Housing and Property Chamber
First-tier Tribunal for Scotland

Decision

Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/23/3112

Re: 38 Davie Sneddon Way, Kilmarnock, KA1 1AD ("the Property")

The Parties:

Miss Nicola Wilson, 38 Davie Sneddon Way, Kilmarnock, KA1 1AD ("the Applicant")

Indigo Square Property Ltd, 42 Holmlea Road, Glasgow, G44 4AL ("the Respondent")

Tribunal Members:
Martin J. McAllister, Solicitor, (Legal Member)
Elizabeth Dickson, (Ordinary Member)
(the "tribunal")

Decision

I) The Respondent has breached the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021.

II) The tribunal proposes to make a property factor enforcement order requiring the Respondent to pay the sum of £1500 to the Applicant.

Background

1. This is an application by Miss Wilson in respect of the Property in relation to the Respondent's actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with Sections 1,2,3,4,6 and 11 of the Overarching Standards of Practice, Sections 2.1,2.4,2.6,2.7,3.1,3.4,4.3,4.11,5.3,5.8,5.10,6.1,6.2,6.4,6.6,6.7 and 7.2 of the 2021 version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code"). It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act. The

application was dated 5 September 2023 and was accepted by the Tribunal for determination on 29 September 2023. The application was accompanied by a number of documents.

2. A case management discussion was held by teleconference on 20 December 2023 where the Applicant participated and the Respondent was represented by Mr Brian Gilmour, its managing director.

3. Findings in Fact

3.1 The Applicant owns the Property.
3.2 The Property is situated in a development of 22 flats ("the development").
3.3 The Respondent was property factor for the development from 27 March 2022 to 20 March 2024.
3.4 The Respondent failed to respond adequately and timeously to enquiries reasonably made to it by the Applicant.
3.5 The Respondent failed to provide information reasonably requested of it by the Applicant or failed to provide it timeously.
3.6 The Respondent instructed work to be carried out in the development without appropriate authority from the homeowners of the development.
3.7 The Respondent entered into contracts on behalf of the homeowners of the development without receiving appropriate authority.
3.8 The Respondent instructed works to be carried out by contractors who had not provided the lowest quotation and had done so without proper explanation.
3.9 The Respondent failed to get competitive quotations for some works carried out in the development and failed to provide an explanation for this failure.
3.10 The Respondent failed to ensure the all the works requiring to be carried out in the development were done.
3.11 The Respondent failed to provide the Applicant with information on the Common Insurance Policy for the Development after a reasonable request had been made of it.
3.12 The Respondent failed to ensure that the common insurance policy was worded correctly and in accordance with the provisions of the title of the Development.
3.13 The Respondent failed to demonstrate how and why it appointed the insurance provider.
3.14 The Respondent imposed a late payment charge on the Applicant which was inappropriate and unreasonable.
3.15 The Respondent failed to carry out inspections of the development which it had undertaken to do.
3.16 The Respondent failed to deal properly in responding to the Applicant with regard to complaints which she had made. It provided no final decision in writing.

Hearing 22 July 2024

4. A hearing was conducted by Webex on 22 July 2024. The members were both present at Glasgow Tribunal Centre. The Applicant participated and the Respondent was represented by Mr Brian Gilmour, its managing director. Both parties had submitted representations and productions.

5. Parties provided useful background. The Property is part of a development of 22 flats and each flat has a dedicated parking space. The development had previously been factored by Murphy Scoular and the Respondent took over factoring duties on 27 March 2022. The Respondent no longer manages the development following appointment of a new property factor on 20 March 2024.

Alleged Breaches of the Code

6. OSP 1
   Miss Wilson agreed that any issues she had could be addressed under other headings of the Code.

7. OSP 2
   Miss Wilson said that the Respondent had failed to meet this and that it is referenced throughout the Code.

8. Miss Wilson said that the main issue is the lack of response by the Respondent to her formal complaint. She said that she had originally emailed on 28 August 2022 but had received no response and that she had sent another email on 23 October 2022. She said that she received no response and received a reminder on 29 October 2022 to pay the final balance. She said that she had not previously paid it because she was querying a transaction on her account. She had received no response to her enquiry and escalated the matter further by making a formal complaint on 30 October 2022
   Miss Wilson referred to productions 102-117 which she had lodged in her first inventory of productions and said that this reflects the full conversations backwards and forwards with the Respondent.

9. She received an acknowledgement from Val West of the Respondent who stated that she would be in touch further. On 27 November Miss Wilson had received no further communication from the Respondent and she sent a further email. She received no response to that.

10. Miss Wilson telephoned the Respondent on 2 December 2022 and was assured by the property manager, Paul Williams, that Val West was dealing with the complaint and that he would pass on the message that she wanted her call to be returned. She said that this did not occur and she telephoned on 5 December 2022 and spoke to a female. Miss Wilson asked to speak to Miss West. She said that she told the person that she had telephoned three days previously and that no one had returned her call. She was assured that the message would be passed on. She said that she almost immediately telephoned the Respondent's office again to ask to whom she had spoken in the previous call. She said that she spoke to the

same person who, “after a prolonged silence” identified herself as “Julie.” Miss Wilson said that she felt uneasy about the exchange.

Miss Wilson said that she still received no response and she telephoned once again and spoke to Paul Williams who confirmed that he had passed the earlier message to Val West. Miss Wilson said that she told him that she had also spoken to Julie and Paul Williams told her that she must have spoken to a male because Val West was the only female working in the office. Miss Wilson said that it is her suspicion that it was Val West rather than “Julie” with whom she had the earlier conversation. Miss Wilson said that she thought Val West did not want to speak to her. She said that this constituted dishonesty as Val West had introduced herself as someone else. She said that Paul Williams had reiterated that there was no other female working in the Glasgow office.

Miss Wilson said that she had been told that her telephone call would be returned but that this did not occur.

11. Miss Wilson said that she sent a further email on 18 December 2022 and that, on 22 December 2022, she eventually received a response from Mr Gilmour. She said that the letter did not address all her concerns and that Mr Gilmour had chosen which parts of her complaint to respond to. She said that she had expressed concerns and Mr Gilmour did not reference all the matters which had been raised by her. She said she would have expected Mr Gilmour to defend his colleague, Julie, but that he had ignored the part of the letter which referred to her and there were other points which he did not address. Miss Wilson said that, at this stage, she was “at the end of my tether.” She said that she left matters over the festive period and wrote on 27 January 2023 to which she received a reply on 29 January 2023. She said that she had highlighted issues and colour coded the letter because she wanted to make things as simple as possible. She said that she put forward steps for Indigo Square to take and she felt that her proposed resolution was balanced and fair.

12. Miss Wilson said that she was getting nowhere and that, although Mr Gilmour had responded on 23 December 2022, the letter and following inactivity by Indigo Square did not advance a resolution of matters.

13. Miss Wilson said that, on 27 March 2023, she received an email response from the Respondent. Around that time, Ruari Smith was appointed as property manager and Miss Wilson said that he impressed her and she was hopeful that his appointment would bring about consideration of her concerns. She said that Mr Smith told her that he would have to speak to Mr Gilmour about the resolution she had previously proposed.

14. Miss Wilson emailed again on 23 April 2023 and was told on 28 April 2023 that a response was being drafted.

    On 9 May 2023, Miss Wilson said that she received a letter from the Respondent with regard to building insurance and which also contained some contractors’ invoices. She said that she had first requested these in March 2022.

    She said that the letter was a partial response and that it did not close the complaint which she had raised.

15. Miss Wilson said that, on 5 June 2023, arrangements were made for a telephone meeting with Mr Gilmour to be held on 12 June 2023. She said that she had hoped that there would be a discussion at which a resolution could be agreed upon. Mr Gilmour told her that it was an information gathering exercise and that, thereafter, he would provide a full written response. At the telephone meeting, Miss Wilson said that she went through the emails and repeated the points that had been made in the communications she had sent to the Respondent. She said that the meeting lasted 2 hours and each point was dealt with on an individual basis. Miss Wilson said that, at the conclusion of the meeting, Mr Gilmour said that he would provide a written response.

16. Miss Wilson said that, on 13 June 2023, Mr Gilmour emailed and confirmed that he had gathered information and would be providing a written response but that it would be delayed because of summer holidays. He indicated that he should be able to respond by 21 July 2023. Miss Wilson said that she still awaits the response promised by Mr Gilmour. She said that no further response was received from the Respondent and that her only option had been to apply to the Tribunal.

17. Miss Wilson said that her issue with financial matters concerns the failure of the Respondent to produce accurate accounts. She said that the account which she received on 1 June 2022 showed her share of common charges to be 2.50 percent but it should have been four percent. This error was reversed on 4 August 2023.
    There was a charge in August 2022 for a car park gates biannual service. Miss Wilson said that the owners were never consulted about a service plan being entered into and that, with the previous property factor, there had been a regime of *ad hoc* servicing.

18. On 29 April 2024, Miss Wilson said that she had emailed the Respondent and had been told that details of the bi-annual service plan would be circulated.
    Miss Wilson said that this service plan was entered into without consultation with owners who had never voted for it. She said that, at one point, they thought that the plan had been cancelled.
    At The AGM on 6 June 2023, Miss Wilson raised the point that owners had never voted for it.
    Miss Wilson said that, in her initial email of 28 August 2022, she raised the matter but had never received a satisfactory response.

19. Miss Wilson said that she had queried the emergency lighting repair referred to in the August 2022 account.
    When she received a copy of an invoice from Fortress Security Alarms Ltd, she said that it contained the following statement: *"We have made calls to arrange maintenance."* She said that she was "appalled" that the Respondent appeared not to have been engaging with the homeowners' contractor. Ms Wilson said that the paperwork she had received would seem to indicate that homeowners had been charged twice for the same thing.
    Miss Wilson said that she was very concerned that the Respondent had not been engaging with "our contractor" and she said that homeowners had a contractual arrangement with Fortress which had lasted for many years and which included annual inspection of emergency lighting, dry risers and smoke vents. She said that, in her view, these are health and safety issues.

20. Miss Wilson said that there was an additional charge from Fortress which appeared in a later invoice and which she could not understand because such a matter should have been included in the annual charge. Miss Wilson said that she had raised these matters but that there had been no satisfactory explanation. Miss Wilson said that there had also been a duplication of charges in respect of an insurance premium which eventually had been credited to her account in February 2023. Miss Wilson said that there was no explanation or recognition of these accounting matters which she raised with the Respondent.

21. Miss Wilson said that a quotation had been needed for replacement of car park lights but only one had been obtained and it was not possible to determine if it was competitive. She said that the Respondent instructed the works in January 2023 but the work to the lights was not done until October 2023. She said that the work was not effective because the car park was still "50% in darkness."

22. Miss Wilson said that there was an issue with the intercom system for the flats where owners were charged when only one should have been because the issue was internal to the flat.

23. Miss Wilson said that, in May 2023, she was charged for an insurance valuation. Miss Wilson said that there had been an insurance inspection the previous year and she said it was unclear why an insurance inspection was required. She said that the owners were not made aware of the frequency of the inspections. Miss Wilson said that she sought clarification on this issue but never received it and only made a partial payment of the sum requested by the Respondent. She said that the insurance should have renewed on 27 March 2023 but was continued to 5 April 2023.

24. Miss Wilson said that she wanted her complaint to be resolved but she was receiving reminders for payment. She said that she paid the transactions on the invoices which she was satisfied with and not those she was querying and she detailed this in an email to Indigo Square.
    Miss Wilson said that the Respondent already knew the invoices which she was querying and what she had said in her email was not new information but she wanted to be as clear and transparent as possible. She said that she had also withheld her share of the insurance premium and also the management fee because owners had not received the service which they had been promised. She said that she did not consider the management fee to be justified because of the poor service which she was receiving.

25. Mr Gilmour said that not receiving the response that one likes is different from not receiving a response.
    He said that Miss Wilson had made reference to the proposal which she had put to the Respondent. He said that this was that she should receive a refund for every penny she had been invoiced and, in addition, be paid compensation. He said that he did not consider this to be a serious proposal. He said that Miss Wilson had omitted from her submission some twenty nine items of correspondence between August 2023 and March 2024 and that this would have evidenced that he had

responded. He said that he did not lodge these because they constituted over 100 pages.

26. Miss Wilson gave evidence on part of her application and, when Mr Gilmour was asked to respond, he indicated that he had understood that the Applicant would have submitted further written representations which would have clarified the specific reasons she considered that the Respondent had failed to comply with the Code.

27. Mr Gilmour conceded that he had notice of the paragraphs of the Code which it is alleged had not been complied with. He said that he had a number of other documents which he wanted to lodge and which could rebut some of the evidence given by Miss Wilson.

Adjournment of hearing

28. The tribunal considered matters. On one view, the Respondent had been given notice of the alleged breaches of the Code and could have raised concerns at the case management discussion. It was clear, from her evidence, that the Applicant's position is that there is wide-reaching failure to comply with the Code and property factor's duties and that this is over a number of issues.

29. The tribunal, having regard to the overriding objective of the Tribunal, determined that it would be just to adjourn the Hearing to another date and to make a Direction requiring the Applicant to be specific in the reasons she considers that the paragraphs of the Code referred to in her application have been breached. It considered that it would also be reasonable to allow parties time to make further written representations and to submit any productions which they may want to do.

30. After discussing dates for a future Hearing, determination of the application was adjourned to a hybrid Hearing to be held in Glasgow Tribunal Centre 20 November 2024. Parties agreed that they would participate by Webex. Both Miss Wilson and Mr Gilmour confirmed that the date would be suitable for them.

31. On 30 July 2024, the tribunal issued a Direction in terms of Rule 16 requiring the Applicant to provide a written submission detailing the particular paragraphs of the Code which she considers had not been complied with and detailing the evidence in support. The Direction obliged parties to make any written submissions and lodge any additional productions before 7 October 2024.

Hearing 20 November 2024

32. A Hearing was conducted by Webex on 20 November 2024. The members were both present at Glasgow Tribunal Centre. The Applicant participated. There was no appearance by the Respondent.

33. On 28 August 2024, the Applicant had lodged a written submission which contained details of the paragraphs of the Code which she considered the Respondent had not complied with and which also provided additional detailed supporting evidence and an updated index. This had been copied to the Respondent.

34. The Respondent had submitted nothing since the previous hearing.

35. The tribunal noted that no employee or representative of the Respondent had appeared. On 22 July 2024, Mr Gilmour had said that 20 November 2024 would be a suitable date for the adjourned hearing. After enquiry, it was confirmed that the Tribunal had sent a letter to the Respondent on 22 July 2024 which confirmed the date.

36. The tribunal clerk telephoned the Respondent's office and spoke to Andrew Sinclair, one of its employees. He said that he knew nothing about Mr Gilmour's whereabouts but that he would make enquiries. After a short time, the clerk telephoned the Respondent's office again and spoke to Mr Sinclair. He said that he had checked Mr Gilmour's diary and there was an entry which said "jury duty."

37. Miss Wilson said that she would not be happy if the hearing had to be adjourned because of non- participation by the Respondent. She said that the hearing had been postponed on one occasion because of the illness of Mr Gilmour. She said that, counting the case management discussion, she had required to use four days of her leave entitlement to participate in the Tribunal process. She said that she considered it significant that the hearing on 22 July 2024 had been adjourned because Mr Gilmour wanted the opportunity to lodge additional information. She said that, in August 2024, she had lodged a written submission and the Respondent had not taken the opportunity to submit any further information or documents.

Issue of possible adjournment

38. The tribunal considered matters. The Respondent had failed to indicate to the Tribunal that there was any issue with it participating in the hearing. On 22 July 2024, Mr Gilmour had confirmed that 20 November 2024 would be a suitable date to continue determination of the application. It may be the case that Mr Gilmour is on jury duty but the tribunal considered this to be irrelevant. If he is serving on jury duty, the citation to do so would have been issued after the date of the hearing had been fixed and an approach to the Court may have meant that he could have been excused. In any event, the Respondent, and Mr Gilmour in particular, had not had the courtesy to approach the Tribunal with regard to any issues there might be in

participation. The tribunal considered it significant that the hearing on 22 July 2024 had been adjourned after Mr Gilmour indicated that there were a number of documents which he would want to have considered by the tribunal. He had also said that the Respondent had not had adequate knowledge of the reasons why the Applicant considered the specific paragraphs of the Code had been breached. The Applicant had provided a detailed submission in August 2024 and the Respondent had not responded to this or lodged anything with the Tribunal since the hearing on 22 July 2024.

39. The tribunal determined that the hearing should proceed in the absence of the Respondent.

40. The tribunal would arrive at its determination after considering the oral evidence of Mr Gilmour which it heard on 22 July 2024, the oral evidence of Miss Wilson which it heard on 22 July 2024 and which it would hear on 20 November 2024, the productions lodged by both parties and their written submissions.

Evidence

41. Miss Wilson said that she would be relying on her written submission.

42. In view of the passage of time since the previous hearing, it was decided that it would be useful to deal with each alleged breach of the Code and overarching standards of practice.

Overarching Standards of Practice

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

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

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

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

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

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

43. Miss Wilson said that she believed that the overarching standards of practice which are included in her application cross over with the paragraphs of the Code which she thinks have been breached and she invited the tribunal to consider matters together.

2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

44. Miss Wilson's position was that the Respondent had comprehensively failed to comply with this paragraph of the Code. At the hearing on 22 July 2024, she had provided examples of correspondence she had sent to the Respondent which had either not been responded too, had been responded to late or had not dealt with the issues which she had raised.

45. The position of the Respondent, as articulated by Mr Gilmour at the hearing of 22 July 2024, was that the Applicant had not included with her application or representations, a considerable amount of correspondence which would demonstrate that the Respondent had complied with the Code. In its representations of November 2023, the Respondent does not accept that there had been breach of this paragraph of the Code.

46. The tribunal considered the evidence of Miss Wilson and the extensive documentary evidence submitted and referenced by her. It accepted her oral evidence as being credible and reliable. Contained in the written documents before the tribunal were numerous examples of the Respondent's failure to communicate effectively with the Applicant. The Respondent had failed to submit any evidence to the contrary which it claimed to have. It determined that the Respondent had failed to comply with this paragraph of the Code.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

47. Miss Wilson's position was that the Respondent had failed to provide information which she had requested and that some had been asked for on more than one occasion. She said that, on the occasions that requested information was provided, it was made available after a considerable delay and was often incomplete.

48. The Applicant's written representations contained examples of what she considered to be failures in the provision of information and documents. In oral evidence she focused on some issues.

49. On 30 May 2022, the Applicant requested copy invoices because she had not received her expected quarterly invoice but other homeowners had and were concerned about the apportionment of charges. None were received and she submitted another request on 28 August 2022. Miss Wilson said that she was concerned because there appeared to be increases in what she described as core

services by contractors such as window cleaning, gardening and cleaning. She said that she wanted to see the invoices to ensure that there had been no error. A further request was made by the Applicant on 29 January 2023 and copy invoices were received by her on 19 May 2023. Miss Wilson said that the invoices raised concerns and she believes show breaches of other paragraphs of the Code. She said that what was disclosed in the invoices reinforces her belief that it had been reasonable for her to request copies.

50. Miss Wilson said that she had concerns because she had not been charged for her share of electricity charges for a considerable period after the Respondent had taken over management of the development from the previous property factor. She said that the Respondent had taken over on 27 March 2022 but homeowners were not invoiced until November 2023. Miss Wilson said that she raised concerns with the Respondent on 28 August 2022 and that it replied on 22 September 2022 intimating that it was in dispute with EON, the utility supplier and had instructed a third party to act on its behalf in an attempt to resolve the issues. Miss Wilson said that homeowners had not previously been advised that there was a problem.

51. Miss Wilson said that she had been advised by another homeowner that EON had left letters at the development with regard to overdue payments and that total fees charged by the utility provider for these visits amounted to £260. She said that she had concerns that these charges would be passed on to proprietors of the development.

52. Miss Wilson said that the matter of the electricity charges was never resolved and that homeowners ended up paying what EON asked for, including late payment charges. She said that, as a homeowner, she should have been provided with full information on the issue from the Respondent. She said that she had difficulty in understanding why the Respondent thought that the bills were wrong. She said that the charges for electricity were not disproportionally higher than what homeowners had been charged when Murphy Scouller was managing the development. Miss Wilson said that, at one point, when the billing changed from Murphy Scouller to the Respondent, the development was transferred from a fixed to a variable rate because the utility supplier treated this as a termination of a contract and the start of a new one.

53. Miss Wilson said that, when she asked the Respondent for copies of the EON invoices, she was advised that it would charge her £100 per hour and that it would be a minimum of two hours' work.

54. Miss Wilson said that she had no idea how hard the Respondent had tried to sort out the issue. She said that it may have been the case that it was "tirelessly fighting the homeowners' corner" but she simply did not know because she was not provided with the information.

55. The Respondent's representations of November 2023 state that *"the transformation and rationalisation within the energy industry along with the huge spike in energy process at the end of 2022 resulted in great difficulties of engaging with utility providers."* The representations state that, to try and avoid management time being used to sort out the issue, the Respondent instructed a third party

company to deal with the matter. The representations do not address the failure of the Respondent to provide information to the Applicant with regard to this matter.

56. Miss Wilson's oral evidence, the productions which she has lodged together with the detail contained in her written representations were persuasive. The tribunal determined that the Respondent had failed to comply with this paragraph of the Code.

    2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

57. Miss Wilson said that the Respondent did not always consult with homeowners when consent was required to have work done or to enter into contracts. Her written representations provided details of instances where she considered this to be the case. In her oral evidence, the Applicant concentrated on an issue with the car park gates service plan and the car park lights.

58. Miss Wilson said that the Respondent circulated homeowners on 29 April 2022 and told them that the maintenance schedule with PTM Services had lapsed and that information would be circulated. She said that this was inaccurate because homeowners never had a service plan for the gates. She said that the promised information was never sent by the Respondent. Miss Wilson said that the Respondent entered into a service agreement with PTM services without agreement of homeowners and that homeowners never received any information concerning the plan. She said that she was not advised what was included and what the terms of the contract were. She said that there was nothing wrong with the Respondent coming to homeowners with a proposal which they could then vote on. Miss Wilson said that she did understand that it was possible that the Respondent might have genuinely thought that a service plan had been in place when they took over management of the development but she pointed out to them that this had not been the case and it appeared to do nothing to review matters.

59. Miss Wilson said that the issue was raised by her again at an AGM on 6 June 2023. She said that Mr Gilmour said that he would review all the correspondence and write to homeowners to see if they wanted the contract to continue. Miss Wilson said that the Respondent never communicated with homeowners on the matter and that she was charged again for the service plan in her quarterly invoice of May 2024. She said she believed that, since the contract had not been authorised, the whole costs of it should be refunded by the Respondent.

60. Miss Wilson said that she raised an issue about the car park lights in an email to the Respondent on 23 October 2022 but that it is her understanding that other owners had contacted it prior to then. She said that there were faults in the car park

lighting. She said that, on 22 December 2022, homeowners were sent a quotation for repair from James Harkin (Electrical Engineers) Ltd for two options- one for £862 ex VAT and another for £655 ex VAT. Miss Wilson said that she thought this was high and had concerns that she had not been provided with competitive estimates. She said that she emailed the Respondent on 10 January 2023 and requested that more quotations be obtained.

61. Miss Wilson said that in her quarterly invoice of February 2023 there was a charge of £378 for *"James Harkin (Electrical Engineers) Ltd. Assessment and making safe lamp posts."* She said that the then delegated authority for repairs in terms of the written statement of services was £250 and that this work should not have been instructed. She said that the work done did not resolve the issue and that what the contractors appeared to have done was to disconnect two of the four lights because one was waterlogged and one had a missing sensor. She said that the Respondent had no authority from homeowners to instruct the work.

62. Miss Wilson said that on 21 March 2023, the homeowners received quotations from the Respondent. One was from Proelectrical for £550 and another was from James Harkin for £742 ex VAT. She said that the Respondent advised that five companies had been asked to quote but that only James Harkin and Proelectrical had provided quotations. Miss Wilson said that this was the only occasion where the Respondents had provided more than one quotation for any repairs. The Respondent advised homeowners that, unless a majority objection was received from homeowners, Proelectrical would be instructed to carry out the work and, on 30 March 2023, the Respondent advised homeowners that the relevant instruction had been given.

63. Miss Wilson said that the work was not carried out and, on 21 August 2023, the Respondent wrote to homeowners to advise that Proelectrical had been instructed to carry out the work. Miss Wilson said that she could not understand the delay of five months and no explanation from the Respondent why the work had not progressed following their advice in March that the necessary instruction had been given to Proelectrical. On 19 September 2023, the Respondent advised that Proelectrical could not undertake the work for three weeks. The letter stated that, because of this, the Respondent had instructed James Harkin to do the job. Miss Wilson said that the work was not actually done until 10 November 2023, more than three weeks after 19 September 2023 and over a year since the matter was first drawn to the attention of the Respondent. She said that the cost was £1,176.40 which was considerably more than the quotation of £550 from Proelectrical. Miss Wilson said that the delegated authority threshold had been increased to £750 at the AGM on 6 June 2023 and that the work which had been instructed exceeded that amount.

64. Miss Wilson said that she believed that homeowners should only have been charged the sum of £550 which was the quotation which had been received from Proelectrical and that the Respondent should refund the difference which would amount to £626.40.

65. Miss Wilson said that she believed that James Harkin appeared to be the Respondent's favoured electrical contractor. She said that she came to this view

because on 21 July 2022, homeowners received a quotation from James Harkin for upgrading the lighting system to LED. She said that quotation was for £7284 and that she considered that at least one other quotation should have been obtained for work costing such a significant sum.

66. The tribunal considered the oral evidence, the written representations and the documents submitted by the Applicant. It recognised that it is sometimes difficult to get quotations when property factors try to get work done in developments which they manage. In this particular case, the Respondent has not provided evidence that it had particular issues in this regard, other than stating that, for a particular project it had asked for five contractors to quote but only got two. In relation to the evidence before it, the tribunal determined that the Respondent had not complied with this paragraph of the Code.

    2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

67. Miss Wilson said that the Respondent consistently failed to respond to enquiries and complaints. Mr Gilmour's position which he articulated at the hearing on 22 July was that, just because Miss Wilson did not get the answer she wanted, it did not mean that the Respondent had failed to respond. He said at that hearing that he had a hundred pages of documents which would vindicate the position of the Respondent. That hearing was adjourned, partly to allow the Respondent to submit the documents. It never did so.

68. Miss Wilson said that her written representations provide details of numerous occasions where she raised matters with the Respondent and it either did not respond, delayed in responding and failed to address the issues which she raised.

69. It is useful to provide some examples provided by the Applicant and documents referred to by her which she had submitted in evidence.

70. Miss Wilson said that she emailed the Respondent on 28 August 2022 querying charges on her account and received no response. She sent a further email on 23 October 2022. She said that she had not paid the invoice which she had queried in her email of 28 August 2022 and she received a payment reminder from the Respondent on 29 October 2022. She said that she sent in a formal complaint on 30 October 2022 and received an acknowledgement on 3 November 2022. She said that, when she had heard nothing further, an email was sent to the Respondent on 27 November 2022. Miss Wilson said that she received no response from the Respondent and telephoned it on 2, 5 and 9 December 2022 and left messages on each occasion. She said that, on 18 December 2022, she sent a further email and received a response from the Respondent on 22 December 2022 which did not deal with the matters which she had raised and did not address the complaint which she had made. Miss Wilson said that she wrote to the Respondent on 29 January 2023 which was a response to its letter to her of

22 December 2022. She said that her letter detailed the matters which had not been addressed and proposed a resolution.

71. Miss Wilson said that she took exception to Mr Gilmour's statement at the hearing on 22 July 2024, that she was seeking a complete refund of all charges. The email which she had sent to the Respondent proposed a credit to her of £195.39 in resolution of all matters.

72. Miss Wilson said that, having had no response to her letter of 29 January 2023, she sent a further email on 23 April 2023 to which she received a reply on 28 April 2023 which indicated that a fuller response was being drafted. She said that she received a letter from the Respondent with regard to queries which she had raised about buildings insurance and the contractors' invoices which she had requested on 30 May 2022.

73. Miss Wilson said that, at this point, she did not consider that she had received answers to the matters which she raised some months previously. She arranged a telephone meeting with Mr Gilmour which took place on 12 June 2023 and which lasted for two hours. Miss Wilson said that, in the meeting, she detailed the outstanding issues which the Respondent had not dealt with and also its failure to communicate with her. She said that, on 13 June 2023, she received an email from Mr Gilmour in which he said that he would send a full response by 21 July 2023 and that this would deal with all outstanding issues. Miss Wilson said that Mr Gilmour did not send her a full response either before or after that date.

74. Miss Wilson emailed the Respondent on 25 August 2023 and sent a copy to Mr Gilmour and Ms Valerie West as the two directors of the Respondent. The letter notified the Respondent of the Applicant's intention to make an application to the Tribunal. Miss Wilson said that she knew that Ms West had read the email at 8.42 am on 26 August 2023. On 10 October 2023, Miss Wilson received an email from the Respondent which she described as a "generic response" and which stated that it was receiving a high number of emails and that hers had been processed for a response. Miss Wilson said that she never received a response.

75. Miss Wilson referred to the evidence she had given on 22 July 2024 regarding the telephone call she had made to speak to Ms Val West. She said that she took particular exception to the way she considered that she had been treated and thought it important to re-state what happened.

76. Ms Wilson said that she telephoned the Respondent on 5 December 2022 in the hope of speaking to Ms West who she thought was dealing with her complaint. She said that a woman answered the phone and said that she would pass on a message to Ms West. Miss Wilson said that, reflecting on the call, she had suspicions and phoned back to ask the name of the person she had spoken to. She said that she was told that it was Julie. In a subsequent telephone conversation with Tom Williams, an employee of the Respondent, she said that she had left a message with a female colleague of his and was told that the only woman working in the Respondent's office was Ms West. Miss Wilson said that she suspected that the person she spoke to was Ms West. Ms Wilson said that at the AGM on 6 June 2023, another homeowner in the development raised this issue with Ms West and

was told that a temporary worker called Julie had been in the office and must have taken the call. Miss Wilson said that she did not consider this to be a plausible explanation because Mr Williams would have surely have known this. Miss Wilson said she felt she had been lied to.

77. The tribunal considered the evidence of Miss Wilson in connection with the telephone call to the Respondent and her belief that it was, in fact, Ms West who she was speaking to. It accepted that Miss Wilson strongly believes this to be the case but the tribunal could come to no view on the matter. It would have welcomed the opportunity to put this to Mr Gilmour who had made no reference to the issue in his written submissions. It made no finding with regard to the telephone call.

78. In evidence, Miss Wilson said that, in relation to her attempts to get answers from the Respondent to queries she had raised or complaints she had made, she felt she was "hitting her head against a wall." The tribunal understood her feeling. Miss Wilson's oral evidence was supported by the extensive representations and copy documents including emails.

79. The tribunal had no difficulty in determining that the Respondent had not complied with this paragraph of the Code.

3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

80. Miss Wilson referred to her written representations, the documents which she had lodged and her earlier oral evidence. Her overarching position is that, in many matters, she did not know what she was being charged for some items and, when she queried anything, the Respondent was not transparent in providing evidence.

81. Miss Wilson said that she had asked for copies of contractors' invoices to support charges which had been made and copies of EON accounts because of the issue with the non- payment of the electricity charges. She said that these were not provided or were not provided timeously. Miss Wilson said that the first quarterly invoice which were received from the Respondent contained incorrect apportionments.

82. Miss Wilson said that, as she had stated in earlier evidence, the charges made on homeowners for such things as cleaning, window cleaning and gardening increased without explanation and she never got a satisfactory explanation on these matters.

83. Miss Wilson said that, when she eventually got copies of the EON invoices, they were incomplete and she was told that, if she wanted more information, she would be charged for it.

84. Miss Wilson referred to the evidence she had given about the contract for the car park gates service contract. She said that there was no transparency in what was included in the contract which was entered into without authority of the homeowners.

85. Miss Wilson said that the Respondent was not transparent in providing information on the buildings insurance policy. That particular issue is dealt with later in this decision but, in relation to this paragraph of the Code, she said that she asked for a specification of the policy, what was included and what cover the development had. She said that the Respondent arranged cover through its own broker but did not provide her with the information she requested. She referred to the emails relating to this matter which she had submitted.

86. Miss Wilson said that she had concerns about the validity of the insurance policy since it was badged as a commercial rather than a residential policy. She said that she was worried that the development was not properly insured and that it included elements only necessary in a commercial policy such as insurance for loss of rent, business interruption cover and other matters. The issue of the insurance policy is dealt with elsewhere in this decision.

87. Miss Wilson referred to the invoices from Fortress Security Alarms Ltd which she had submitted and which are referred to in other parts of this decision. She said that the fact that the Respondent had not liaised with the contractor to arrange the annual inspection and had not advised homeowners of cost implications arising from that failure demonstrated a lack of transparency.

88. The tribunal accepted the evidence of Miss Wilson in relation to this paragraph of the Code. It may have been that there was no issue with the insurance policy but the Respondent was not transparent in giving the necessary information in a timeous manner to the Applicant. In relation to issues over invoices and contracts such as the car park gates service plan and the Fortress Security Systems Ltd, the Respondent was not transparent in providing information to the Applicant on what she was paying for.

89. The tribunal determined that the Respondent had not complied with this paragraph of the Code.

3.4 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for

90. Miss Wilson's position is that the Respondent did produce an annual expenditure breakdown but it was inaccurate which "rendered the document worthless."

91. Miss Wilson said that one example was that the statement showed the management fee to be £180 which actually was the cost per property rather than

for the whole development. She said that the costs for the aerial and satellite repairs had been omitted and there was an arithmetical mistake in the total.

92. The tribunal noted that a financial statement had been produced and, on the balance of probabilities, determined that the Respondent had complied with this paragraph of the Code. The statement was inaccurate but that was dealt with in the tribunal's consideration of other paragraphs of the Code.

4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.

93. Miss Wilson's position was that a late payment fee imposed on her by the Respondent was not reasonable.

94. After a considerable period when the Applicant was trying to get information from the Respondent, she had a telephone meeting with Mr Gilmour on 13 June 2023 where he promised to review matters and provide a detailed response. No such response was received by the Applicant. On 18 August 2023, the Applicant received a payment reminder from the Respondent which included a late payment fee of £20. Miss Wilson said that she had withheld payment because she had not had the information which she had requested. She made partial payment to the Respondent on 23 August 2023.

95. It seemed to the tribunal that a property factor which imposed a late payment charge in circumstances where it had not responded to a homeowner's reasonable request for information was not complying with the spirit of the Code. The tribunal determined that the Respondent had not complied with this paragraph of the Code.

4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).

96. It is useful to set out the terms of paragraph 4.7 of the Code:

4.7 If an application against a property factor relating to a disputed debt is accepted by the First-tier Tribunal for consideration, a property factor must not continue to apply any interest, late payment charges or pursue any separate legal action in respect of the disputed part of the debt during the period from when the property factor is notified in writing by the First-tier Tribunal that the application is being considered and until such time as they are notified in writing of the final decision by the First-tier Tribunal or the Upper Tribunal for Scotland (if appeal proceedings are raised).

97. Miss Wilson conceded that the Respondent did not take legal action against her but threatened to do so. She said that the homeowners of the development decided to change property factor and the appropriate notice was served on the Respondent on 20 November 2023. On 4 December 2023, the Applicant and other homeowners were advised by the Respondent that it required settlement of all

outstanding accounts by 14 December 2023, failing which there would be referral to sheriff officers. The letter stated that such referral could lead to further charges and legal action. Miss Wilson stated that she had concerns about her creditworthiness should the Respondent take maters further. She settled her account in full on 14 December 2023 but advised the Respondent that she still awaited information which she had requested. She also stated that she considered that the Respondent had breached paragraph 4.7.

98. No legal action had been taken by the Respondent against the Applicant notwithstanding the fact that there was the threat of it. Whilst it is unfortunate that the Respondent chose to seek payment from the Applicant against a background where it had not provided information reasonably requested by her, the tribunal did not consider that there had been breach of paragraph 4.11 of the Code.

99. The tribunal considered the issue of paragraph 4.7 of the Code. The application was accepted for determination on 29 September 2023. The Respondent sought payment from the Applicant on 4 December 2023 and this included the late payment charge.

100. Breach of paragraph 4.7 had not been part of the original application. However, breach of this paragraph could only be made after an application had been made: the debt cannot be pursued "*in respect of the disputed part of the debt during the period from when the property factor is notified in writing by the First-tier Tribunal that the application is being considered and until such time as they are notified in writing of the final decision by the First-tier Tribunal or the Upper Tribunal for Scotland*." The Respondent had sought to pursue the debt, part of which was disputed, after it had been notified that the Tribunal process had commenced. The Applicant made reference to this issue in her representations and the respondent therefore had notification and chose not to make representations on the matter. The tribunal determined that the Respondent had failed to comply with paragraph 4.7 of the Code.

101. *5.3 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:*

- *the basis upon which their share of the insurance premium is calculated;*
- *the sum insured;*
- *the premium paid;*
- *the main elements of insurance cover provided by the policy and any excesses which apply;*
- *the name of the company providing insurance cover; and*
- *any other terms of the policy.*

This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.

102. Miss Wilson's overarching position was that she did not receive an annual insurance statement in compliance with this paragraph of the Code.

103. On 17 April 2024, Miss Wilson requested a copy of the buildings insurance policy. She said that what was described as “an insurance handout” was sent to her on 19 April 2024. She said that the document was missing important information such as the policy number, the premium, and details of how the premium would be charged.

104. Miss Wilson said that she had conversations with fellow homeowners and that she, with others, had concerns about the buildings insurance and the lack of information which had been given to them. She asked the Respondent for a copy of the insurance policy.

105. The written submissions of the Applicant and the documents which she has submitted detail the concerns which she had. One example was that the policy which she had been sent differed in some detail to the insurance handout which she had received.

106. The written submissions also state that the policy with Arch Insurance was headed: “Commercial Property Owners” with the policy holder as Indigo Square Property Ltd and that Miss Wilson had concerns about these matters. She said that no part of the development was used for commercial purposes and that previous policies had the policy holder stated as being the co-proprietors of Davie Sneddon Way. She said that she had fears that the policy may have been invalid.

107. The policy also contained items which did not need to be covered such as loss of rental income, employment and tenancy disputes and business interruption which are matters more appropriate for commercial insurance. Miss Wilson said that the thought that the insurer might be under the impression that the development was owned by the Respondent.

108. Miss Wilson emailed the insurance broker and Arch Insurance. The broker replied and stated that the insurers were aware that the Respondent did not own the development. She received no reply from Arch Insurance. After more representations by the Applicant, the policy was changed to run in the name of the proprietors of the development.

109. Miss Wilson said that the failure to provide accurate information is demonstrated by the cost for the insurance year of 2023. She said that the premium quoted by Mr Gilmour was £5800, the policy schedule which she was provided with showed £5632.28 and the actual annual charge was £6124 per annum.

110. The written representations set out further issues which Miss Wilson had in relation to the Respondent’s failure to arrange for the policy to be in place on the renewal date.

111. The tribunal considered the evidence, both written and oral, together with the written representations. On the narrow point of provision of an annual insurance statement to the Applicant, it determined that the statement provided by the Respondent did not meet the requirements of this paragraph of the Code. There are other issues with regard to the buildings insurance policy which are dealt with elsewhere.

5.8 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.

112. Miss Wilson said that the Respondent did not renew the policy timeously. She said that, when she realised the policy had not been renewed, she telephoned Mr Gilmour who assured her that the existing policy had been extended. On 6 April 2023 homeowners were advised that the insurance had been renewed with Arch Insurance for an annual premium of £5800.

113. Miss Wilson said that, five months after she had first requested copies of the insurance quotes obtained by the Respondent, she received them on 12 September 2023. She said that she was surprised to note that there had been a lower quote from Geo Underwriting for £5049 and she did not understand why that quote had not been accepted.

114. Miss Wilson said that the Respondent had provided no explanation as to why it had not selected the cheaper quotation from Geo Underwriting. She said that there was also what she described as a "worrying discrepancy" in terms of the premium charged: £5800, £5632 and £6124, as detailed in paragraph 107 of this decision.

115. The Respondent's representations of November 2023 state that it employed an independent insurance broker as is standard practice and that it obtained quotations. The representations do not address the issue of the quotation from Geo Underwriting.

116. On the basis of the oral and written evidence, together with the Applicant's written representations, the tribunal determined that the Respondent had not complied with this paragraph of the Code.

5.10 A property factor must notify homeowners in writing of the frequency with which property revaluations will be undertaken to establish the building reinstatement valuation for the purposes of buildings insurance. It is good practice for re-valuations to be undertaken at least every 5 years and sums assured reviewed in other years using the BCIS Rebuilding Cost Index. The property factor must adjust this frequency of property revaluations if instructed to do so, in line with the arrangements in any agreement with homeowners.

117. Miss Wilson conceded that the written statement of services was silent with regard to property revaluations.

118. Miss Wilson said that, on 27 April 2022, homeowners were informed by the Respondent that an inspection was to be undertaken by a third party for a review of the common insurance policy. She said that the Respondent never provided information on the frequency of such valuations and she said that a further inspection was carried out in April 2023, for which homeowners were charged £250. Miss Wilson said that this was one of the charges which she was querying

with the Respondent and for which she never got an explanation. She said that homeowners never received a copy of any valuation certificate.

119. The tribunal considered matters. It is the responsibility of homeowners to ensure that their property has adequate insurance cover. Written statements of services often set out the frequency of insurance revaluations. It is an area where homeowners frequently instruct property factors with regard to how often revaluations will be carried out. In this case, it appears that the Respondent did arrange for some kind of inspection of the Development for insurance purposes.

120. The tribunal considered that the issue was quite balanced but, marginally, determined that the Respondent had not complied with this paragraph of the Code.

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard

121. Miss Wilson's overarching position was that, during the Respondent's management of the development, little progress was made with regard to repairs which were needed to the Development.

122. Miss Wilson referred to her written representations and provided further detail on some issues.

123. She said that in September 2022, the Respondent was made aware about an issue with the communal aerial and satellite system. She said that no prompt repair was carried out and she included this matter in her email to the Respondent of 23 October 2022. The necessary quotation for the repair was sent to homeowners on 7 November 2022 but the repair was not instructed. Further problems occurred with the system and, on 18 December 2022, Miss Wilson and other owners contacted the Respondent and questioned an urgent repair. The Respondent emailed on 19 December 2022 and advised that the repair had been instructed. Miss Wilson said that the repair cost more than the original quotation and she said that this might have been as a consequence of not carrying out the repair when it had been reported to the Respondent in September 2022. Miss Wilson conceded that she had no evidence of this but said that for the Respondent to take over three months to deal with the matter was unacceptable.

124. Miss Wilson said that, on 29 April 2022, homeowners were advised by the Respondent that it had sought quotations for gutter cleaning and cleaning of the building but no quotations were provided to the homeowners. On 8 November 2022, homeowners were advised by the Respondent that it was its intention to instruct a contractor but no costs were provided. On 11 November, 2022, Miss Wilson asked for details of the cost of the work but this was never provided and the work was not carried out. Miss Wilson said that, on 21 August 2023, homeowners were provided with one quotation for clearance of the gutters and cleaning of the building. The work was never progressed and Miss Wilson said that it was one of

the first tasks organised by the property factor who took over management of the development on 20 March 2024.

125. Miss Wilson said that the Respondent advised homeowners on 14 September 2022 that Mr Williams, one of its employees had inspected the development and noticed broken kerbstones in the car park which could be a trip hazard to residents and visitors. The communication from the Respondent said that it was seeking quotations to remedy the defects. Miss Wilson said that she received no quotations and that the work was never carried out.

126. Miss Wilson referred to her earlier evidence about the car park lights and upgrading of the lighting within the development. She said that her written representations on these matters together with her evidence supported her contention that, in relation to these matters, the Respondent had not complied with this paragraph of the Code.

127. The tribunal had no difficulty in determining that the Respondent had not complied with this paragraph of the Code.

6.2 Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstructions.

128. Miss Wilson said that her concerns about this paragraph of the Code are around the fact that, in her view, the Respondent had failed to engage properly with a contractor who had been responsible for maintaining fire safety systems within the development.

129. Miss Wilson said that Fortress Security Alarms Ltd had been the developments' longstanding contractor for maintenance of the emergency lighting system and fire alarm. After requesting copies of contractors' invoices, Miss Wilson received some which included an invoice from Fortress. This contained the following statement: *"We have made several attempts at contacting you in order to arrange your annual maintenance of your security system. I am sorry that we have been unable to arrange this appointment. In order to continue to receive the benefits of being a maintained customer we will need to charge you the annual maintenance charge pertaining to your alarm. If you wish to book your overdue maintenance visit or if you wish to cancel your maintenance contract, then please contact our maintenance department……"*

130. Miss Wilson said that she and other homeowners had not been advised that what she described as "essential" maintenance had not been carried out. She said that the fact that the Respondent had not made arrangements with regard to the annual maintenance visit by the contractor had led to homeowners being charge twice for work. One charge was made when no visit was undertaken as a consequence of the Respondent failing to make the necessary arrangements.

131. The tribunal considered matters. It accepted that the Respondent had not timeously arranged for a maintenance visit but it did not consider that this was necessarily a breach of this paragraph of the Code. The tribunal considered it appropriate, in the particular facts and circumstances of this case, to apply a wide definition to the word “repair” and consequently determined that the Respondent’s failure in this matter evidenced further non-compliance with paragraph 6.1 of the Code.

6.4 Where a property 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, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work

132. Miss Wilson said that she believed that the Respondent’s failure to arrange for repairs to be done in a reasonable timeframe supported her belief that the Respondent had failed to comply with this paragraph of the Code.

133. Miss Wilson referred to her earlier evidence in relation to the car park lights, the aerial/satellite system and the gutter cleaning. In relation to the car park lights she believed that she should be refunded money because the Respondent chose to instruct a contractor which was more expensive.

134. The representations of the Respondent dated November 2023 state that, in relation to the car park lights, an instruction had been given to a contractor but that, after “chasing it” to do the work, the contractor advised that it could not carry out the contract. The Respondent’s representations state that it went to the “second quoting firm.”

135. Miss Wilson said that there had also been issues with repairs to the car park gates and which had been delayed.

136. The tribunal considered the representations of the Respondent which appeared to be in conflict with the written evidence before it and the oral evidence of the Applicant which it preferred.

137. The tribunal accepted that there was compelling evidence that the Respondent had not ensured that repairs were carried out within a reasonable timescale. The tribunal determined that the Respondent had failed to comply with this paragraph of the Code.

6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they

have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

138. Miss Wilson said that the Respondent appointed contractors without authority of the homeowners and, in not providing competitive quotations for some work, denied homeowners a range of options on repairs.

139. Miss Wilson said that homeowners had never had a maintenance contract with PTM Services for maintenance of the car park gates. She said things had worked well with the previous property factor and that PTM had been instructed on an *ad hoc* basis whenever work had to be carried out to the car park gates. Miss Wilson said that, without authority from homeowners, the Respondent entered into a maintenance contract with PTM Services. In a communication from the Respondent on 29 April 2022, the Applicant was advised that the maintenance arrangement with PTM had lapsed and that owners would be contacted with information for their consideration. Miss Wilson said that no previous maintenance contract had existed and that, notwithstanding the Respondent's promise to circulate information, nothing was sent to her. She said that a maintenance contract had been entered into and that homeowners were charged £134.62 on three occasions. Miss Wilson said that, if the Respondent had proposed a maintenance agreement as an option, she would have considered it and voted once she was able to consider its advantages and disadvantages.

140. Miss Wilson said that this issue was raised at an AGM and that Mr Gilmour undertook to review matters and circulate homeowners to ascertain if they wanted the arrangement to continue. Miss Wilson said that Mr Gilmour never did this.

141. Miss Wilson referred to her earlier evidence with regard to the car park lights and said that the Respondent's failure to instruct the contractor with the most competitive quote demonstrated its failure to comply with this paragraph of the Code. She said that the reason given by the Respondent was that, at one particular point, the cheaper contractor could not do the work for three weeks was not reasonable especially given that the appointed contractor took longer than three weeks before starting the work.

142. Miss Wilson referred to her earlier evidence in relation to the aerial/satellite system repair and gutter clearing and building cleaning. She said that, in relation to the aerial/satellite system, there was delay in work being carried out. She said that, in relation to the gutter clearing and building cleaning, no options were presented to homeowners for consideration despite the Respondent informing them that quotations had been obtained.

143. The tribunal considered that the evidence with regard to the aerial/satellite system repair was not supportive of a breach of this paragraph of the Code. There was certainly delay but there was no evidence that there was a need for options on repair. The tribunal accepted the evidence in relation to the gutter clearing, building cleaning, car park lights and car park gates and that it supported the Applicant's view of non-compliance. The tribunal determined that this paragraph of the Code had not been complied with.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or 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 property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

144. Miss Wilson said that it was a matter of agreement that periodic property visits would be carried out by the Respondent and that this was not adhered to. She referred to the written statement of services which states that periodic property inspections are part of the service provided by the Respondent. She also referred to the tender document prepared by the Respondent before its appointment as property factor: *"In the initial period of management, Indigo Square staff will inspect the development at least once a month. This is to ensure that contractors and service providers are undertaking works as instructed. Thereafter Indigo Square will revert to quarterly inspection dates. To enable you to know when these inspections have happened a card will be put through the door of every property. If there are any issues arising thereafter, we would welcome calls and emails from owners."*

145. Miss Wilson said that, at the time she submitted her application to the Tribunal, only four inspections had been undertaken in a seventeen month period. She said that these were on 21 April 2022, 8 September 2022, 24 November 2022 and 15 March 2023. She said that planned inspections for 15 December 2022 and 31 March 2023 did not take place.

146. The tribunal determined that the Respondent had not complied with this paragraph of the Code. In not carrying out inspections as agreed in the written statement of services, the Respondent had failed to ensure that the development was maintained appropriately.

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

147. Miss Wilson said that her written submissions provide details of why she considers that this paragraph of the Code has not been complied with. She said that she never got a letter from the Respondent confirming any final decision on her complaint. She said that her attempts to have the complaints resolved have been ignored.

148. The tribunal noted that the Respondent has not submitted a copy of any letter to the Applicant which could be constituted as a letter from it giving a final decision on the complaint raised by the Applicant. There is sometimes an issue where a property factor might not recognise that there is an actual complaint from a homeowner rather than a query or raising of a question. Having examined the numerous pieces of communication from the Applicant to the Respondent, the tribunal does consider that the Applicant had a number of complaints which had been intimated to the Respondent. At the very least, the Applicant's letter to the

Respondent of 25 August 2023 where she said that, unless she got resolution of the matters she had raised, she would make an application to the Tribunal, could have left it in no doubt.

149. The tribunal determined that the Respondent has failed to comply with this paragraph of the Code.

Property Factor's Duties

150. Miss Wilson said that, in relation to the placing of the common insurance policy, she considers that the Respondent has failed to carry out the property factor's duties. She said that the title deeds state that the policy should state the insured to be the co-proprietors of Davie Sneddon Way and that, the first version of the policy arranged by the Respondent did not do this but, rather, stated the insured to be the Respondent.

151. The tribunal determined that the Respondent had failed to carry out the property factor's duties in this regard.

Overarching standards of practice.

152. Having considered the totality of the evidence, the tribunal addressed the overarching standards of practice included in the application.

OSP 1- The Respondent did not comply with the Code or property factor's duties but the tribunal had no evidence that the Respondent's business was not compliant with all relevant legislation. The tribunal did not determine that the Respondent had failed to comply with this overarching standard of practice.

OSP2- The tribunal did not find that the Respondent had been dishonest but determined that it had failed in its duty to be transparent and fair to the Applicant.

OSP3- Any information provided by the Respondent was clear and accessible but the issue was its failure to provide information with regard to various matters. The tribunal determined that there was no evidence that the Respondent had breached this overarching standard of practice.

OSP4- The tribunal did not consider that information provided to the Applicant by the Respondent was deliberately misleading or false. Some information, such as the issue with a contract for the car park gates and the insurance policy was negligently misleading and the Respondent therefore failed to comply with this overarching standard of practice.

OSP6- The evidence supported the Respondent's failure to comply with this overarching standard of practice.

OSP11- The evidence supported the Respondent's failure to comply with this overarching standard of practice.

Applicant's Final Position

153. Miss Wilson said that she was seeking a written apology and compensation to reflect what she considered to be extremely poor service from the Respondent. She said that she wanted a copy of the apology to be sent to all homeowners in the development because she believed that some believed that the issues which she was raising with the Respondent were not significant. She said that she considered that all management fees which she had paid to the Respondent should be refunded. She said that the service was completely unacceptable and that she had endured a "constant battle with Indigo Square, week after week."

154. Miss Wilson said that she would also like a personal apology from Ms Val West because she believed that she had lied to her by not owning to her identity when she telephoned the Respondent's office.

155. Miss Wilson said that she considered that her share of the difference in the insurance premium paid from that of the lower quote should be refunded to her.

156. Miss Wilson said that she should be refunded additional costs incurred as a result of the Respondents failure to properly have repairs carried out after obtaining appropriate quotations.

157. Miss Wilson said that she should be compensated in respect of her share of the insurance revaluation cost.

158. Miss Wilson said that she should be refunded the late payment fee which she was charged together with her share of the late payment fee charged by the electricity provider.

159. Miss Wilson said that, to vindicate her position and advance her application, she had required to take four days' leave from her employment to attend the case management discussion and the hearings.

160. Miss Wilson described her involvement with the Respondent as being a "difficult time." She said that the service provided by the Respondent was so bad that, had the homeowners in the development not voted to change property factor, she would have had to move home.

Discussion and Decision

161. For the reasons detailed in the decision, the tribunal determined that the Respondent had not complied with the Code and had not carried out the property factor's duties. The tribunal determined that it was appropriate to consider the terms of a property factor enforcement order ("PFEO")

162. It was helpful of the Applicant to set out what she was looking for in respect of an outcome. The Respondent no longer manages the development so there seems little point in issuing a PFEO requiring it to modify its practice.

163. Because the Respondent no longer manages the development in which the Property is situated, an apology is of little merit. Decisions of the Tribunal are published on its website and are accessible to the public, including the Applicant's fellow homeowners.

164. The tribunal considered it appropriate to require the Respondent to pay compensation to the Applicant. Calculation of what is appropriate is a matter of judicial discretion.

165. In cases before the Tribunal, applicants often ask for refund of management fees. It is not always appropriate because, in many cases, even though a property factor has failed to comply with the Code or carry out the property factor's duties, some element of service has been provided. In this case, the tribunal had difficulty in identifying what service had been provided by the Respondent which had been adequate. The tribunal considered it appropriate that, in arriving at a figure for compensation, the total amount of the management fees paid to the Respondent by the Applicant should be part of the consideration.

166. It was not possible for the tribunal to arithmetically calculate with certainty what additional costs might have fallen to the Applicant because of the Respondent's failure to comply with the Code and to carry out the property factor's duties. On the balance of probabilities, the tribunal found that, considering the evidence, the Respondent's poor management of the development would have had an adverse impact on the Applicant in financial terms.

167. The Applicant had assisted the tribunal in providing detailed written submissions and documentary evidence. This showed the extensive correspondence which she had with the Respondent in attempting to get answers to queries and to point out areas where it was not complying with the Code. The tribunal considered that the efforts which the Applicant had gone to in assembling this should be taken into account when considering compensation.

168. The tribunal also took into account the Respondent's lack of engagement with the Tribunal process. The Respondent had sought an opportunity on 22 July 2024 to submit items "one hundred pages" of documentation and the hearing had been adjourned to allow it the chance to do so. It had lodged nothing. The Respondent had failed to respond to the detailed written submissions of the Applicant which it had been sent in August 2024. The Respondent had failed to attend the hearing on 20 November 2024 and had not provided, in advance or subsequent to the hearing, any reason why it could not participate.

169. The Respondent's representations of November 2023 state that it does not consider that it has failed in any way in its service delivery to the Applicant and that it does not consider that it requires to apologise for anything. The representations also state that it will not be waiving the late payment fee, will not be refunding any sums to the Applicant, will not be paying compensation and will not be refunding management fees.

170. **Taking all matters into account, the Tribunal determined to make a proposed property factor enforcement order requiring the Respondent to pay**

the Applicant the sum of £1500 within twenty one days of the final property factor enforcement order being served on it.

171. **In terms of section 19 (2) of the 2011 Act, in any case where it is proposed to make a property factor enforcement order, the Tribunal must give notice of the proposal to the property factor, and allow parties to make representations to it.**

Appeals

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

Martin J. McAllister,
Legal Member
14 January 2025