled to decide when mutual repairs and renewals are necessary for the proper maintenance of the said common portions of the said tenement.
263. Burden condition SIXTH also allows for the appointment of a Factor for the tenement and all proprietors whether consenters or not shall be bound to pay their respective shares of the expense thereof in the same way as if their consent had been given and the said majority of proprietors shall be entitled to recover from the remaining proprietor or proprietors his or their share of said costs with any necessary expense incurred in doing so
264. Burden condition SIXTH also states that it is provided and declared that the proportion payable of the said Factors' remuneration with respect to the subjects is an equitable share.
265. On the 29th of November 2020 one of the Homeowners forwarded an e-mail to the Factors confirming that a majority vote had been received to engage Morrison Walker as Factors.
266. The e-mail on the 29th of November 2020 also confirms that there is a majority vote for RF Watters to replace the common close windows.
267. On 6 January 2021, the Factors wrote to the Homeowners confirming the appointment as Factors including an invoice for the float for £150 and attaching further information including the written statement of services.
268. Invoices were issued on a quarterly basis with the first invoice being issued 1st February 21 - 30 April 21.
269. On 24th June 2021, the Homeowner emailed the Property Factor disputing a number of the invoices and confirming she would not pay the float because she was only with the Factor under protest.
270. On 27th of June 2022 the Factors issued a statement to the Homeowners setting out that there was a sum due of £627.48 alleged due by the Homeowner.

## DECISION

271. The tribunal has found a number of breaches of the Property Factors Codes of Conduct 2012 and 2021 and a number of breaches of the Property Factors duties. We do not consider that the breaches are significant in relation to the conduct of the Factor.
272. The tribunal found the Homeowner to be committed and concerned about their property. This appears to have led to them locking horns with the other owners, the Factors and the contractors appointed. It was clear that they had continued to raise their concerns with the Factors about various different matters. What is difficult is that the Homeowner's standard was so exacting that they were not content with any work that was carried out to the tenement, and they had in the main refused to pay for any repairs to the common parts. It may also be considered that their position was often unreasonable in what they expected of others.
273. The title deeds are clear that a majority of Homeowners are entitled to appoint a Factor. Furthermore, the majority of Homeowners are also entitled to decide upon and then instruct repairs. The title deeds set out that all Homeowners whether they agree or not are bound by the majority. The Homeowner has refused to be bound. This is contrary to their title deeds.
274. Accordingly, it does not matter that the Homeowner did not agree with the appointment of the Factor, they were bound to pay their fee as the majority had determined that a Factor was to be appointed. They should also have paid the float. In addition, where the majority determined that repair works will be instructed, again the Homeowner is bound to pay those repairs. The tribunal understands that the other owners have raised actions in the sheriff court seeking payment of the common charges. This tribunal does not have jurisdiction over such matters, and it is not for the tribunal to determine whether or not they are entitled to dispute payment of those debts. The Homeowner is entitled to defend the court actions.
275. The purpose of this tribunal is to look at the procedure and duties which were adopted by the Factor and to decide whether they fell short of the standards in the two Codes and/or if the Factor breached their duties, and if we find that they did, we can impose an order where we find it would be appropriate to do so.
276. In this case, the Factor is no longer appointed and it would not necessarily serve any positive purpose to impose a Property Factor enforcement order to amend the Factor's procedures where we have found there to be any breach.

277. In terms of the invoices that the Homeowner does not intend to pay for, these are matters that require to be determined by the sheriff court and not this tribunal.
278. In terms of the fairness of the approach adopted by the Factor, the tribunal considered this aspect in terms of whether we should award compensation to the Homeowner. It appears clear to the tribunal that the Factor did engage with the Homeowner in answering a number of the Homeowner's queries and responding to correspondence. We appreciate that the Factor stopped/reduced doing so to a larger extent as time went on, notably because the Homeowner had paid nothing towards the Factor's fees and the majority of the other charges. We consider that the Factor was entitled to take this action in the circumstances. As the Homeowner refused to pay the Factor fees and the initial float or for almost all works and services undertaken, we find it difficult to see on what basis they were entitled to insist that the Factor provide them with a full service over and above the basic one that was being delivered.
279. We consider that the Factor acted reasonably in dealing with disputed debt, although how they did this was not set out clearly within their procedures. We do acknowledge that the Factor corresponded with the Homeowner regarding disputed debt. We considered their invoices should have been clearer in relation to administration charges. Furthermore, there is notice in the debt recovery procedure about the Factor attaching to the title deeds a notice of potential liability. We do not consider the Factor's actions in relation to that matter were unfair in terms of their own procedures. Given that there is debt apparently due, we do not consider that it would be appropriate, or even within our jurisdiction, to order the Factor to remove the Notice of Potential Liability.
280. We do not know why it took the Factor so long to organise cleaning to the guttering which appears to have led to an emergency repair being undertaken. We accept that it may be a charge that could have been avoided. That said, the charge has not been paid. We see that the invoice for the emergency was for £340 in total and from that the call out charge was £85. We consider it would be appropriate for the Factor not to charge a 1/8 portion of that £85 emergency call out fee. The other work had to be paid for. As the fee is so small and as the fee has not been paid, we do not consider that it would be in accordance with the tribunal's overarching principles to impose an order seeking an amendment of the fee of around £10.

## **OUTCOME**

281. The tribunal finds there are a number of breaches of the 2012 and 2021 Codes of Conduct and some breaches of the Property Factors duties. However, the tribunal does not consider that it should make a Property Factor enforcement order for the reasons set out above.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

**Melanie Barbour**

**28 November 2024**

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**Legal Member/Chair**

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**Date**