Housing and Property Chamber
First-tier Tribunal for Scotland

First-tier Tribunal for Scotland (Housing and Property Chamber) Property Factors (Scotland) Act 2011 ("the Act")

Statement of reasons for decision in terms of the First-tier Tribunal for Scotland, Housing and Property Chamber ("the Tribunal") (Rules of Procedure) Amendment Regulations 2017 ("the regulations")

Chamber Ref: FTS/HPC/PF/21/0459

Re.: 18 Silvertrees Wynd, Bothwell, G71 8FH ("the property")

The Parties:-

Ms Caroline Adams, 18 Silvertrees Wynd, Bothwell, G71 8FH **("the homeowner")**

Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park, Hamilton ML3 0QA **("the property factor")**

The Tribunal members: Simone Sweeney (legal chairing member) and Andrew Taylor (ordinary member)

Decision of the Tribunal

The Tribunal unanimously determined that the property factor has failed to comply with sections, 2.1, 2.5, 5.2 and 6.3 of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Act.

In terms of section 19(1) (b) of the Act the Tribunal proposes to make a Property Factor Enforcement Order ("PFEO") and gives notice of that proposal and allows parties to make representations in terms of section 19 (2) of the Act.

Background

1. By application dated 20th February 2021, the homeowner applied to the Tribunal for a determination on whether the property factor had breached sections 2.1, 2.5, 3, 5.2, 5.5, 6.3 and 6.9 of the Code. There was no allegation of any failure on the part of the property factor to comply with the Property Factor's duties.

2. A Notice of Acceptance of the application was issued on 10th March 2021 by a legal member of the Tribunal under Rule 9 of the regulations. The application was referred to a telephone hearing before the Tribunal on 4th June 2021.

3. A written response to the application together with an inventory of productions was received from the property factor under cover of email dated 14th April 2021.

4. Reference is made to the terms of the Tribunal's direction dated 16th May 2021.

5. At the telephone hearing on 4th June 2021 the homeowner was present. The property factor was represented by director, Mr Harry Miller.

Section 2.1 of the Code

You must not provide information which is misleading or false.

Evidence of the homeowner

6. Ms Adams alleged that the property factor had failed to comply with section 2.1 of the code by reference to two separate examples. Firstly, Ms Adams referred the Tribunal to production number 13 within her inventory. This was a copy of expenditure incurred by the property factor for the period 1st September to 30th November 2020. The Tribunal were directed to an entry which read, *'Insurance excess charges (re burst mains water supply to building) £12.13.'* Ms Adams alleged that this charge related to a repair and not to an insurance excess charge. This had been confirmed by Mr Miller. Ms Adams referred the Tribunal to production number 17 (an email to the homeowner from Mr Miller dated, 31st December 2020) specifically the section which provided,

> *'Please note that the main supply pipe was burst above the ceiling of the underground car park. There is no discrepancy as the total charged for the callouts and repairs were under the threshold of £500 therefore owners were only charged the actual total.'*

Ms Adams found it misleading that a repair should be included as part of an insurance excess charge.

7. Secondly, Ms Adams alleged that the property factor had been false and misleading in failing to answer her query about how many insurance claims had been made against the buildings insurance policy. The insurance is around £450 each year and each time a claim is made against the policy, it affects the cost of the yearly premium. Any claims are handled internally by the property factor. Ms Adams understood that there had been twelve claims made against the policy which caused her concern. She submitted that this information had been provided to her by Mr Miller in an email which she had not produced.

8. Ms Adams directed the Tribunal to an email she had sent to Mr Miller dated 24th June 2020 in which she enquired how many claims had been made against the insurance policy in the preceding three years. The response, within an email from Mr Miller dated 25th June 2020, provided, *'This information has already been provided within our quarterly statements.'* Ms Adams submitted that, within invoices, the property factor includes the cost for insurance excess at £350 but directed the Tribunal to a copy of the Allianz policy at production which included the excess as £500. Ms Adams felt that the information provided by the property factor to have been misleading.

Response of the property factor

9. Mr Miller insisted that the property factor had complied with the requirements of section 2.1 and denied that any information had been provided which had been misleading or false. The relevant insurance policy had been shared with homeowners. Moreover, he referred the Tribunal to production number 24 within the homeowner's inventory. This was a copy letter from the property factor to all homeowners dated 20th December 2020. The letter contained further information relevant to the policy and specifically in relation to the excess. The letter, insofar as relevant provided,

> *'Your building insurance details have already been provided and your individual charges have been invoiced in accordance with your title conditions. The current*

insurer is Allianz, Policy number…Please be aware that this policy covers the whole of the building and, as such, any claims will be subject to a £350 excess (nb water excess is £500) which, like the premium, will be shared equally between all owners. The policy and claims handling service is administered by ourselves on behalf of the Insurers and they provide us with a commission …Please also note that this Insurance is not part of your Factoring Management fund which is shown below.'

10. Mr Miller denied the allegation that there had been anything misleading about the excess charges. It was clear from the content of the letter of 20th December 2020 an excess charge of £350 applies to a claim against the buildings insurance with the exception of claims involving water which are subject to an excess charge of £500. There may have been a misunderstanding on Ms Adams' part but there had been nothing false or misleading within the information provided by the property factor.

11. Mr Miller denied having ever said that twelve claims had been made against the buildings insurance policy. He denied having sent an email to Ms Adams to this effect. He submitted that there had been no more than four claims made by the property factor on behalf of homeowners over the last four years.

12. Mr Miller explained that the development was constructed by Muir Construction around 2014. There have been major structural issues with the buildings since then including water ingress into some flats. Muir Construction are still on site and undertaking works and repairs (including internal redecoration) to properties which otherwise might have made claims against the buildings insurance. However, because Muir Construction has taken responsibility for the works, no claims have been made.

13. With regard to the charge for repair at production 13, Mr Miller denied that there was anything misleading or false here. He explained that repairs were required to fix a burst water pipe. The actual cost of the work fell below the value of the excess and therefore only the costs of the works were charged to homeowners.

Section 2.5 of the Code

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and

complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.

Evidence of the homeowner

14. Ms Adams alleged that, on several occasions, the property factor had failed to respond to enquiries she had made within prompt timescales.

15. A copy of the property factor's written statement of services was within the homeowner's inventory of productions. On the last page, the document provided, insofar as is relevant,

> *'MPM Ltd will endeavor to respond to written enquiries within 7 working days of receipt. If more time is required to respond the homeowner will be notified within that time. MPM Ltd will endeavor to respond to telephone calls by the end of the next working day.'*

16. In her submission, Ms Adams claimed that the property factor failed to meet the commitments set out in its own statement of services and respond within seven days. Examples were provided.

17. Ms Adams directed the Tribunal to an email she had sent to the property factor dated 22nd January 2021. The email contained a complaint regarding a number of issues in connection to her application to the Tribunal. The email referred to the homeowner's intention to escalate her complaint to the Tribunal. There being no response from the property factor, the homeowner had sent a further email dated 30th January 2021 (copy of which was before the Tribunal). The property factor did not respond until 6th February 2021 and in the following terms,

> *'Please note that your enquiry was not of an emergency nature or a requirement for work to be carried out therefore items of this nature take longer to address.'*

18. The Tribunal was directed to production number 18. This was an email dated, 2nd January 2021 with questions about various matters. There being no response, a further email was sent to the property factor on 14th January. A reply was not forthcoming until 20th January 2021.

19. Within some of her emails, Ms Adams claimed to have referred to the property factor's failure to meet the standards of service set out within the written statement of services ie failing to reply to her emails within a period of seven days.

Response of the property factor

20. In response, Mr Miller did not deny that the property factor had failed to comply with its own written statement of services and respond to the homeowner within seven days.

21. Mr Miller referred to the unusual circumstances of the last year and the difficulties he experienced trying to run a business when his office was closed. Mr Miller claimed that he did not have the time to respond to Ms Adams' emails and preferred to concentrate on responding to emergency matters. Mr Miller offered no apology and insisted that many homeowners will support the good work which has been done by the property factor.

22. Mr Miller accepted the timescale of seven days within the written statement. He submitted that this had been written before the pandemic. Whilst he wasn't making excuses for failing to meet this commitment, he was trying to do his best in the unusual circumstances.

23. The Tribunal chair enquired whether an acknowledgement email could have been sent to the homeowner with a realistic timescale by which she would receive a more detailed response. Mr Miller advised that this might have been done in different circumstances.

24. In response to the ordinary member's enquiry about whether the property factor had written to homeowners at the start of lockdown in 2020 to advise that there would be a change to the normal service, Mr Miller confirmed that the property factor had failed to do this.

Section 3 of the Code

Evidence of the homeowner

25. Clarification was provided by the homeowner that her complaint in respect of section 3 of the Code was focused on the preamble where it provides,

'While transparency is important in the full range of services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.'

26. Ms Adams alleged that the property factor had failed to comply with the preamble to section 3 of the Code by reference to three examples.

27. The first example was a charge for £6 which had appeared within the quarterly statement of 11th June 2017 (production number 8 within the homeowner's inventory).

28. The charge was included in the statement for, *'sundry development owners expenditure.'*

29. The background was that an arrangement had been reached between the property factor and the owners' association at the development whereby the property factor would hand deliver to homeowners the minutes of meetings of homeowners. The property factor would charge owners for the service at the rate of £6 per quarter.

30. Ms Adams explained that she was not a member of the owners' association and that the association had no legal authority to make this agreement with the property factor. Reference was made to the deeds of conditions which Ms Adams claimed to allow for repair, maintenance and renewal, only. Ms Adams explained that the association is a voluntary organization, represents a minority of homeowners and cannot mandate owners to be members of the association.

31. She believed that there was no authority for the charge and that it ought to be removed from her statement.

32. The second example of the property factor failing to comply with section 3 of the Code was charging twice for plant and machinery insurance cover.

33. The Tribunal was directed to productions 12 and 13. Production 12 was the quarterly statement of charges for the period 1st March 2020 to 31st May 2020. This contained an entry for the homeowner's share of the cost of plant and machinery insurance for 2020 as £7.56.

34. Production 13 was the quarterly statement of charges for the period 1st September 2020 to 30th November 2020. Plant and machinery insurance cover was included at a cost of £6.49.

35. Ms Adams claimed to have written to Mr Miller on several occasions querying why the charge had been included twice. The Tribunal was directed to Ms Adams' emails dated, 30th December 2020, 2nd January, 21st and 22nd February 2021. Ms Adams claimed that she failed to receive a satisfactory response to her enquiries. The Tribunal was referred to the response from Mr Miller in his email, dated 6th February 2021 which provided insofar as is relevant,

> *'Plant & Machinery - Our charges are clear & evident to the vast majority of the owners – but again your personal view is deifferent (sic).'*

36. Ms Adams conceded that she had received a credit from the property factor in April 2021 for the second charge. However she insisted that this remained part of her complaint.

37. The third example cited concerned a charge by the property factor to copying keys to the security door. Ms Adams alleged that none of the homeowners had received keys to the security doors leading into each of the buildings within the development. The property factor had been given only one key to each building by the developers when the development was completed approximately six years ago. Ms Adams claimed that the property factor advertised to have keys cut for the sum of £5. However on the statement of charges, the property factor applied a charge of £6.03 per key.

38. Despite requests from Mr Miller for an explanation, Ms Adams remained unaware how this charge had been calculated.

Response of the property factor

39. In response, Mr Miller denied any failure on the part of the property factor to comply with section 3 of the Code. With regards to the charge for *'sundry development owners expenditure'* Mr Miller explained that he had been instructed by the owners' association to issue invoices. This was an additional service to that provided by the property factor and therefore the homeowners were charged for the service. He did

not consider the costs to be excessive. Mr Miller admitted that the property factor failed to intimate to homeowners that they would be charged for the service. He assumed that intimation was provided to homeowners by the association.

40. Mr Miller referred the Tribunal to the terms of the written statement of services as authority for the property factor to undertake the service and charge homeowners accordingly. Insofar as is relevant the statement of services provides,

> *'Additional services/Fees MPM Ltd offer the following services which may incur additional costs (homeowners to be informed and agreement reached prior to commencement):- …Supply of copy invoices/statements and documentation.'*

41. Moreover, the property factor relied upon the fact that the instruction came from the owners' association as authority for the property factor to undertake the additional service and charge accordingly. Mr Miller was of the opinion that the association was acting on behalf of all owners, that his instruction followed a majority of homeowners voting in support of the property factor undertaking the service.

42. In response to the suggestion that the deed of conditions provided no authority for the owners' association to instruct the property factor, Mr Miller advised that he assumed he had authority to charge the homeowners.

43. Mr Miller admitted that the homeowner had been charged twice for plant and machinery insurance. He explained that the insurance company had made an error. The error had been identified and a credit provided to the homeowner in April 2021.

44. It was admitted that the homeowners were not provided with keys to access the security doors when the building was completed and that the property factor had arranged to have keys copied on request from homeowners. Originally the property factor had used the services of a business which charged only £5 to copy each key . During lockdown, the service was not operating. The property factor required to make use of key cutting services in a local supermarket which charged £6.03 per key. Mr Miller submitted that the increased cost had been explained to all homeowners. There was no benefit or additional charge applied by the property factor.

Section 5.2 of the Code

You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.

Evidence of the homeowner

45. Ms Adams alleged that the property factor had failed to comply with section 5.2 because the property factor had failed to consult with insurers prior to agreeing policies for buildings and plant and machinery insurance. The homeowner submitted that she found billing for each of the insurance policies confusing and alleged that the property factor refused to disclose the type of cover which applies to each of the policies.

46. Ms Adams admitted that she had received a certificate of the buildings insurance policy as required by section 5.2 of the code and that it formed production number 22 on her inventory.

47. However the homeowner considered the information brief. She was unclear why she was being charged different excess charges on her quarterly statements. The homeowner accepted that she had been provided with details of the excess levels in place. The homeowner submitted that her complaint was more about the content of the insurance policy. She admitted that a complaint of that nature did not fall within the terms of section 5.2 of the Code.

48. The homeowner submitted that she had no information in relation to the insurance for plant and machinery.

Response of the property factor

49. Mr Miller denied that the property factor had failed to comply with section 5.2 of the Code. He referred the Tribunal to production number 24 on the homeowner's inventory (a letter from the property factor addressed to the homeowner dated, 20th December 2020). Mr Miller referred the Tribunal to the terms of that letter referred to

at paragraph 9 above. It was submitted that the information provided in this letter satisfied the terms of section 5.2 of the Code.

Section 5.5 of the Code

You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.

Evidence of the homeowner

50. The homeowner alleged that the property factor had failed to comply with section 5.5 of the Code with reference to an insurance claim in May 2020. A car parked on the common car park area had gone on fire causing damage to the surface of the car park. The property factor had made a claim against the common insurance policy. The homeowner was charged her share of the excess. Resurfacing work did not occur until January 2021. The homeowner alleged that the property factor had failed to provide homeowners with any progress of the claim between May 2020 and January 2021.

Response of the property factor

51. Mr Miller denied any failure on the part of the property factor to comply with section 5.5 of the Code. He submitted that there was no requirement to keep the homeowners updated with progress of the claim arising from the damaged car park. The claim concerned a general matter and was not a claim specific to any single homeowner, therefore no requirement to keep homeowners informed.

52. Mr Miller admitted that the homeowner had not been provided with a certificate for plant and machinery insurance. He admitted that he did not possess such a certificate and was unaware that he required to share this with homeowners. Mr Miller submitted that he would make enquiries with the insurer providing cover for plant and machinery and recover the relevant certificate.

Section 6.3 of the Code

On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.

Evidence of the homeowner

53. It was alleged that the property factor had instructed a contractor to remove moss from the car park and pavement areas at a cost of £984 to the homeowners. The homeowner considered this work to fall under the responsibilities of the caretaker and gardener and unnecessary for another contractor to be instructed. Ms Adams described it as a duplication of services and an unnecessary expense.

54. Moreover, the property factor had failed to undertake a tendering exercise or consult with homeowners prior to instructing the contractor. Ms Adams had sent an email to the property factor, dated 30th December 2020, in relation to the moss removal stating, *'I should like to see the tenders you received for this work and the invoice relating to same.'* The reply from the property factor of 31st December 2020 provided, insofar as is relevant, *'With regards to tenders, please refer to your deed of conditions.'*

55. Ms Adams had enquired of the property factor why the contactor had been instructed and had found the reasoning unsatisfactory. Mr Miller had advised that the contractor had access to specialist equipment necessary to remove the moss. Ms Adams submitted that she had identified that the equipment was available for hire at a cost of around £75.

56. Ms Adams referred the Tribunal to Mr Miller's response to her enquiries in his email dated 20th January 2021. Insofar as is relevant the email provided,

> *'Please note that the moss removal was carried out to the pavements, driveways and car park- as these areas are classified as private and outwith the Local authority cleaning and management services…This specialist equipment (Westermann moss brush) from Germany cannot be hired-only purchased- but if you wish, we can ask the owners if they would be interested in purchasing one for the development- but it will cost in excess of £2-£3K…the cost was well within our threshold in accordance with your title conditions.'*

57. The homeowner submitted that, at no point, had the property factor ever identified the contractors instructed to remove the moss. Ms Adams felt that the property factor had failed to show how and why the contractors had been appointed and,

through this failure, had not complied with the requirements of section 6.3 of the Code.

58. Mr Miller disputed this allegation. He maintained his position that specialist equipment was required to remove moss from the affected areas. Mr Miller appointed the in-house cleaners to remove the moss as they had the necessary equipment.

59. Mr Miller denied that moss removal fell within the work specification of either the gardener or the caretaker. In any event, he explained that the caretaker was not present at the development during lockdown to provide the usual caretaking service. Homeowners' charges were reduced to reflect the reduction in service during this time. The additional charges applied for moss removal replaced the reduced caretaker's costs. Mr Miller submitted that many homeowners were content with this arrangement.

60. The need to address the moss was an issue brought to the attention of the property factor by various owners. Mr Miller denied that he had been instructed by the owners' association.

61. Mr Miller denied that the homeowner was unaware that the cleaners had been instructed to remove the moss and had not been advised of the identity of the contractors. Mr Miller could not direct the Tribunal towards any evidence that he had intimated this information to the homeowner. In any event the costs of the works fell under £1,000 which meant that the property factor had authority to instruct the contractors without seeking permission from the homeowners.

62. Mr Miller disputed that he had failed to satisfy the obligations of section 6.3 by failing to advise Ms Adams how and why the contractors were appointed. He insisted that he would have sent an email but admitted that there was no evidence before the Tribunal.

Section 6.9 of the Code

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

Evidence of the homeowner

63. Ms Adams alleged that the property factor had failed to pursue contractors for works she considered to have been carried out to a less than satisfactory standard. Two examples were provided to illustrate her submission.

64. The first related to the need to instruct contractors to remove moss. Ms Adams argued that the role of the caretaker and gardener was to keep the common areas free of moss. They had failed to do so. Rather than instruct a contractor to undertake this specific work, the property factor ought to have pursued the caretaker or gardener to remove the moss effectively. Had the property factor done this, the charge of £984 would have been avoided.

65. The second example concerned damage to the roller shutter door at the communal garage. The door was damaged by a recovery truck. Arrangements were made for the door to be repaired by specialist contractors. Only a temporary repair was carried out initially. Further faults occurred with the door following the temporary repair which were made known to the property factor. These further faults resulted in repair costs being charged to homeowners at the sum of £258. The homeowner alleged that the temporary repair was inadequate and, having been made aware of further issues, the property factor ought to have pursued the contractors to complete more effective repairs.

66. In support of this position, the homeowner relied on advice which she had received from Gordon Nutall, a neighbouring resident at the development. Mr Nuttall had 55 years of experience of working in the steel industry. He had observed the temporary repair being carried out and did not consider it to be satisfactory. Mr Nuttall had shared his views with the property factor by email dated 31st December 2020. The email was included within the homeowner's inventory of productions.

67. Mr Miller denied any failure on the part of the property factor to comply with section 6.9 of the Code.

68. Mr Miller relied on his earlier submission that moss removal was not within the remit of the gardener or the caretaker and that the caretaker was not working at the development during lockdown. Even if it had been a job for the caretaker, he was not

present at the relevant time to complete the works. Moreover, there was no extra charge to the homeowners by the cleaning company carrying out the works as the costs were balanced by the reduction in caretaking charges.

69. Mr Miller moved the Tribunal to reject the evidence of Gordon Nuttall. Mr Miller insisted that the temporary repair was adequate and enabled the door to operate effectively. The faults which occurred thereafter were the result of someone tampering with the door and not poor workmanship on the part of the contractors. Mr Miller explained that specialist contractors had been instructed to repair the door. Parts were required which were initially unavailable. Therefore only a temporary repair could be carried out until the parts arrived from Germany which were delayed due to issues arising post Brexit.

Findings in fact

The Tribunal finds that the following facts have been established:-

70. That the property factor provides property management services to the development in which the property is located.

71. That a charge of £12.13 was included on the quarterly statement of charges for 1st September to 30th November 2020.

72. That the charge was described as an insurance excess charge on the statement.

73. That the charge was the homeowner's share of the cost of a repair.

74. That the property factor did not make a claim against the buildings insurance policy for this repair.

75. That the charge of £12.13 was not in respect of the homeowner's share of the cost of insurance excess.

76. That the property factor provided the homeowner with a copy of the certificate for buildings insurance providing the name of the insurer.

77. That the property factor provided the homeowner with details of the insurance policy excess levels and terms of the policy.

78. That the homeowner was not provided with any information regarding insurance for plant and machinery.

79. That the written statement of services provides the core standards which the property factor will meet in delivery of its management services.

80. That the written statement of services provides that the property factor will respond to written enquiries within seven working days of receipt.

81. That the homeowner sent emails to the property factor 2nd and 22nd January 2021.

82. That these emails raised enquiries about the property management services.

83. That the emails were received by the property factor.

84. That the property factor failed to respond to the homeowner's emails of 2nd and 22nd January 2021 within seven days.

85. That the property factor charged the homeowner £6 for 'sundry development owners expenditure.'

86. That this charge was for the administration costs incurred in issuing papers to homeowners following meetings of owners.

87. That the homeowner knew that the charge was to meet administration costs.

88. That the homeowner received no prior notice of the service or charge from the property factor.

89. That the written statement of services provides that the property factor may incur additional charges for supplying documentation.

90. That the homeowner was charged twice for plant and machinery insurance as a result of an error on the part of the insurance company.

91. That the homeowner has received a credit for the sums charged (and paid) in error.

92. That the property factor arranges for copies of keys to security doors to be made for homeowners at the development.

93. That the cost of key cutting services has increased.

94. That the property factor submitted an insurance claim following a car fire at the car park in May 2020.

95. That the property factor instructed a cleaning company to undertake moss removal at the development in 2020.

96. That the homeowner made enquiries with the property factor about the contractors appointment on 30th December 2020, 2nd and 22nd January 2021, including whether a competitive tendering exercise had been undertaken.

97. That there was no competitive tendering exercise to appoint the contractors.

98. That there was a charge to homeowners of £984 for this service.

99. That the caretaker was not working at the development at the time the moss removal was required.

100. That a temporary repair was undertaken to the damaged roller shutter door until parts were available.

Reasons for decision

Section 2.1 of the Code

101. The homeowner received a statement of charges for the period 1st September to 30th November 2020. Included was a charge for the sum of £12.13. This was described on the statement as, 'Insurance excess charges (re burst mains water supply to building).' The homeowner sought clarification from the property factor. It was confirmed to her that the charge was her share of a repair. Because the cost of the repair fell below the insurance excess level, the property factor made no claim against the insurance policy for the repair. The Tribunal understand why the property factor chose to do this. However it was reasonable for the homeowner to assume that a claim had been made given the description applied by the property factor. The description was misleading. It was inaccurate. It was open to the property factor to provide a more accurate description for the charge but he failed or chose not to do so. In the circumstances the Tribunal determines that the property factor has failed to comply with section 2.1 of the Code.

Section 2.5 of the Code

102. Within their written statement of services, the property factor aims to respond to written enquiries from homeowners within seven days. Mr Miller

admitted that he had not met this commitment in relation to the emails from Ms Adams in January 2021. Mr Miller did not dispute that he had received these emails. It was open to the property factor to acknowledge the emails and provide the homeowner with a realistic timescale for providing a more detailed response. The property factor failed to do so. The property factor's evidence was that lockdown affected service. It was open to the property factor to write to homeowners to make them aware of this. The property factor failed to do so. In the circumstances the Tribunal determines that the property factor has failed to comply with section 2.5 of the Code.

Section 3

103. The homeowner clarified to the Tribunal that her complaint under section 3 was specifically that homeowners should know what it is they are paying for, how charges are calculated and that no improper payment requests are involved.

104. In respect of the charge of £6, the property factor admitted that there was no prior notice given to the homeowner of the charge. However the homeowner knew that the charge was for issuing papers to homeowners on behalf of the owners' association.

105. The homeowner alleged that the request for payment was 'improper' on the basis that the owners association had no legal basis to instruct the property factor to act on its behalf.

106. The word 'improper' should be given its ordinary meaning. This would mean a payment which was illegal or dishonest or unsuitable or not right. This fits with the mischief being struck at by this provision. The Tribunal did not have enough evidence to find that the owners association did not have authority to instruct the work covered by this charge. In any event, the Tribunal accepts that the property factor carried out this work and incurred this charge in good faith. To that end, it was not an improper charge.

107. Parties agreed that the homeowner had been charged twice for plant and machinery insurance. The Tribunal accepted the property factor's evidence that the error was made by the insurance company. In any event the monies charged in error

have now been refunded to the homeowner who confirms that she has received the credit.

108. The property factor has arranged to have keys cut for security doors at the development for some years. Homeowners know what they are paying for when requesting this service. The Tribunal accepts the evidence of the property factor that alternative key cutting services were sourced during lockdown and a higher price was charged. The Tribunal accepts this explanation for how the charges are calculated and finds no evidence that there is any benefit to the property factor from offering this service. In the circumstances, the Tribunal finds no evidence that there has been any failure on the part of the property factor to comply with section 3 of the Code.

Section 5.2 of the Code

109. In evidence, the homeowner accepted that she had received information from the property factor about the buildings insurance premium. Indeed she, herself, had lodged the insurance certificate and a letter from the property factor dated 20th December 2020. The letter provided the homeowner with the information required by section 5.2 of the Code. The homeowner conceded that her complaint was about the content of the policy which did not fall under this section of the Code.

110. However the property factor did not dispute the evidence of the homeowner that no information had been provided to her in relation to the insurance for plant and machinery. The property factor indicated that he did not have the relevant information but would request same from the insurers. Given the failure of the property factor to provide this information to the homeowner, the Tribunal determines that the property factor has failed to comply with section 5.2 of the Code.

Section 5.5 of the Code

111. Parties agreed that the insurance claim arising from the car fire in May 2020 occurred in the common car park area. The claim was not pursued on behalf of the homeowner. There was no requirement on the property factor to inform the homeowner on progress of the claim. Therefore the Tribunal finds no failure on the part of the property factor to comply with section 5.5 of the Code.

Section 6.3 of the Code

112. There was no dispute between the parties that the homeowner had made enquiries of the property factor about how the contractors were appointed to undertake moss removal including enquiries about tenders. The response of the property factor was that a contractor with access to specialist equipment was required to carry out the work. The Tribunal finds no evidence that the property factor provide the homeowner with an explanation of how and why the contractors were appointed. In the circumstances, the Tribunal determines that the property factor has failed to comply with section 6.3 of the Code.

Section 6.9 of the Code

113. The homeowner's evidence was that the caretaker and gardener had failed in their duties to remove moss, that the property factor ought to have addressed this failure and had they done so, specialist contractors would not have been required to remove the moss. The Tribunal did not accept this argument. Even if it were accepted that moss removal was within the duties of the caretaker, the caretaker was not present at the development when the issue needed to be addressed. The Tribunal was not satisfied that there was evidence that moss removal was within the duties of the gardener.

114. In respect of the temporary repair to the roller shutter door, there was no evidence to suggest that the works undertaken by the specialist contractors were inadequate, such that the property factor ought to pursued them to remedy the work. In all the circumstances the Tribunal finds no evidence of a failure on the part of the property factor to comply with section 6.9 of the Code.

Decision

115. In all of the circumstances narrated, the Tribunal finds that the property factor has failed to comply with sections 2.1, 2.5, 5.2 and 6.3 of the Code.

116. The Tribunal determine to issue a Property Factor Enforcement Order ("PFEO").

117. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the property factor and to allow parties to make representations to the Tribunal.

118. The Tribunal proposes to make the order in the following terms:

Within 21 days from the date of issue of this order, for the property factor to:-

- *Make payment to the homeowner the sum of £200 in recognition of the inconvenience arising from the failures of the property factor and the time incurred in bringing the application.*
- *(In respect of the insurance for plant and machinery at the development) provide to the homeowner clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing the insurance cover and the terms of the relevant insurance policy.*
- *Provide to the Tribunal's administration evidence that the property factor has complied with the order.*

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

[redacted]

Legal chair, at Glasgow on 20th June 2021