Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)
In an Application under section 17 of the Property Factors (Scotland) Act 2011

Re: Longford Crofts, West Calder EH55 8FD ("the Property")

The Parties:-

Karim Sowaidan, 8 Longford Crofts; Ruth Close, 6 Longford Crofts; Roddy Fuller, 5 Longford Crofts EH55 8FD; and Robert Dalziel, 4 Longford Crofts EH55 8FD ("the Applicants")

Longford Property Management, Longford Farm, West Calder, West Lothian EH55 8NS ("the Respondent")

Chamber Ref: FTS/HPC/LM/19/3717, 20/0283, 20/0334 and 22/2063

Tribunal Members:

John McHugh (Chairman) and Robert Buchan (Ordinary (Surveyor) Member).

DECISION

The Respondent has failed to carry out its property factor's duties.

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

1 The Applicants are the owners of Plots 4, 5, 6 and 8 Longford Crofts (“the Properties”).
2 The Properties are located within a development of houses and associated amenity areas known as Longford Crofts ("the Development")
3 The Development consists of 15 building plots. Many of them have been sold and now have houses built upon them.
4 Each plot is served by a central access road ("the Access Road") which runs between the public highway to the East and each plot entrance.
5 The Access Road is the property of Mr Alan and Mrs Michelle Middleton.
6 The Access Road has been surfaced for its length between the public highway and each of the first ten plots. The remainder of the Access Road which will serve plots 11-15 is made up with hardcore and has not yet been surfaced.
7 Large rocks have been placed at the edges of the Access Road at close regular intervals.
8 Wooden posts have been placed in certain other locations at the edges of the Access Road.
9 At each side of the Access Road there is either a grass verge or a French Drain (consisting of hardcore).
10 The Access Road is generally not wide enough to allow two vehicles to pass. Passing is possible at certain points along the Access Road.
11 Grit bins have been placed along the Access Road.
12 In 2018 the Access Road was surfaced by contractors employed by the Respondent. The Applicants were not involved in the process.
13 The Respondent imposed charges upon the Applicants for works to prepare the road for surfacing.
14 Small areas of amenity ground consisting of grass and trees are adjacent to the Access Road and are available to residents.
15 A Deed of Declaration of Conditions recorded 10 June 2014 ("the Deed of Conditions") governs the arrangements for the sharing of costs relating to the Access Road and other defined areas within the Development among the proprietors of the properties within the Development.
16 In terms of the Deed of Conditions Mr and Mrs Middleton are entitled to appoint the first Manager of the Development. They have appointed the Respondent.
17 The Respondent is the property factor responsible for the management of the Access Road and other defined areas within the Development.
18 The Respondent is a partnership consisting of Mr Allan and Mrs Michelle Middleton and known as Longford Property Management.
19 The Respondent was appointed to the role of property factor by Mr and Mrs Middleton.
20 The Respondent first issued its Written Statement of Services on 18 April 2019.
21 The property factor’s duties which apply to the Respondent arise from the Statement of Services and the Deed of Conditions.
22 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from its date of registration under the Act on 13 April 2017.
23 The Applicants have, by their correspondence, including by their emails of 13 and 16 November 2019; 9 and 10 February 2020 notified the Respondent of the reasons

why they consider the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.

24 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicants.

Preliminary Matter

There are a number of conjoined cases raising the same issues. Originally there was an application by Craig Bissett (Plot 1) with reference FTS/HPC/LM/19/3362 which was withdrawn on 15 June 2022. A new case (Robert Dalziel, Plot 4, 22/2063) was conjoined with the remaining cases in July 2022.

Hearing

A site visit took place on 2 March 2020. Mr and Mrs Middleton and many of the owners of properties on the Development were present.

A hearing was scheduled to take place in April 2020 but was delayed because of the COVID-19 pandemic.

The Tribunal reviewed the progress of the application from time to time in light of the ongoing pandemic related restrictions which continued to make a physical hearing impossible. The Respondent indicated a willingness to have the matter resolved on the basis of written submissions. However, the Applicants saw an advantage in the application being resolved by way of a physical hearing and the Tribunal was prepared to continue determination of the application pending a physical hearing becoming possible.

A hearing took place at George House, Edinburgh on 19 August 2022.

The Applicants other than Mr Fuller were present at the hearing. Mr Bisset represented the Applicants other than Mr Fuller although Mr Dalziel also made regular contributions of his own and there were additional contributions from Mr and Mrs Close; and Tracy Burrows (Mr Bisset's partner and former owner). In the case of Mr Fuller, Mr Bisset had been unsure whether Mr Fuller would attend in person but in the absence of Mr Fuller, Mr Bisset did not claim an active right to represent him as although Mr Fuller's application had been aligned to those of the other Applicants, it was not clear to Mr Bisset that he had been specifically authorised to represent Mr Fuller. In any event, Mr Fuller's application can proceed without his attendance at the hearing.

The Respondent was represented at the hearing by Allan and Michelle Middleton. They were supported by their solicitor, Mr MacKay. No other witnesses were called by either party.

During the hearing, the Respondents made reference to a document which had not been seen by the Tribunal or the Applicants previously. This was a quotation from WI Meikle dated 28 August 2018. It related to the question of the cost of completing the Access Road. The Tribunal considered it to be relevant to that question and in the absence of any objection from the Applicants, the document was allowed to be received.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Respondent became a Registered Property Factor on 13 April 2017 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicants and the Respondent.

The documents before us included a Deed of Declaration of Conditions by Allan William Middleton recorded 10 June 2014, which we refer to as “the Deed of Conditions” and the Respondent’s undated "Longford Crofts East Service Agreement" incorporating "Statement of Services" which we refer to as “the Written Statement of Services”.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicants complain of failure to carry out the property factor's duties.

The Written Statement of Services and the Deed of Conditions are relied upon in the Application as a source of the property factor's duties.

The Code

The Applicants complain of failure to comply with the Code.

The Applicants complain of breaches of Sections: 1.1b; 2.1; 2.4; 6.1; 6.3; 6.5; 6.6 and 6.8 of the Code.

The elements of the Code relied upon in the application provide:

" SECTION 1: WRITTEN STATEMENT OF SERVICES

You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code…

1.1b Alternative standards for situations where the land is owned by a land maintenance company or a party other than the group of homeowners

The written statement should set out:

A. Authority to Act

a. a statement of the legal basis of the arrangement between you and the homeowner;
b. a description of the use and location of the area of land to be maintained, including a map where possible (this information must be kept up-to-date);

B. Services Provided

c. The services that you will provide. This will include the minimum service delivery standards that can be expected and the target times for taking action in response to

requests for both routine and emergency repairs. Any work or services which are a requirement of the property titles should also be stated;

C. Financial and Charging Arrangements

d. how many properties contribute towards maintenance costs for the area of land maintained;
e. confirmation that you have a debt recovery procedure which is available on request, and may also be available online (see Section 4: Debt recovery);
f.any arrangements relating to payment towards a floating fund, confirming the amount, payment and repayment (at change of ownership or termination of service);
g. any arrangements for funds for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);
h. any services or works that may incur additional fees and charges, including when or how they may arise (this may take the form of a "menu" of services) and details of how these fees and charges are calculated and notified;
i. how often you will bill homeowners and by what method they will receive their bills;
j. how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable (see Section 4: Debt recovery);

D. Communication Arrangements

k. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied after completing your in-house complaints handling procedure (see Section 7: Complaints resolution);
l. the timescales within which you will respond to enquiries and complaints received by letter or e-mail;
m. your procedures and timescales for response when dealing with telephone enquiries;

E. Declaration of Interest

n. a declaration of any financial or other interests (for example, ownership) in the land to be managed;

F. How to End the Arrangement

o. clear information on how to change or terminate the service arrangement between you and the homeowner, including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination.

*…**SECTION 2: COMMUNICATION AND CONSULTATION***

2.1 You must not provide information which is misleading or false.…

…2.4 You must have a procedure to consult with the group of homeowners and seek their written approval 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 you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies)…

*… **SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE***

This section of the Code covers the use of both in-house staff and external contractors.

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

…6.3 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…

6.5 You must ensure that all contractors appointed by you have public liability insurance.

6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance….

…6.8 You must disclose to homeowners, in writing, any financial or other interests that you have with any contractors appointed."

The Matters in Dispute

The Applicants complain in relation to the following issues:

(1) The Respondent has failed to issue a Written Statement of Services timeously.

(2) The Respondent has carried out and charged for works without the authorisation of the Applicants

(3) Excessive or unreasonable charges (including using only its own connected contractors/employees rather than contracting to outsiders)

(4)The Respondent has produced inaccurate minutes of meetings.

(5) The Respondent has operated in a conflict of interest situation and failed to give appropriate consideration to the interests of the homeowners.

We deal with these issues below.

Background

Mr and Mrs Middleton, the partners of the Respondent, are the owners of Longford Farm. In recent years, they developed a section of the farm which became known as Longford Crofts. The Longford Crofts site was developed to offer 15 individual house building plots for sale, served by an access road running from the public highway ("the Access Road"). The plots also offered connections to water and drainage facilities. Mr and Mrs Middleton have retained ownership of the Access Road.

A Deed of Conditions governs the relationship between Mr and Mrs Middleton and the purchasers of plots such as the Applicants.

Mr and Mrs Middleton created a partnership consisting of the two of them known as Longford Property Management to carry out the functions of the Manager as set out in the Deed of Conditions.

The relevant sections of the Deed provide:

"Part 6

The Plot Owners shall have the powers to do the following things: …

…1.3 To appoint or remove a Manager and to fix the remuneration of the Manager, subject always to the terms of sub-clause 2 (b) of this Part hereof…

…1.5 to instruct the employment by the Manager of such staff as may reasonably be required for inspection, maintenance, emptying, repair and renewal of the Services.

1.6 to require payment by each Plot Owner of the service charge (as after defined) due by him and to instruct the collection by the Manager of the service charges from each of the Plot Owners and the accounting by the Manager of his intromissions therewith

(a) subject always to the terms of sub-clause 2 (b) below, the Plot Owners shall appoint a Manager who shall be entitled during the continuance of his appointment, to exercise the whole rights and powers which may competently be exercised at or by an Owners' Meeting (other than the right to appoint or remove the Manager or to fix his remuneration). The Manager shall act as agent of the Plot Owners in exercising any of the said rights and powers. The Manager will comply with any direction given by the Plot Owners at a properly constituted meeting of the Plot Owners convened in accordance with the provisions of this Part hereof (herein referred to as "Owners' Meeting")

(b) notwithstanding conditions 1.2 and 1.3 of this Part hereof and sub-clause (a) above, the Retained Land Proprietors as proprietors of those parts of the Retained Land through, under and within which the Services run are appointed Manager until the date occurring six months after the date on which the Retained Land Proprietors notify each Plot Owner in writing that the Retained Land Proprietors no longer wish to be the Manager ("Initial Period"), During the Initial Period the Retained Land Proprietors shall be entitled to exercise all the powers and do all the things which may competently be exercised or done by the Plot Owners at an Owners' Meeting including without prejudice to the generality of the foregoing, to determine the amount of service charge and fix the remuneration of the Managers, subject always to acting reasonably at all times.

The Manager holding office immediately prior to the expiry of the Initial Period shall continue to hold office until the first Owners' Meeting."

The Retained Land Proprietors are Mr and Mrs Middleton. They have not provided formal, written confirmation to the Plot Owners that that they no longer wish to be the Manager. However, the Manager has, in fact, for some years been the partnership known as Longford Property Management, the entity which is the Respondent in these Applications as result of Mr and Mrs Middleton having appointed it. Arguably, the identity of the Manager changed when the Respondent commenced its role with the effect that the Initial Period ended and the Plot Owners became free to choose the identity of the Manager. That question was raised by the Tribunal but was something which none of the parties had considered to date; they have conducted themselves on the basis that the partnership of Longford Property Management is synonymous with Mr and Mrs Middleton themselves.

The Deed of Conditions, Part 6 Clause 13 provides that all Plot Owners are responsible for the cost incurred in provision of work and services pursuant to the powers to instruct same vested in the Plot Owners/Manager (including the Manager's fee) and that each Plot Owner's share will be termed the "service charge".

Clause 14 requires the Manager to prepare a budget in respect of works and services to be carried out and to issue invoices to Plot Owners.

We now turn to the specific matters in dispute.

(1) The Respondent has failed to issue a Written Statement of Service timeously

The Applicant complains that the Respondent issued the Written Statement of Services for the first time on 18 April 2019. The Applicant considers that the Written Statement of Services should have been issued within four weeks of the disposal of the first plot in 2013.

The Respondent accepts that the Written Statement of Services was first issued on 18 April 2019 some two years after becoming the property factor and that there is therefore a breach of the Code, but maintains that there was no practical effect upon the plot owners as much of the same information had already been provided to them by other means, namely in the Deed of Conditions and missives for sale of each plot.

We find there to have been a breach of Section 1 of the Code in respect of the late provision of the Written Statement of Services. We do not find there to have been any breach of property factor's duties in this respect.

(2) The Respondent has carried out and charged for works without the authorisation of the Applicants

The Applicants complain that the Respondent carries out works without ever asking for authorisation from owners.

The concerns of the Applicants focus upon works done to the Access Road and the placement of stones on the road verges.

Charges for grit bins had also featured in the papers but Mr Bisset advised that that issue had been resolved.

The Applicants complain that there is no procedure for reporting maintenance issues to the Respondent.

Parties are agreed that the Respondent originally made up the Access Road to a base course standard (the "Temporary Standard") on or around 2015. The road was maintained by the Respondent until 2018 when work was done to finish the road by tarmacing it. The Respondent charged for the maintenance of the temporary road and the Applicants paid those charges.

The Respondent imposed charges for works to the road in its January 2019 invoices. At that time the work was described as "road prep for tar". In the Final Costs Statement for 2018 prepared by the Respondent, the same works were described as "Road Reinstatement". The total charged to Plot Owners was £4000. The Respondent considers that these charges are properly due by the Applicants. The Respondent considers that the road was originally at the Temporary Standard but that through years of use it had fallen below that standard. Although repairs had been done over that period, those were only pothole repairs and not enough to bring the road up to Temporary Standard. The Respondent therefore considers that the exercise of completing the road to the final Required Standard first involved bringing the road back up to the Temporary Standard (for which cost the Applicants are responsible) and then the remaining steps for which the Respondents are responsible.

The Applicants consider that the whole works are properly due to be completed at the Respondent's cost and that the exercise described by the Respondent as bringing the

road back up to Temporary Standard is nothing more than what would be required as preparatory works in every road completion.

Parties are agreed that the contractor who carried out the works was not made aware of the terms “Temporary Standard” or “Required Standard”. The contractor has simply been asked to complete the road. The contractor’s quotation to the Respondent dated 28 August 2028 offered three options (Option 3 was chosen). All three contained an identical entry: “Preparation of existing sub-base; shaping in imported hardcore not exceeding 80mm thick”. In each Option, the cost was similar for this stage and the variation among the Options was found in the surfacing stage and its cost.

It was the preparation amount of £9780.37 which the Respondent had considered could be passed on to the Plot owners. However, the Respondent had limited the charge to c.40% of that amount which it thought was fair to reflect that the Middletons had made use of the road themselves.

The Deed of Conditions provides the following as regards the Access Road (Part 3, Clause 1):

"*Access*

The Retained Land Proprietors shall construct the Access Road and the Access Driveways in accordance with and to the standard required in terms of the Design Guide ("the Required Standard"), subject always to the following qualifications:-

1.1 No later than the six months after the first disposal of each Plot, the Retained Land Proprietors shall construct the relevant Access Driveway and the section of the Access Road required to give access to and egress from the public road to a standard comprising not less than the base course as specified in the Design Guide ("the Temporary Standard"); and

1.2 No later than the earlier of (1) six months after West Lothian Council or their statutory successors as building authority issues a completion certificate in respect of the last Dwellinghouse to be constructed on the Croft holdings or (2) the date occurring on the fifth anniversary of 10 Jan 2014 ("the Long Stop Date") the Retained Land Proprietors shall complete the construction of the Access Road and the Access Driveways to the Required Standard; under declaration that notwithstanding the foregoing the Retained Land Proprietors shall be entitled to construct the Access Road and the Access Driveways to the Required Standard at any time prior to the Long Stop Date."

Part 4 of the Deed of Conditions imposes burdens upon the Plots as follows:

"1 Access

Once constructed by the Retained Land Proprietors to the Temporary Standard or the Required Standard as the case may be in accordance with condition 1 of part 3 hereof, (a) the proprietors of the Croft Holdings shall be jointly and severally responsible for inspecting, maintaining, repairing and when necessary renewing the Access Road and the Access Driveways to the relevant standard as at the time the inspection, maintenance, repair and renewal requires to be undertaken all to the reasonable satisfaction of the Retained Property Proprietors and (b) each Plot Owner shall pay a one tenth share of the cost of such inspection, maintenance, repair and renewal;"

The Applicants were unaware of the quotation or of its terms until the hearing. They had not been advised by the Respondent that they would be contributing the cost of

the remaining road works. They had expected that all works required would fall within the making up of the road to the Required Standard at the cost of the Respondent. The first they knew that they were expected to contribute was when they received the Respondent's invoice for the road works.

Mr Close said that there was a Road Bond in place and as regular maintenance had been undertaken each year, then the Applicants should not be paying for these works. Mr Middleton said that he had paid for a thicker layer of tar than the design guide so that the road would last longer and that he had personally overseen the works to ensure that the thicker layer was applied.

Given that the road works have been completed and there is no contemporaneous record of the condition of the Access Road at the time the completion works took place, it is impossible for the Tribunal to assess whether the road was at the Temporary Standard in 2018 or whether further works would have been needed to bring it to that stage. There is also no evidence available as to whether the works required to bring the road to the Temporary Standard were identifiable as works above and beyond the works which would always have had to be done by a contractor in preparation for laying the top course.

However, the Tribunal is able to assess the Respondent's conduct relative to its obligations to act reasonably in terms of Clause 1.6(b) of Part 6 of the Deed of Conditions. The Tribunal considers that the Respondents' actions were unreasonable in that the Applicants were denied the opportunity to make representations about the extent of their liability or the acceptability of the quotation either in terms of cost or the selected contractor prior to the works being undertaken. There is therefore a breach of property factor's duties. The failure to justify the selection of this particular contractor or to consider obtaining other quotations also amount to a breach of Code Section 6.3.

The Respondent has placed a number of large stones on the verges of the roads. Its reason for doing so is to protect the grass verges and the drain from damage caused by vehicles driving off the road (as may happen when two vehicles wish to pass one another on the Access Road). The Respondent has charged for the placement of the stones (though not the stones themselves) in its service charges of 2018. The Middletons were concerned that delivery vehicles and contractors were disrespectful of the verges and that without the protection provide by the stones, damage would be caused which the respondent would have to repair at the Plot Owners' cost, which they thought undesirable. They think stones are the cheapest way to protect the verges.

The Applicants complain that they did not want these stones placed. They find the placement of the stones inconvenient and potentially dangerous. They would prefer not to have the stones.

The parties agree that there was discussion of the possibility of placing stones at an Owners' meeting on 27 June 2018. The Applicants consider that they only agreed to the Respondent obtaining costs for the stones and that the Respondent had since proceeded to obtain and place the stones without their agreement. The Tribunal notes that the earlier minutes of the meeting on 10 January 2018 also deal with the stones. They state that Mr Middleton will obtain and place the stones. Those minutes note concerns about the need to paint the stones with reflective paint but no actual objection to the stones in principle. The Respondent wish the stones to remain in

place at their current locations; the Applicants are unhappy with the location of the stones.

Mr Bisset advised that the problem arose when stones were placed on each side of the road. Mr Fuller expressed safety concerns. He believed that cars have been damaged and there was especially a problem at the entrances to the plots. Mrs Close said that a stone at her entrance had caused damage. Mr Dalziel said that none of the other similar developments in the area have stones. Mr Bisset stated that he considered that it was not reasonable for the Middletons to act unilaterally and that there was no visibility of costs.

Mrs Middleton said that they had found difficulty in getting other people to quote for works and that she considered that “prevention is better than cure” in that the stones would prevent damage by vehicles.

Whatever the exact history of agreement or otherwise to the idea of the stones, it is evident that the stones as placed (at the partial expense of the Plot Owners) are not in accordance with the preference of the Applicants. The Respondent reports stones being moved apparently by owners and the Applicants complain of the stones being replaced or moved further onto the surface of the road. We consider that the Respondents’ insistence upon the stones remaining in place and being unwilling to move or replace them in accordance with the Plot Owners’ wishes to be unreasonable contrary to the duty of reasonableness imposed by the Deed of Conditions. We therefore find there to be a breach of property factor’s duties in this respect. We do not identify a breach of the Code.

As far as the complained absence of a method of reporting repairs issues, the Written Statement of Services contains details of the maintenance regime and of the Respondent’s postal address. It does not contain a dedicated telephone or email contact details. However, in the particular circumstances of this case, the Respondent is effectively based on site and it is evident that parties have one another’s contact details such that there does appear to be a practical method for reporting issues which is sufficient so we do not find there to be any breach of property factor’s duties or of the Code in this respect.

(3) Excessive or unreasonable charges

The Applicants complain that the Respondent's charges are unduly high at a rate of £60/hour for all activities. They complain that the Respondent has failed to consider using any sub-contractors or carry out any tendering exercise but insists upon doing all work itself at rates which are not competitive.

The Respondent charges the same rate for all of its activities even those which apparently would involve less skill or effort such as litter picking although the Respondent points out that the litter picking service includes proper disposal and Mr Middleton checking that waste water disposal units serving the plots are working. The Respondent does not charge extra for more complicated works such as digging out the drainage ditches which are works which might be more expensive if performed by a specialist contractor.

There is no evidence available to the Tribunal to enable us to determine that the rates charged are themselves unreasonably high. The Respondent has in recent months

made enquiries of professional factoring firms and indicates that the result of these enquiries has been to establish that the Respondent's rates are reasonable.

At the hearing, Mrs Middleton accepted that any works required are only ever carried out by the Respondent; the Middletons themselves or their employees without ever considering the use of third parties. Mrs Middleton explained that she had only sought comparative costs from factoring firms relatively recently as it would have been difficult to obtain quotations earlier because of the pandemic.

It is not apparent to the Tribunal why alternative contractors could not have been considered. It may well be, as the Respondent suspects from its recent enquiries, that alternative contractors would not have provided a better option in terms of quality, service delivery or price. However, we consider that the Respondent's failure to consider using the services of contractors other than those closely associated with it, is a breach of property factor's duties and, in particular, the duty to act reasonably in terms of the Deed of Conditions. In addition, it constitutes a breach of Code Section 6.3.

(4) The Respondent has produced inaccurate minutes of meetings.

The Applicant complains that the Respondent produces inaccurate minutes of owners' meetings and has refused to correct inaccuracies when asked.

In particular, the Applicants believe that the minutes have become more inaccurate since there have been increasing differences between the parties and that Mrs Middleton in her note taking had sought to record her position on controversial matters rather than a fair record of the meeting.

In particular, Mr Bisset had listed inaccuracies in Mrs Middleton's minute of the meeting of 28 May 2019. These were listed in his email of 31 July 2019 to the Respondent. A particular concern of the Applicants had been the inaccurate minuting of a question by Mr Bisset and Mrs Middleton's answer. Mr Bisset had asked whether if plot owners requested that works not be carried out and the Respondent did them anyway would that be reasonable (in terms of the Deed of Conditions). Mrs Middleton had recorded her answer as "no" which all agree with. However, Mr Bisset's question had been minuted asking about a scenario where the Respondent refused to do works that the plot owners were asking for.

Mrs Middleton accepted that her minutes may not be accurate but that she had prepared them in good faith. She had thought that she had recorded the question and answer correctly but that the meeting had been ill-tempered and heated at that point and she may not have been able to minute it correctly. She was not able to produce verbatim notes. More recently she had asked her daughter to assist by taking minutes.

Although it appears that the minutes taken by the Respondent are inaccurate in some respects, we accept the Respondent's position that any inaccuracies were inadvertent and we do not identify any breach of the Code or of property factor's duties in this respect.

(5) The Respondent has operated in a conflict of interest situation and failed to give appropriate consideration to the interests of the homeowners.

This was presented at the hearing as a discrete complaint. However, it seems to the Tribunal to be a general and overarching complaint which has its substance in specific matters which we have dealt with above. We therefore do not propose to make any findings of breaches of the Code or of property factor's duties in this respect.

Observation

The Tribunal observed at the hearing that the various parties involved are likely to have to co-exist as neighbours in future. It is unusual for such a high percentage of owners in a development to make a complaint to the Tribunal. Whilst Mr and Mrs Middleton may consider their actions to be in the best interests of the Development, it is evident that the Plot owners do not share that view. The Tribunal noted that Mr Bisset went out of his way to praise Mr Middleton for the quality of the work he has carried out. It is to be hoped that the parties will be able to improve relations and communication among themselves such that any future works relating to the Access Road can be the subject of discussion and agreement.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached document. The Tribunal considers that a payment should be made by the Respondent to the Applicants in view of the breaches of the property factor's duties and of the Code which have caused stress and inconvenience to the Applicants. In considering the level of the payment, the Tribunal took into account that the Applicants had no complaint about the quality of work undertaken.

APPEALS

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

JOHN M MCHUGH

CHAIRMAN

DATE: 15 September 2022