Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 ("the Act") and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: FTS/HPC/LM/17/0096

The Property: 23 Bowbutts Brae, Strachan, Banchory AB31 6PG ('the property')

The Parties:

Martin Wylie and Mrs Janet Helen Wylie, both residing at Woodend, Alford AB33 8DH ("the homeowner")

FirstPort Property Services Scotland Limited, incorporated under the Companies Acts (3829468), having their Registered Office at Queensway House, 11 Queensway, New Milton, Hampshire BH25 5NR and having a place of business at 3rd Floor, Troon House, 199 St Vincent Street, Glasgow G2 5QD ("the property factors")

Tribunal Members – George Clark (Legal Member) and Mike Links (Ordinary Member)

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

The Tribunal has jurisdiction to deal with the application.

The property factors have not failed to comply with their duties under Section 14 of the Property Factors (Scotland) Act 2011 ("the Act") and have not failed to carry out the property factor's duties in terms of Section 17(5)(a) of the Act.

The Tribunal does not propose making a Property Factor Enforcement Order.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code of Conduct"; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as "the Tribunal".

The property factors became a Registered Property Factor on 1 November 2012 and their 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 (1) the application by the homeowner received on 30 March 2017 with supporting documentation, namely a covering letter dated 28 March 2017 with 10 Appendices extending to 42 pages, (2) an e-mail from the homeowner to the Tribunal dated 12 April 2017, withdrawing the complaint made under Section 4.6 of the Code of Conduct, (3) a letter from the property factors to the homeowner dated 13 April 2017, stating that the content of the homeowner's correspondence had been addressed fully and in line with the property factors' complaints procedure (4) written representations by the property factors dated 20 July 2017, to which were attached 24 documents and (5) copies of the property factors' Statement of Services and Delivery Standards, of their Credit Control Procedures and of their Complaints Procedure.

Summary of Written Representations

(1) By the Homeowner

The following is a summary of the content of the homeowner's application and written representations to the Tribunal. A significant portion of the homeowner's letter which accompanied the application relates to the Introduction to the Code of Conduct, so could not be considered by the Tribunal, which can only determine whether property factors have failed to comply with specific Sections of the Code. The Tribunal was, however, satisfied that the matters which were the subject of complaint contained within the application as a whole were all covered in later portions of the letter, which did refer to specific Sections of the Code of Conduct. The homeowner also made a number of references to HSE Guidance documents, British Standards and RoSPA guidance in relation to playparks. The Tribunal was not in a position to assess whether the property factors and those instructed by them had complied with these standards and guidance, but was satisfied that the contractors employed by the property factors to carry out the playground inspections would have been mindful of all relevant legislative requirements and guidance when preparing their reports and recommendations. The homeowner also made a number of references to dissatisfaction with the Residents' Association, but this is outwith the remit of the Tribunal and no consideration was given to these comments or to the

response by the property factors in their written representations that the comments were speculation.

The homeowner complained that the property factors had failed to comply with Sections 2.1, 2.5, 3.3, 4.1, 4.4, 4.6, 5.3, 6.4, 6.9 and 7.1 of the Code of Conduct. By e-mail dated 12 April 2017, the homeowner withdrew the complaint made unde Section 4.6 of the Code.

With reference to **Section 2.1** of the Code of Conduct, which provides that property factors must not provide information that is misleading or false, the homeowner alleged that the property factors had falsified accounts and misled owners. They had told owners in January 2016 that due to non-payment, the ground maintenance schedule would be reduced for the following growing season and that the reason for non-payment not having impacted previously was that they had not been taking their management fee to cover non-payment. At no time prior to 2016 had they advised any owner that this was the case, nor did the accounts reflect it.

The property factors had advised owners that there was one non-payer, despite non-payment by at least 3 owners during this period as confirmed in writing by the then area manager for the property factors, Mr Frazer Mackay. This was, the homeowner contended, done to ensure the owners formed a Residents' Association, in order that the property factors could invoice the Residents' Association for the cost of legal action. They had also stated that they would withdraw from the development if the Asociation was not formed.

Despite advising owners that they had not taken their management fee for the past 3 years, during a visit in January 2017, Mr Bodden had told the owners that the property factors had issued the development with a no-interest corporate loan. The Minutes from the Residents' Association stated that an overdraft was given. This was conflicting information and another example of misleading information being given by the property factors. Further, the accounts did not show non-payment of invoices by owners, nor that the property factors were not taking their management fees. The actual spend clearly showed that the property factors had been paid in full, as had the grass cutting company, despite the property factors being aware that they had not completed the work in accordance with the agreed schedule.

A statement by the property factors that all owners, apart from the homeowner, were happy with the level of service and the quality of work was completely untrue. A number of owners were unhappy, but they did not wish to be identified.

Despite having agreed to provide all maintenance and inspection reports to the homeowner, the property factors had instead supplied a minimum number of reports and those that were provided contained so much incorrect information that the only conclusion that could be reached was that the inspections had not taken place, as the same errors appeared in all reports and lack of ground maintenance was not identified. The property factors had also claimed that these reports had been

discussed with the committee of the Residents' Association and that action on low or very low risk items had been taken or was in the process of being put out to tender, but that was only partly true, as the issues identified in 2015 by the Dunlop/PI reports had not been addressed and no risk assessment had been undertaken to justify not implementing the recommendations.

The homeowner then made reference to the fact that the proposed maintenance schedule for 2017 did not include the ground to the rear of the development. This area had always been included in the workscope although the work had not been fully implemented due to poor management of the sub-contractors and the refusal of the property factors to address the issue. The clear implication being made by the property factors was that this area was additional workscope, which it most certainly was not. The ground maintenance schedule, which had been in place since 2013, clearly showed that the rear of the development had always been included in the ground maintenance plan.

In their response to the homeowner's Stage 2 complaint, the property factors had stated that there were historic issues relating to their ability to complete ground maintenance schedules in their entirety as a result of development financial issues, but they had previously advised that prior to 2016 there had been no impact on ground maintenance as they had not been taking their management fee.

The homeowner provided no supporting evidence in respect of the complaint under **Section 2.5** of the Code of Conduct, but the Tribunal was of the view that the complaint that not all of the maintenance and inspection reports that the homeowner had requested had been provided fell within the ambit of Section 2.5 of the Code, which requires property factors to respond to enquiries and complaints within prompt timescales.

In relation to **Section 3.3** of the Code of Conduct, which requires property factors to provide to homeowners, in writing at least once a year, a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for, the homeowner stated that none of the financial statements supplied by the property factors made any reference to non-payment by any owners, no owners had been advised of non-payment of accounts and no owner had been advised that the property factors were not taking their management fees.The accounts showed that the property factors were taking their management fee every year, which was contradictory to the statement made to owners by Mr Mackay in January 2016. The homeowner also complained that the latest invoice included the full charges for the period, despite less than 50% of the work having been completed in 2016 and the property factors' failure to address the non-completion of work. The homeowner had also requested the account balance during the site meeting with Mr Bodden, but Mr Bodden had stated he would not provide it.

Sections 4.1 and 4.4 of the Code of Conduct require property factors to have a clear written procedure for debt recovery, which sets out how disputed debts will be dealt with and to provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations. The homeowner complained that, despite advising the property factors of the reasons for withholding payment (failure to honour an agreement reached in August 2016, non-completion of ground maintenance works, serious errors in inspection reports, failure to identify during visits that ground maintenance work was not being completed and failure to take the required action to ensure that it was completed), the property factors had continued to demand payment, threatening legal action and additional costs for non-payment. Their debt recovery procedure did not mention the procedure for dealing with disputed payments and no statement had been issued to owners on how the service would be affected if one or more homeowners did not fulfil their obligations.

The homeowner did not include a complaint under Section 4.2 of the Code of Conduct, which states that property factors must not apply any interest or late payment charges in respect of disputed items during the period that the Tribunal is considering the case, but the terms of the Section were set out in the covering letter of 28 March 2017. The Tribunal was not able to consider a complaint under Section 4.2, but at the hearing held on 1 August 2017, the property factors confirmed that no such charges had been levied since the date of the application.

Section 5.3 of the Code of Conduct states that property factors must disclose to homeowners in writing, any commission, administration fee, rebate or other payment or benefit they receive from the company providing insurance cover and any financial or other interest they have with the insurance provider. The homeowner contended that the property factors had failed to advise the owners that the inedependent insurance broker they used was FirstPort Insurance. They also imposed a Landlords' insurance policy, which was not required. Public Liability cover was all that was required.

Section 6.4 of the Code of Conduct states that if the core service agreed with homeowners includes periodic property inspections and/or a programme of cyclical maintenance, property factors must prepare a programme of works. The homeowner complained that the property factors had failed to ensure that the programme of works was amended after they decided on a reduced maintenance schedule in January 2016.

Section 6.9 of the Code of Conduct requires that property factors must pursue the contractor or supplier to remedy any defects in any inadequate work or service provided. The homeowner stated that the property factors had failed to ensure their sub-contractor completed the work in accordance with the agreed maintenance schedule for August to November 2016 and had failed to do so since 2013. The sub-

contractor had disposed of waste on the development, but the property factors had failed to identify this during their inspections.

The homeowner included in the application a complaint under **Section 7.1** of the Code of Conduct, which requires property factors to have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which the property factor will follow. This procedure must also include how property factors will handle complaints against contractors. The homeowner's complaint was that the property factors had assigned their development manager to review the complaint and had only reassigned it when the homeowner had complained about what they had done. It had been clear at the meeting with Mr Bodden in January 2017 that he regarded it as a "tick in the box" exercise, as had no desire to answer questions, did not have any information and told the homeowner he was not there to discuss specific issues and refused to answer direct questions.

The homeowner stated in the application that the complaint also related to a failure to carry out the **Property Factor's Duties** under Section 17 of the Act. The homeowner did not provide any written representations to further specify this aspect of the complaint and the Tribunal did not consider it further.

(2) by the Property Factors

The written representations by the property factors are contained in their letter to the Tribunal dated 20 July 2017, with supporting documents. They responded to the homeowner's comments which related to the Introduction to the Code of Conduct, but, as stated above, the Tribunal can only determine complaints by reference to specific Sections of the Code, so the property factors' response in relation to matters contained in the Introduction to the Code were not considered by the Tribunal.

In relation to **Sections 2.1 and 2.5** of the Code of Conduct, the property factors said by way of explanation that their management fee had been taken throughout the period, but the development account had been in overdraft. Although all appropriate costs had been paid, this had resulted in debts at the development, which had required both an overdraft and corporate loans to be used. There was no evidence to support the allegation made by the homeowner that the property factors had not been taking their management fees.

The reduction in ground maintenance provision had been agreed with the Residents' Association, in order to reduce costs in the light of the homeowner's debt, but it did not constitute a substantial change to the tems of the written statement.The debt issue clearly had a detrimental effect on the carrying out of a full ground maintenance schedule.

The homeowner had provided no evidence to support the allegation that the property factors had at any time said there were three owners, rather than just one, who had not paid the factoring charges.

The homeowner had alleged that a number of owners were unhappy with the level of service, but had provided no evidence to support that allegation and comments the homeowner had made about the Residents' Association were speculation.

The property factors denied that they had been asked to provide copies of all maintenance and inspection reports regarding the playpark. The homeowner's request had been non-specific in terms of quantity or dates and the reports provided to the homeowner satisfied his request in full.

The property factors stated that maintenance of the playpark was attended to when it was required. There was a risk assessment in place and low or very low risk items identified as such by the third party inspectors were not attended to due to the debt issue. The inspection reports were generic documents, used to highlight required action. The property factors accepted that, as a result, occasionally an item would be marked as "yes" instead of "not applicable", but that did not affect the overall validity of the reports.

In relation to the homeowner's complaint under **Section 3.3** of the Code of Conduct, the property factors' response was that the homeowner had provided no evidence that they had failed to comply with the requirements of the Section. The accounts for the period from January to May 2017 had not been finalised, but the property factors had explained to the homeowner that any works not carried out would show as a saving on the accounts when they were finalised. The assertion by the homeowner that 50% of the work had not been carried out was an unsubstantiated claim which the property factors considered to be untrue. During the meeting between the homeowner and Mr Bodden, referred to in the homeowner's written representations, it had been explained that the property factors were unable to finalise accounts and produce a balance outwith the normal timescale or within a current financial period.

In their response to the complaint made under **Sections 4.1 and 4.4** of the Code of Conduct, the property factors accepted that their Debt Recovery Procedure had not set out how they dealt with disputed debt, but this had now been rectified. They had pusued the homeowner's debt until June 2017, but had then written it off and removed any charges associated with it. They had also offered to cover the homeowner's service charge in full until 4 August 2017, the date on which they understood the homeowner's sale of the property was due to settle.

The response of the property factors to the complaint made under Section 5.3 of the Code of Conduct was that FirstPort Insurance Services Limited are an independent insurance broker. They are a separate limited company from FirstPort Scotland Limited and are regulated by the Financial Conduct Authority.

With regard to Section 6.4 of the Code of Coduct, the property factors stated that all amendments to the schedule of works had been discussed and agreed with the Residents' Association and had been communicated to all owners. All agreed work had been completed appropriately.

The homeowner had also complained under Section 6.9 of the Code of Conduct that the sub-contractor had disposed of waste on the development, but had provided no evidence to support that contention.

Finally, with regard to the complaint under Section 7.1 of the Code of Conduct, the response of the property factors was that the homeowner's account of the meeting with Mr Bodden in January 2017 differed very greatly from that of Mr Bodden. All relevant complaints had been addressed appropriately.

The property factors included with their written representations a copy of their Stage 2 response to the complaint, dated 10 February 2017. It was signed by their Regional Director and stated that if the homeowner remained dissatisfied, an application could be made to the First-tier Tribunal for Scotland, contact details of which were provided in the letter.

THE HEARING

A hearing took place at The Credo Centre, 14-20 John Street, Aberdeen AB25 1BT on the morning of 1 August 2017. The homeowner was not present or represented at the hearing. The property factors were represented at the hearing by Mr Roger Bodden, their Area Manager. The Clerk to the Tribunal was Alan Kerr.

Summary of Oral Evidence

The chairman told the party present that he could assume that the Tribunal members had read and were completely familiar with all of the written submissions and the documents which accompanied them. He also advised that the Tribunal would not be considering those elements of the homeowner's written submissions which related to the Introduction to the Code of Conduct without reference to any specific Section or Sections. He then invited Mr Bodden to address the Tribunal in relation to any further evidence he wished to be considered by the Tribunal.

Mr Bodden referred first to **Section 2.1** of the Code of Conduct and explained that, throughout the final period when there was growing debt on the estate, the property factors had not taken their management fee monthly, but they did reconcile the account annually and always showed their management fees as taken. Corporate loans were used to pay bills when the account was in deficit and these loans and any overdrafts on the account were cleared by the owners, apart from the homeowner, at

the next payment date. With the exception of the homeowner, all owners had been willing to engage with the property factors.

In relation to **Section 3.3** of the Code of Conduct, Mr Godden told the Tribunal that a significant number of inspection reports had been supplied to the Residents' Association. He was not sure whether the Association had passed all of them on to the homeowner, but the homeowner's request had in any event been non-specific in relation to how far back he wished to go. The property factors had supplied at least a year's worth.

The property factors told the Tribunal that their on-site inspection is a visual inspection, designed to identify any obvious matters which required to be dealt with. Once a year, the property factors used a third party to provide a site-specific inspection, with any risks identified being categorised as very low, low, moderate or high. Low or very low items were only carried out when there were funds available to meet the cost. Nothing had ever shown up as more than low risk. If anything was not done, it was because the owners were unwilling to provide the necessary funding.

The property factors accepted that their reports were very generic in nature, with a number of items where the answer could be "no" or "not applicable". They agreed that there was work to be done in-house to tailor reports to be more site-specific and this work was under way. The important thing to note, however, was that anything that was highlighted as an issue was dealt with.

The property factors then referred to a comment in the homeowner's written representations that the property factors had advised them that all owners had been invited to attend a meeting in November 2016, but that neither the property factors nor the Residents' Association had issued an invitation to that meeting. The property factors told the Trubunal that it had been an open Residents' Association meeting and it was the Residents' Association which took responsibility for publicising it. The role of the property factors was attend the meeting and to pay for the church hall in which it was held.

The ground maintenance schedule in place for the site was fairly standard. If everybody paid, all the work would be done, but if debt was growing, decisions had to be made and priority was given to the portion of land facing the road at the front of the development. The homeowner's property was at the rear corner of the estate. In a ground site arrangement such as this, the loss of $1/18^{th}$ of the revenue due to non-payment by one owner would be significant and if the debt compounded, the problem became even more acute. Mr Godden added that the property factors had not done as much work as had been budgeted for, but the accounts to 31 May 2017 would show that and would, in all probability, produce a surplus, as the property factors had paid out less.

The property factors then turned to the complaints under **Sections 4.1 and 4.4** of the Code of Conduct and advised the Tribunal that when they were reviewing the

homeowner's case, they had looked at their documentation and they accepted that their Credit Control procedure did not cover disputed debt. The procedure had now been amended and Mr Godden provided the Tribunal with a copy of the revised procedure.

In relation to **Section 5.3** of the Code of Conduct, the property factors stressed that FirstPort Insurance are the brokers and that all of the information required by Section 5.3 is sent out with the annual statements, which show that the property factors do not derive any benefit from the arrangement. It would be the parent company who would benefit. The property factors would only ever have had playpark insurance and public liability cover for this site and would never have had landlord's insurance as the homeower seemed to be suggesting. The residents were aware that the reviews of insurance were carried out through FirstPort Insurance, as this was included in the information with the annual accounts that were sent out.

In addition to their written representations regarding **Section 6.4** of the Code of Conduct, the property factors told the Tribunal at the hearing that a revised schedule of ground maintenance had been agreed with the Residents' Association in line with the levels of funding and debt.

In conclusion, the property factors referred to the complaint made under **Section 7.1** of the Code of Conduct and provided the Tribunal with a copy of their Complaints Procedure document and added that it also appeared on the company's website. The property factors made it known in their written Statement of Services that a copy of the procedure was available on request and, if a complaint was escalated, the policy document would be sent out to the complaining homeowner.

Mr Bodden then left the hearing and the Tribunal members considered the evidence that they had heard, along with the written representations and other documentation before them.

The Tribunal makes the following findings of fact:

- The homeowner is the owner of the property.
- The property forms part of a development of 18 dwellinghouses.
- The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2 (1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- The property factors' duties arise from a Written Statement of Services, a copy of which has been provided to the Tribunal. It includes a section on Complaints Procedure and states that the full Complaints Procedure is available on their website or upon request. It also states that a written copy of the Debt Recovery Procedure is also available on request.

- The date from which the property factors' duties arose is 1 November 2012, the date on which the Act came into force.
- The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- The date of Registration of the property factors was 1 November 2012.
- The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under Sections 14 and 17 of the Act.
- The homeowner made an application to The Tribunal on 12 March 2017 under Section 17(1) of the Act.
- The jurisdiction of HOHP was transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- On 27 April 2017, a Convener of the Housing and Property Chamber intimated to the parties a decision to refer the application to a tribunal for determination.

Reasons for the Decision

The Tribunal considered that the essence of the homeowner's complaint was that the ground maintenance contract had been varied, with the effect that the ground adjacent to the homeowner's property at the rear corner of the development was removed from the schedule and that this amendment had been agreed at a meeting to which the homeowner had not been invited. The Tribunal had, however, heard from the property factors that it was not part of their duties to publicise meetings of the Residents' Association, that being the responsibility of the Association, and the Tribunal accepted that evidence. It was clear to the Tribunal that the homeowner had issues with the Residents' Association, but this was not a matter in which the Tribunal could become involved.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 2.1 of the Code of Conduct. The Tribunal determined that there was no evidence before it to support the allegation that the property factors had falsified accounts or misled owners in relation to the question of whether they had been taking their fees, nor was there any evidence that there was more than one owner who had not been paying their maintenance and factoring charges. The Tribunal could not comment on whether a number of residents were unhappy with the level of service provided by the property factors, as the homeowner had not produced any evidence to that effect. The property factors had been correct in stating in January 2017 that they had made a corporate loan to

the development and, whilst the Residents' Association might have worded it differently in their Minutes, the property factors had not said anything that was misleading or false in that regard.

The Tribunal accepted that a number of maintenance and inspection reports were provided by the property factors. It was not clear to the Tribunal that the homeowner had requested copies of every such report or that it was reasonable for the homeowner to expect to receive a copy of every such report and the Tribunal held that the property factors had responded reasonably in the circumstances to the homeowners' request.

The Tribunal also accepted that there had been an alteration to the ground maintenance schedule as a result of debt building on the account and that this had resulted in an area to the rear of the development being removed from the schedule, but was satisfied from the evidence given by the property factors that this decision had been agreed with the Residents' Association. The Tribunal accepted the evidence of the property factors that where there was debt on the development, it was no longer possible to carry out all the works anticipated in the budget and that decisions had to be taken, including a decision not to carry out maintenance items on the playground area which had been identified as being low-risk.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 2.5 of the Code of Conduct. The Tribunal had earlier concluded that, whilst the homeowner had offered no direct evidence in support of the complaint under this section, the complaint that not all of the reports that the homeowner had requested had been provided fell within the ambit of Section 2.5. As the Tribunal had made a finding in relation to Section 2.1 that it was not clear that the homeowner had requested or was reasonably entitled to expect to receive every report, the Tribunal could not uphold the complaint under Section 2.5.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 3.3 of the Code of Conduct. The Trubunal found no evidence that the property factors had not complied with the duty to provide, at least once a year, a detailed financial breakdown of charges and a description of the activities and works carried out which were charged for. The Tribunal accepted the evidence given by the property factors that, whilst the latest invoice would have shown full charges anticipated for the period, if less work than was budgeted for was actually carried out, there would be an appropriate adjustment in the final accounts to 31 May 2017. The Tribunal also accepted that it was not practicable to expect property factors to provide a note of the balance on the account without carrying out the reconciliation work that would be required at the end of an accounting period and that it was not unreasonable for the property factors to decline to provide this figure when requested to do so at the site meeting in January 2017.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Sections 4.1 and 4.4 of the Code of Conduct. The Tribunal noted that the property factors' Debt Recovery Procedure had not set out how disputed debts would be dealt with and how service delivery and charges would be affected if one or more homeowner did not fulfil their obligations, but was satisfied that the property factors had now made the appropriate changes to their Credit Control Procedures document. The Tribunal also noted that the property factors had, in their letter to the homeowner of 12 June 2017, cleared the homeowner's outstanding service charge balance of £166.92 and removed the charge of £36 for Notice of Court Action and had agreed to cover the service charges due by the homeowner to 4 August 2017, which they understood to be the date of entry in the homeowner's sale of the property.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 5.3 of the Code of Conduct. The Tribunal noted the written representations from the property factors and also the oral evidence and was satisfied that there was no indication that the property factors received any commission, administration fee, rebate or other payment or benefit from the company providing insurance cover and that any such benefit arising from the fact that FirstPort Insurance were the insurance brokers accrued to the parent company and not to the property factors.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 6.4 of the Code of Conduct. There was no disputing the fact that the programme of cyclical maintenance had been amended, due to the levels of funding and debt on the development account, but the Tribunal accepted that this had been agreed with the Residents' Association.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 6.9 of the Code of Conduct. There was no evidence that the property factors had failed to ensure their sub-contractors had completed works in accordance with the agreed and, latterly, amended by agreement, maintenance schedule. The homeowner had alleged that the sub-contractors had disposed of waste on the development and that the property factors had failed to identify this during their inspections, but the homeowner had provided no evidence of any waste being disposed of on the development. Consequently, there was no evidence of such a failure on the part of the property factors.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 7.1 of the Code of Conduct. The homeowner had not provided any evidence to support this alleged failure, but had complained that the property factors had assigned their development manager to review the complaint and had only resssigned it when the homeowner had complained. The Tribunal had seen a copy of the Complaints Procedure document and noted that the written statement of services clearly stated that the full procedure

was available on the property factors' website or upon request. The Tribunal had seen in the written representations, a copy of the property factors' Stage 2 response to the complaint. It was dated 10 February 2017 and had been signed by the Regional Director. The Tribunal was satisfied that the homeowner's complaint had been dealt with at an appropriate level within the company.

Property Factor Enforcement Order

As the Tribunal has not upheld any part of the homeowner's complaint, the Tribunal does not propose to make a Property Factor Enforcement Order.

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.

G Clark

Signature of Legal Chair . Date 26 September 2017