



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference numbers: FTS/HPC/PF/23/2940 and 3627 (“the Applications”)

Property: 11, Lambhill Steadings, Strathaven, ML10 6XF (“the Property”)

The Parties:

Mrs. Nicol Shadbolt residing at the Property (“the Homeowner”)

James Gibb Residential Factors, 65, Greendyke Street, Glasgow G1 5PX (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Nick Allan (Surveyor and Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined: -

that with reference to Application FTS/HPC/PF/23/2940, the Property Factor failed to comply with the Section 14 duty in respect of compliance with Sections Bc, Dm, 2.4, 2.5, 6.1, 6.4, 6.7, 7.1 and 7.2 of the Property Factor Code of Conduct 2012

that with reference to Application FTS/HPC/PF/23/3627 the Property Factor failed to comply with the Section 14 duty in respect of compliance with sections Sections OSP3, OSP11, B4, D13, D14, 2.3, 2.7, 3.1, 3.2, 6.4, 6.7 and 7.2 of the Property Factor Code of Conduct 2021

The Tribunal further determined that the Property Factor failed to comply with the Property Factor Duties.

The First-tier Tribunal proposed to make a Property Factor Enforcement Order.

Procedural Background

1. By application dated 25 August 2023, the Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with Sections A3, B4, 2.3, 3.1, 3.2, 3.4, 6.4, 6.7 and 7.2 of the Property Factor Code of Conduct effective until 16 August 2021 (“the 2012 Code”), all as required by Section 14(5) of the Act. The Application also complained of a failure to comply with Property Factor Duties. An inventoried bundle of productions accompanied the application. This application was given reference number FTS/PF/23/2940.
2. By further application dated 13 October 2023, the Homeowner withdrew her application dated 25 August 2023, together with its accompanying productions, and submitted a replacement application for a determination that the Property Factor had failed to comply with Sections Bc, Dm, 2.4, 2.5, 3.3, 6.1, 6.4, 6.7, 7.1 and 7.2 of the Property Factor Code of Conduct effective until 16 August 2021 (“the 2012 Code”), all as required by Section 14(5) of the Act. This Application did not complain of a failure to comply with Property Factor Duties. A fresh inventoried bundle of productions accompanied this application. This application retained reference number FTS/PF/23/2940.
3. By another application dated 13th October 2023, the Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with Sections OSP2, OSP3, OSP11, B4, D13, D14, 2.3, 2.7, 3.1, 3.2, 3.4, 6.4, 6.7 and 7.2 of the Property Factor Code of Conduct effective from 16 August 2021 (“the 2021 Code”), all as required by Section 14(5) of the Act. This Application did not complain of a failure to comply with Property Factor Duties. This application was given reference number FTS/PF/23/3627. The inventoried bundle of productions which accompanied the replacement application FTS/PF/23/2940 was also submitted with this application FTS/PF/23/3627.

4. The Applications were conjoined and dealt with together.
5. A series of case management discussions were held and Directions issued to ensure that the Applications could proceed to a Hearing of evidence. Written submissions were lodged by the Property Factor and further written submissions were lodged by the Homeowner.
6. A Hearing of evidence took place on 7 October 2024. At the outset of that Hearing, it became clear that neither the Property Factor nor the Tribunal had been issued with the replacement application FTS/PF/23/2940.
7. In order to attempt to progress the Applications, the Tribunal discussed its procedural options with both Parties. The Parties agreed that there was no room for reconciliation. The Homeowner, Mrs. Shadbolt, wished to proceed with both Applications. The Tribunal advised that the Hearing would require to continue to allow both the Property Factor and the Tribunal to be given replacement application FTS/PF/23/2940.
8. Mrs. Shadbolt was visibly upset. She advised that she was moving house but wished to continue with the Applications. She advised further that she was unlikely to be able to attend a further Hearing but wished a Hearing to take place in her absence. The Tribunal confirmed that this was in order and asked the Parties to consider agreeing to the Applications being determined without a Hearing if the key facts of the Applications were not in dispute.
9. An adjourned Hearing was fixed for 14 January 2025. Prior to that Hearing, the Parties confirmed to the Tribunal that they were content that the Applications be determined without a Hearing.
10. For the avoidance of doubt, no oral evidence was heard on 7 October 2024.

Determination of the Applications under Rule 18 of the Rules.

11. The Tribunal convened by telephone, initially on 14 January 2025 and thereafter on further dates, to consider the Applications and reach its decision.

Evidence before the Tribunal.

12. In addition to the Applications with the productions, the Tribunal had the following written evidence:

- i) Copy Deed of Conditions by Acrestar Limited in Liquidation dated 5 November 2014 affecting the development of which the Property forms part.
- ii) The Property Factor's written representations dated 5 December 2023 with a copy its Written Statement of Services, copy Scottish Power invoices; spreadsheet in respect of Scottish Power invoices, copy documentation from EEG, Damm and SEPA regarding the sewage station and explanatory letter from the Property Factor in respect of the sewage station invoicing;
- iii) The Homeowner's submission dated 25 May 2024 lodging copy correspondence with the Property Factor;
- iv) The Property Factor's written representations dated 11 December 2024 in respect of FTS/PF/23/2940 with a copy of its Written Statement of Services and development schedule, copy inspection report of the sewage station and copy invoices and
- v) The Homeowner's further written submission dated 12 December 2024 with copy correspondence with the Property Factor.

Homeowner's Evidence

13. The Homeowner, Mrs. Shadbolt's, evidence and written submissions are set out in the Applications and augmented by her further submissions.

14. Mrs. Shadbolt submits that there have been ongoing disputes with the Property Factor since 2019, none of which have been brought to conclusion. These complaints are under both the 2012 Code and the 2021 Code of Conduct as they cover both periods.

15. Mrs. Shadbolt's submissions for both Applications are broadly the same. For each Application, she cross-refers the detail of the complaint to the relevant Code and co-relates the detail of the complaint to the productions.

16. There are two areas of complaint which relate in the main to the sewage treatment system at the development involving the invoicing of costs and the repair and maintenance schedule. The latter being a potential danger to life.

Invoicing

17. Mrs. Shadbolt's complaint in relation to billing and costs is that it is not clear what she is being asked to pay. The Property Factor has failed to explain how charges have been calculated and has failed to answer all requests for more information.

18. Mrs. Shadbolt states that this is a breach of Section 3: Financial Obligations, parts 3.3 in both Codes and the overriding objectives of this section of the Codes.

19. In particular, there is no transparency in the accounting procedure used and so Mrs. Shadbolt believes the invoices and bills to be incorrect. The Property Factor has failed to respond to requests for an explanation.

20. Mrs. Shadbolt's submissions highlighted three current invoicing complaints:

1) In 2020, the development owners were invoiced for a Scottish Power electricity bill backdated to 2015. Mrs. Shadbolt referred to a letter from the Property Factor in January 2020 which states that the Property Factor made an agreement with Scottish Power without knowledge or consent of the development residents to accept the five-year backdated Scottish Power bill. Mrs. Shadbolt pointed out that this agreement was contrary to Ofgem guidance that backdating bills for domestic customers should be restricted to a 12-month period. Despite a significant number of emails and phone calls to the Property Factor for a resolution, there has been no response. Mrs

Shadbolt stated that this is a breach of Section 2: Communication and Consultation at 2.4, 2.5 and 7.2 of the 2012 Code.

- 2) The May 2023 Property Factor invoice shows a late invoice from Scottish Power for communal electricity covering the period 23 July 2021 to 23 October 2021. Again, this breaches the Ofgem back-billing rules and has been accepted by the Property Factor without challenge to Scottish Power or communication with the owners. Mrs. Shadbolt's position is that the Property Factor does not protect homeowners' funds and so breaches the overriding objectives of Section 3: Financial Obligations.

Further, Mrs. Shadbolt pointed out that there is a duplication of invoicing with Opus energy. With reference to productions lodged by her, both Scottish Power and Opus have invoiced for the same period and with the same description with both invoices being paid by the Property Factor. Again, the Property Factor has not answered requests for an explanation and clarification.

- 3) Mrs. Shadbolt's position is that the Property Factor's invoice of May 23, and the follow-up invoice do not reconcile. She stated that an amended invoice was posted on the client portal. With reference to several of the productions lodged by her, Mrs Shadbolt highlighted unexplained discrepancies and over charging in respect of electricity invoicing from 2021 to 2023. No explanation or clarification has been provided by the Property Factor.

Servicing and Repairs

Sewage treatment system

21. Mrs Shadbolt's complaint in relation to services and repairs for the development, relates to scheduling routine inspections and maintenance, particularly in regard to the sewage treatment system at the development. Her position is that the Property Factor has failed to organise and schedule timely maintenance and emptying of the sewage treatment system for the development.

22. Repeated request for information have been made but no responses have been provided.
23. With reference to the productions lodged, Mrs Shadbolt pointed out that a finance department employee of the Property Factor made the property managers aware of the issues on site, but no action was taken. She pointed out that the client portal, where information on these matters should be found, is empty and does not show the schedule for emptying the sewage treatment system or a procedure for dealing with repairs. Mrs Shadbolt's position is that the lack of a planned programme of cyclical maintenance is a breach of Section 6: Carrying out repairs and maintenance.
24. Mrs Shadbolt's submissions explain that the development is served by a sewage treatment system situated in a field which forms part of the title to the development. She stated that the sewage treatment system has several ill-fitted, loose and unsecured lids and the waste management teams who have emptied the sewage system advised that these pose a real danger to life if not correctly secured. This was reported to the site manager in person in May 2020 but no action was taken. She further submitted that the homeowners requested specifications of sewage treatment system to acquire the parts themselves, but the Property Factor failed to reply.
25. Mrs Shadbolt noted that the last site visit to the development was the May 2020 visit and this followed many request from the development homeowners. She pointed out that Written Statement of Service Development Schedule outlines that there should be four visits per annum.
26. Details on the last time the sewage tank was emptied and serviced, plus information on the scheduling of future emptying and servicing have been requested but are unanswered.
27. Mrs Shadbolt's position is that the lack of site visits is a breach of Written Statement of Service and Section 6: Carrying out Repairs and Maintenance.

28. Further, the lack of regular maintenance is having an adverse effect on the efficiency of the system. Mrs Shadbolt explained that numerous requests were made to the Property Factor to increase the frequency of the emptying of the sewage treatment tank to six monthly, but these were ignored, resulting in an emergency situation in September 2020. The contractors who attended advised by that the system was not being emptied frequently enough and that the current condition of the system was hazardous due to the loose and ill-fitting lids. The Property Factor was advised and took no action.

29. Mrs Shadbolt pointed out that there are no current SEPA certificates on the client portal to demonstrate that the sewage treatment system is functioning correctly and not impacting on the local waterway in to which it discharges. These certificates should be obtained annually but the client portal has had no documents uploaded to the 'contracts and specifications' section since 2019.

Water Pumps

30. Mrs Shadbolt's submissions explain that the development is served by a water pump site, which requires ongoing maintenance and upkeep. Again, no documents, certificates or evidence of maintenance of the water pump site have been provided in the client portal. Mrs Shadbolt understands that, following a four day water pump failure in September 2020 which left the development without running water, the contractors had raised concerns with the Property Factor who had taken no action. The full pump failure in September 2020 resulted in large costs to the development. Since 2020, there have still been no inspection reports uploaded to the Client Portal, despite the pump system requiring quarterly servicing.

Fire Hydrant

31. Mrs Shadbolt's submissions explain that the development is served by a fire hydrant. Although there should be annual maintenance inspections, it does not appear that these have taken place.

32. Mrs Shadbolt's position is that, in general, the lack of engagement or response from the Property Factor amount to breaches of Section 2: Communication and Consultation, and Section 7:

Complaints Resolution.

33. Mrs Shadbolt's position is that, in general, her complaints are "multifaceted" and have been ongoing for since 2019. In that time, there has been little engagement from the Property Factor and no actions have been taken to resolve the maintenance issues.
34. The Property Factor commits to a five-day timeframe for responses to emails but much of the correspondence does not ever receive a response. Mrs Shadbolt's formal written complaint (document 27) from June 2023 was not responded to other than by a holding email more than 10 days after the original email was sent.
35. The Property Factor has not followed any complaints procedure and has never provided a written outcome of a dispute resolution process, in breach of Section 7.

Effect of Property Factor's conduct and outcome sought.

36. With reference to the effect which the Property Factor's conduct has had on her, Mrs Shadbolt emphasised the extreme stress and upset that their lack of action, care and concern has caused, to the extent that she and her husband are now moving house. She stressed the amount of time and effort she has taken to pursue a resolution with the Property Factor to no avail. Mrs Shadbolt stated that "non-transparent finance systems" and unexpected "aged" bills have had a financial impact and leads to financial uncertainty for her household.
37. With regard to an outcome, Mrs Shadbolt's position is that the Property Factor should pay a share of the bills that have resulted from their mistakes, in particular, the "aged debt bills", the costs for repairing the sewage treatment plant, the "aged" electricity bill should be written off and management fees

should be refunded. Further, the Property Factor should put protocols put in place that ensure that other developments in their management “do not end up without correct servicing certificates or working amenities”.

Property Factor’s Evidence

38. The Property Factor’s evidence and written submissions are set out in their responses dated 5 December 2023 and repeated in their further written submissions are set out in their responses dated 11 December 2024. Similar, to Mrs Shadbolt’s submissions, the Property Factor’s submissions for both Applications are broadly the same.

39. The Property Factor accepts that they did not communicate with Mrs Shadbolt as fully and as promptly as they should have. They fully accept breaches of Section 2 of both Codes. With reference to Section of the Codes, their position is that the complaints procedure was underway and had not finished to completion.

40. With regard to the following particular points raised by Mrs Shadbolt:

Invoicing

41. The Property Factor’s position is that, with reference to their correspondence of 10 January 2020 and 2 November 2020, they consider that they have responded in full as best they could with regard to the backdated electricity costs. They state that the 12-month back billing period did not apply to the development and state that, at that time copy invoices were available to view on the client portal. However, due to the time that has elapsed the information is no longer viewable. They state that the homeowners received the electricity supply. They state that there has not been a breach of the Code.

42. With regard to double charging and a spreadsheet lodged by them, the Property Factor explained that the development has two communal meter supplies. Opus and then EDF supplied the communal electrics and Scottish Power and then Scottish Hydro supplied the sewage system.

43. With regard to the errors in the invoices, the Property Factor accepted that there had been “incorrectly double charging” in the February 2023 invoice and explained that this had been corrected in the May 2023 invoice. They explained that in June 2023 they attempted to provide further clarification by reversing the consolidated charges and re-charging individual costs. The Property Factor accepted that this was not explained to the Homeowner.

Servicing and Repairs

44. The Property Factor’s position is that Ritchie MacKenzie has a service contract for the water and sewage systems. The Property Factor accepted that some of the Ritchie MacKenzie accounts detail only the water pump service, and does not include the sewage systems. The Property Factor explained that, in spite of this lack of mention, Ritchie MacKenzie had serviced the sewage system, too.

45. With regard to emptying the sewage tank, the Property Factor evidenced that this has been done on four occasions.

46. With regard to the SEPA licence and with reference to a summary of charges, the Property Factor’s position is that this has been paid annually and that the 2023/2024 is awaited.

47. With regard to the water pumps, the Property Factor’s position is that these have been serviced regularly by Ritchie MacKenzie. They explained it was a power cut and surge that caused the outage in September 2020 and referred to communications to homeowners at that time.

48. With regard to the fire hydrant, the Property Factor’s position is that the developer did not hand over a fire hydrant and so they had no any documentation of the fire hydrant being in place. Accordingly, they did not maintain the fire hydrant.

49. With regard to the Written Statement of Services (WSS), the Property Factor refuted a breach of the Codes. They explained that the WSS fully explains their policies in respect of billing arrangements, communication arrangements and complaints procedures.

Effect of Property Factor's conduct and outcome sought.

50. The Property Factor made no comment in respect of the effect of their conduct on the Homeowner. Other than to point out that the Homeowner benefitted from the electricity supply and so is liable for payment, The Property Factor made no comment in respect of the outcome sought by her.

Further evidence considered by the Tribunal.

51. The Tribunal gave particular consideration to the following relevant evidence:

- i) The various third party invoices lodged by the Parties and referred to them in their written submissions;
- ii) Copy Deed of Conditions by Acrestar Limited in Liquidation dated 5 November 2014. The Tribunal noted that common parts of the development are all parts of the development used in common and which are out with the individual house and include the pumping station, gas tanks and the water treatment plant;
- vi) The Property Factor's Written Statement of Services. The Tribunal noted that the Development Schedule at Section 03 makes no mention of the pumping station, gas tanks and the water treatment plant but makes reference to the common parts of a tenements building, at Section 05 states that cleaning is not applicable and at 06 which commits to four site visits per year;
- iii) The correspondence referred to by the Parties in their written submissions. In particular, letter by LPM dated 10 January 2020 and letter by the Property Factor 2 November 2020, both authored by Jason Millar, which attempt to explain the back-billing matter;
- vii) The Property Factor's copy inspection report of the sewage station dated 14 August 2018 which notes two electricity meters;

- viii) Homeowner's email dated 12 December 2024 which submitted correspondence with the Property Factor regarding the termination of the Property Factor's contract as property factor.

Findings in Fact.

52. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property Factor is a land manager for the development;
- iii) The common parts of the development of which the Property forms part includes a pumping station, gas tanks and a water treatment plant;
- iv) The Development Schedule of the Property Factor's Written Statement of Services makes no mention of these particular common parts;
- v) The Development Schedule of the Property Factor's Written Statement of Services infers that the common parts of the development are those relating to a tenement property;
- vi) The Development Schedule of the Property Factor's Written Statement of Services is not appropriate for a land management contract;
- vii) The Development Schedule of the Property Factor's Written Statement of Services commits the Property Factor to four site visits per year;
- viii) The Property Factor does not carry out four site visits per year;
- ix) The Property Factor has not carried a site visit since August 2018;
- x) There is an electricity supply for the development common parts which is metered by two meters and supplied by two electricity companies;
- xi) In terms of their Written Statement of Services at section 5.2.1, the Property Factor pays the electricity accounts on behalf of the development homeowners;
- xii) There have been errors and discrepancies in respect of the

electricity invoicing;

- xiii) The Property Factor is unable to provide a clear explanation these errors and discrepancies which span a number of years;
- xiv) The Property Factor employs Ritchie MacKenzie Co. Ltd to service the pumping station;
- xv) Ritchie MacKenzie Co. Ltd have carried out annual servicing from 2018 to 2023;
- xvi) The servicing carried out by Ritchie MacKenzie Co. Ltd was not communicated to the Homeowner;
- xvii) A SEPA licence has been in place for the sewage treatment plant;
- xviii) The existence of the SEPA licence was not communicated to the Homeowner;
- xix) The Property Factor has not maintained the fire hydrants which form part of the development common parts;
- xx) The Property Factor has not communicated to the Homeowner that they have not maintained the fire hydrants;
- xxi) Property Factor's Written Statement of Services has sections which cover financial and charging arrangements, communication arrangements and complaints;
- xxii) The Property Factor has failed to comply fully with these sections of their Written Statement of Services;
- xxiii) The Property Factor's client portal is not kept up to date and lacks relevant information in respect of services carried out;
- xxiv) The Property Factor's contract at the development has been terminated;
- xxv) The Homeowner has suffered stress, frustration and expense as a result of the Property Factor's conduct.

Issues for the Tribunal

53. The issue for the Tribunal are did the Property Factor breach the 2012 Code and the 2021 Code as set out in the Applications?

Decision of the Tribunal and Reasons for the Decision.

54. In reaching its decision the Tribunal noted that the core facts of the complaints were not disputed and that the dispute centred on the way in which the Property Factor had acted in line with its Written Statement of Services.

55. The Tribunal noted that duration of the complaints was such that the same broad complaints fell under both Codes. The Parties' evidence dealt with both Codes together and so the Tribunal has taken the same approach.

2012 Code and 2021 Code – Written Statement of Services.

Application FTS/HPC/PF/23/2940 2012 Code: Bc;Dm;2.4,6.1,7.1 and 7.2

Application FTS/HPC/PF/23/3627 2021 Code: B4, D13, D14, 2.3

56. Both Codes require the Property Factor to have a Written Statement of Services with set policy and procedure criteria. The Codes differ only slightly in their wording. Both Codes, in their respective preambles, make it clear that the expectation and test which the Tribunal will apply, is that the Property Factor's Written Statement of Services not only has the set criteria but the Property Factor follows the policies and procedures.

57. From its Findings in Fact and the Property Factor's candid admission in respect of communication, the Tribunal finds that although the Property Factor's Written Statement of Services has the required policy and procedures, it is clear that the Property Factor does not adhere to or follow these policies and procedures.

58. Therefore, the Tribunal finds that the Property Factor is in breach of these parts of the Codes.

2012 Code and 2021 Code – Communication.

Application FTS/HPC/PF/23/2940 2012 Code: 2.4, 2.5

Application FTS/HPC/PF/23/3627 2021 Code: 2.3, 2.7

59. From its Findings in Fact and the Property Factor's candid admission in respect of communications, the Tribunal finds that the Property Factor's has failed to comply with these parts of the Code.
60. The extent of the Property Factor's failures in this regard are significant, continuous and are at the very root of the Homeowner's complaints. Had the Property Factor answered the Homeowner's requests for information in respect of the invoicing, no matter how difficult that might have been for the Property Factor, and, had explained that actions which they had been taking in the background regarding maintenance of the common parts, the Homeowner's complaint might well have been resolved without the need for the Applications.
61. The Tribunal's failure to keep the client portal up to date exacerbated the situation between the Parties and added to the Homeowner's frustration.
62. With regard to the letter by LPM dated 10 January 2020 and the letter by the Property Factor dated 2 November 2020, both authored by Jason Millar, the Tribunal found these to be evasive in respect of the issues raised by the Homeowner. The Homeowner wanted a simple explanation as to why five years of invoices had been grouped together and paid by the Property Factor. The letters did not address this. The January letter uses vague wording such as "for various different reasons the invoice has only recently been received" with no attempt to detail the "various different reasons". The November letter fares no better with a rambling explanation of invoices being sent to a wrong address and giving this as a reason as to why the Ofgem guidance did not apply. No clear reasoning was given in respect of what actually happened with the invoices and which organisation, the energy company or the Property Factor, was responsible for the incorrect invoicing. The November letter links a "change of tenancy" to eligibility of the Ofgem guidance. As there are no tenancies, this explanation makes no sense whatsoever. This response by the Property Factor is woefully inadequate in all respects.

63. Therefore, the Tribunal finds that the Property Factor is in breach of these parts of the Codes.

2012 Code and 2021 Code – Financial obligations.

Application FTS/HPC/PF/23/2940 2012 Code: 3.3

Application FTS/HPC/PF/23/3627 2021 Code: 3.4

64. These parts of both Codes oblige the Property Factor to provide an annual statement. There is no evidence in this respect and so the Tribunal finds that the Property Factor is in breach of these parts of the Codes.

2021 Code – Financial obligations.

Application FTS/HPC/PF/23/3627 2021 Code: 3.1, 3.2 and 3.4

65. From its Findings in Fact, the Tribunal finds that the Property Factor's has failed to comply with these parts of the Code.

66. The Tribunal's view is that the Property Factor failed to provide clear explanations for the way in which they dealt with the electricity accounts. With regard to the perceived double charging, the Property Factor could and should have explained that there are two meters and two suppliers before the matter came to the Tribunal. With regard to the discrepancies in the 2023 invoices, the Property Factor Property Factor could and should have explained how the discrepancies arose and how the Property Factor dealt with them. They chose not to do so and this added to the Homeowner's frustration.

67. Therefore, the Tribunal finds that the Property Factor is in breach of these parts of the 2021 Code.

2012 Code and 2021 Code – Repairs and maintenance

Application FTS/HPC/PF/23/2940 2012 Code: 6.4

Application FTS/HPC/PF/23/3627 2021 Code: 6.4 and 6.7

68. From its Findings in Fact, the Tribunal finds that the Property Factor's has failed to comply with these parts of the Code.

69. The evidence shows that the Property Factor did not carry out the quarterly site inspections as set out in their Written Statement of Services and the last inspection was in August 2018. That inspection was rudimentary and provided no meaningful detail. The Tribunal accepts that the Property Factor may not have been made aware that there were fire hydrants on site which it should maintain. However, the Tribunal takes the view that a site inspection, if carried out to a reasonable standard, should have noticed the fire hydrants. The inspector should have reported on these and should have queried if they should be part of the common maintenance.

2021 Code – Complaints procedure

Application FTS/HPC/PF/23/3627 2021 Code: 7.2

70. From its Findings in Fact, the Tribunal finds that the Property Factor's has failed to comply with this part of the Code.

71. The Tribunal notes that the Property Factor refutes the breach because the complaints procedure was not followed to completion before the Application was raised. As a thrust of the Homeowner's complaint is lack of communication, with which the Property Factor agrees, the Tribunal finds this to be a flimsy response by the Property Factor. The Tribunal takes the view that, the Property Factor, acting reasonably and in a pragmatic fashion, should have anticipated that the complaints procedure would not assist in resolving matters and should have issued a communication to this effect.

72. Therefore, the Tribunal finds that the Property Factor is in breach of this part of the 2021 Code.

2021 Code – Overarching standards of practice.

Application FTS/HPC/PF/23/3627 2021

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

73. From its Findings in Fact, the Tribunal found that the Property Factor failed to communicate effectively with the Homeowner. However, there was no evidence that the Property Factor was not “honest, open, transparent and fair”.

74. Therefore, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

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

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

75. From its Findings in Fact and the reasons set out in respect of the Code breaches relating to Communications and Complaints, the Tribunal found that the Property Factor has failed to comply with these OSPs.

76. Therefore, the Tribunal finds that the Property Factor is in breach of these parts of the 2021 Code.

Property Factor Enforcement Order (PFEO)

77. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *“(1) The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”*

78. The Tribunal’s view is that the Property Factor breaches of the Codes were continual and could easily have been avoided if the Property Factor had

simply communicated with the Homeowner, had admitted to mistakes when these were made and explained how the technical aspects of their management of the common parts were sub-contracted and handled.

79. The Tribunal noted that the outcome which the Homeowner, having moved from the development, now seeks is financial being a refund of the “aged debt bills”, the cost of repairing the sewage treatment plant and a refund of management fees. The Tribunal agrees with the broad principles of these outcomes and agrees that the Homeowner should be compensated in respect of additional costs incurred by her.

80. The Tribunal has no doubt that Mrs. Shadbolt has suffered extreme stress and upset as a result of her experiences with the Property Factor and has no doubt that this has played a part in her decision to move house. Accordingly, the Tribunal considers that she should awarded compensation in this regard.

81. The Tribunal considers the sum of £2,500.00 to be reasonable in respect of the total compensation.

82. Section 19(2)(a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2)(a) of the Act, the Tribunal issues separate Notice to the Parties.

Signed

Karen Moore, Chairperson

14 February 2025

