

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision on homeowner's application: Property Factors (Scotland) Act 2011  
Section 19(1)(a)**

**Chamber Ref: FTS/HPC/PF/2535**

**Flat 1/ 2 17 Prospecthill Street, Greenock ("the Property")**

**Parties:**

**Helen McGoldrick, Flat 1/ 2 17 Prospecthill Street, Greenock ("the Homeowner")**

**River Clyde Homes, Clyde View, 22 Pottery Street, Greenock. PA15 2UZ ("the Property Factor")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Mary Lyden (Ordinary Member)**

### **DECISION**

**The Property Factor has not failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not fail to comply with the 2021 Code of Conduct for Property Factors and did not fail to carry out its property factor duties.**

**The decision is unanimous**

### **Background**

1. The Homeowner lodged an application with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The applications comprise documents received by the Tribunal between 18 October 2021 and 17 February 2022. The application states that the Property Factor has breached Overarching Standards of Practice ("OSPs") 3, 6, 7, 11 and 12 and sections 2.1, 2.7, 6.4 and 6.6 of the 2021 Code of Conduct ("the 2021 Code"). The application also states that the Property Factor had failed to carry out its property factor duties. Documents were lodged in support of the application including a copy of part of Land Register title sheet for the property and correspondence with the Property Factor.

2. On 4 March 2022, a Legal Member of the Tribunal with delegated powers of the President referred the applications to the Tribunal. The parties were notified that a case management discussion (“CMD”) would take place on 30 May 2022 at 10am at Glasgow Tribunal Centre. Prior to the CMD the Property Factor lodged written submissions and documents, including a response to the application which had been sent to the Homeowner in February 2022.
3. The CMD took place on 30 May 2022. The Homeowner attended and was supported by her sister, Frances McGoldrick. The Property Factor was represented by Mr McMenemie.

### **Summary of discussion at the CMD**

4. Ms McGoldrick had brought further documents to the CMD. The Tribunal noted that two of the documents were letters from Inverclyde Council and the third was a letter from the Property Factor. The Tribunal allowed these to be submitted but noted that the letters from the Council might not be relevant to the application.
5. The Tribunal noted that several of the Homeowner’s complaints relate to the door entry system at the property. It is stated that the handset which is located inside the property is not suitable for the Homeowner’s needs as she is both hearing and sight impaired. The application states that she requires an adapted handset, but the Property Factor has told her that this is not a factoring issue. They have offered to arrange for an adapted handset to be installed but that Miss McGoldrick will have to pay for this. In response to questions from the Tribunal, Miss McGoldrick said that she paid for the current handset when the new system was installed. An adapted handset ought to have been offered at that time. The Property Factor ought to have been notified by the Council when the housing stock was transferred about her dual sensory impairment. It appears that this did not happen, although the Council was fully aware of the situation. As a result, she was provided with the same handset as the rest of the block and does not know when someone is at the door. Even if she had a handset with a flashing light, this would not solve the problem because she cannot hear when people speak into the door entry system at the main door. The Property Factor notified Ms McGoldrick that they were not responsible for providing a replacement handset which would address her needs because it relates to an issue within her flat and not the common areas at the property. The Tribunal noted that this complaint related to an issue which might be outwith the Property Factor’s remit and responsibility and suggested that Ms McGoldrick might want to take advice. In the meantime, it was also noted that the Property Factor had offered to have the door entry system checked to ensure that there is no defect.
6. The Tribunal proceeded to discuss the Homeowners application. This had been drafted and submitted by a welfare rights officer with Deafblind Scotland on behalf of the Homeowner. Ms McGoldrick advised the Tribunal that she had not reviewed and sorted her papers in advance of the CMD and was not able to answer questions about the specific complaints listed in her

applications. She said that if the matter was continued to another date, she could prepare properly and make sure that she could provide the Tribunal with the information required.

**7. The Tribunal noted the following complaints under the 2021 Code: -**

- (a) OSP 3 – You must provide information in a clear accessible way.**
- (b) OSP6 – You must carry out the services you provide to Homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.**
- (c) OSP 7 – You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation.**
- (d) OSP 11 – You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.**
- (e) OSP 12 – You must not communicate with homeowners in any way that is abusive, intimidating or threatening.**
- (f) Section 2.1 – Good communication is the foundation for building positive relationships with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners responsibility to make sure that the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.**
- (g) Section 2.7 – A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible and to keep the homeowners informed if they are not able to respond within the agreed timescale.**
- (h) Section 6.4 – Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware**

**in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.**

- (i) Section 6.6 – A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointee contractors including cases where they have decided not to carry out a competitive tendering exercise or use in house staff. This information must be made available if requested by a homeowner.**

**8. The Homeowner also stated that the Property Factor has failed to carry out its property factor duties.**

9. Following the CMD, the Tribunal determined that the application should proceed to a hearing. The parties were notified that the hearing would take place on 23 August 2022. At the request of the Homeowner, the hearing was postponed, and parties were notified that it would take place on 29 September 2022 at 10am at Glasgow Tribunal Centre, York Street, Glasgow. Prior to the hearing Mr McMenemie submitted further documents. These included a letter to the Homeowner dated 5 July 2022. A copy of a report from the contractor (VWS) who inspected the door entry system on 10 June 2022 was attached to the letter. In the letter the Property Factor states that their attempts to convert the report to Font 60, which the Homeowner requires, were unsuccessful. However, they had copied the content of the report into the letter so that the Homeowner could read what was said. They suggested that she could ask her sister to check the report to ensure that their narration of its terms was accurate, if she had any doubts. The report states that the engineer was asked to check the system because the Homeowner (wrongly described as a tenant) “can’t hear visitors who buzz up adamant that this is a common door fault” and asked to “inspect handset for issues.” Following the inspection, they stated that they “adjusted the audio so that is as clear as possible, but the tenant still cannot hear when I speak but can hear the handset ring, the system is equipt with an entry loop for hearing aids and the owner does set this to the T position.” The engineer also stated that he spoke with “videx technical staff who explained that a videx 3171 handset with an INDICOIL built in will be required as this induction coil works with hearing aid functions.”

10. The hearing took place on 29 September 2022. The Homeowner attended and was supported by her sister, who also gave some evidence to the Tribunal. The Property Factor was again represented by Mr McMenemie. The application under the 2012 Code was also considered.

## **The Hearing**

11. Ms McGoldrick firstly referred the Tribunal to the letter of 5 July 2022. She said that she was not happy with the failure to provide the contractor’s report

in Font 60 and the suggestion that she ask her sister or another person to compare the report with the copy of it in the letter. She said that this takes away her independence and that they are obliged to issue everything in Font 60. She had several other issues. The letter refers to the T position – that should be Number 3. She said that the engineer was only in the house for a short period. The end of the report says that there will be a follow up call to her. She didn't get a call. She stated that she cannot hear the handset. The only reason that she could do so during the visit was because she was standing next to it. Ms McGoldrick was concerned about the rating on the report of 5/5. She would not have given that rating. She then referred to page 27 onwards of the letter which discusses her attendance at the Property Factor's office on 16 June 2022 when she asked to see Mr Orr. She was told that he was in a meeting and would call her back. He did not do so. The letter goes on to say that, due to his senior position, he would not usually attend face to face meetings with individual customers. She was unhappy with this because she had approached Inverclyde Council about information passed to the Property Factor at the time of the stock transfer about her impairments. They told her to speak to someone high up so that is what she was trying to do and why she had refused to speak to someone else. Ms McGoldrick then referred to page 35 onwards which states that she had left notes at reception when she had attempted to see Mr Orr. These notes indicated that she wanted to know the name of the person who gave the Property Factor the information (about her impairment), the Council department that the person works for and the date the information was given to the Property Factor. This would allow her to ask the Council to check what information was passed on. The letter (page 41) states that the Property Factor is not aware of a "single party or department... within Inverclyde Council that was responsible for the transfer of data when the property stock transferred to River Clyde Homes on 03/12/2007." They "have not shared data" with the Council following this so cannot provide the details of a person working for the Council". Ms McGoldrick stated the situation is a shambles. As she has been wearing a hearing aid since 2005, the correct information should have been passed on. She also told the Tribunal that she made a subject access request but was sent information with names and other information redacted.

**12.** Mr McMenemie said that as River Clyde Homes ("RCH") are only the factor for the property, they hold limited information. They do not hold information regarding health issues and disabilities in relation to Homeowners. They only keep information about specific communication requirements. So, they their records indicate that all letters must be sent out in Font 60. In relation to the rating on the VWS report he stated that this is just the general rating given by RCH to this contractor and not a rating specific to the job which was instructed. He confirmed that the stock transfer took place in 2007. He also stated that the letter of 5 July was instead of a phone call.

**13. OSP 3 of the 2021 Code.** Ms McGoldrick told the Tribunal that most of the correspondence she now receives is in Font 60 but that has not always been the case and she has had to contact the Property Factor on numerous occasions when they have failed to comply with this. She has also been sent

letters on A3 paper which is not suitable. When she has complained she has been told that they don't like her attitude. She told the Tribunal that she previously needed Font size 36. This changed in 2017/2018 but she continued to get letters in Font size 36. She referred the Tribunal to a letter that she received 2 weeks before the hearing, in standard font. She had not lodged the letter in advance of the hearing. The Tribunal noted that the letter was addressed to "the resident" and related to bins. Ms McGoldrick stated that whenever she gets a letter in the wrong font and phones up to complain she feels as though the staff are laughing at her.

14. Mr McMenemy said that he had no prior knowledge of the letter referred to by Ms McGoldrick but noted that it had been issued by a housing officer who had probably put the same letter through all the letterboxes. Had she consulted the system she would have been aware of the required Font size. The factoring team are all fully aware that all documents must be issued in Font 60.
15. **OSP 6 of the 2021 Code.** Ms McGoldrick told the Tribunal that the staff at RCH and their contractors have not been given information about her impairments. In particular, she said that she has had problems with a staff member called Jamie. She has spoken to him on the phone, but he kept repeating that it was not an RCH issue. On one occasion she was trying to identify who a missed call had been from. It later turned out to be from Video Watchman, but Jamie had not passed on her enquiry. There was an incident in July 2021 when the police had to attend and told her that her door entry handset was not suitable because she could not hear who was at the door. As a result of this advice, she contacted the Property Factor by phone to explain what had happened and what she needed. She wanted to speak to a female, but Jamie kept saying that she had to speak to him. When she explained about the handset, he kept saying that it was not an RCH issue. She became very agitated and had to terminate the call.
16. Mr McMenemy advised the Tribunal that the contact centre staff are trained to limit call times. This is due to the volume of calls and to avoid people having to wait. As part of this training, staff are told to terminate calls which are not about factoring issues. The information provided by Ms McGoldrick about the police incident and her internal handset would not be factoring issues. He added that RCH are only the property factor for the property.
17. **OSP 7 of the 2021 Code.** Ms McGoldrick told the Tribunal that she has been unfairly discriminated against by the Property Factor. They make her feel like a nuisance and don't take her seriously. She feels that they are laughing at her and not listening to her. They have failed to provide her with the adapted handset. In response to a question about affordability, Ms McGoldrick said that the centre for independent living do not things like handsets and canes anymore and that she is not willing to pay for the handset because she has paid already.
18. Mr McMenemy said that RCH generally refer people in Ms McGoldrick's situation to the centre for independent living when they need an adaptation for

their property. If an adaptation is needed for the common areas, such as a handrail in a common area, they sometimes write to all residents to see if they are agreeable. However, they only provide a reactive service for homeowners so they would have to be asked about this before they would take any action.

19. **OSP 11 of the 2021 Code.** The Tribunal noted that this is similar to a complaint made under 2.5 of the 2012 Code in a related application. Ms McGoldrick was only able to provide one example of this since August 2021, an enquiry which she made on 10 August 2022 to which a response had been received on 9 September 2022. The Tribunal noted that these documents had not been lodged in advance of the hearing and the Property Factor had not had the opportunity to comment. The Tribunal advised that these letters could not be considered as the Property Factor had not had fair notice of them.
20. **OSP 12 of the 2021 Code.** Ms McGoldrick advised the Tribunal that she felt intimidated during calls with Jamie and considered his attitude to be demeaning. He contradicted everything that she said. He declined to arrange for her to speak to a woman and she had to terminate calls on 2 occasions. She subsequently spoke to Tricia Jamieson who said that she would speak to Jamie's boss. In response to questions from the Tribunal, Ms McGoldrick said that these discussions with Jamie had taken place in July 2021. It therefore appeared that the 2021 Code did not apply at the relevant time. Ms McGoldrick was unable to provide any further instances when this section might apply after 16 August 2021.
21. **Section 2.1 of the 2021 Code.** Ms McGoldrick told the Tribunal that she had not been properly consulted in relation to the door entry system and that the Property Factor had not fulfilled their obligations to communicate and consult. The Tribunal noted that the door entry system was installed in 2017 and was therefore not covered by the 2021 Code. Ms McGoldrick was unable to provide any examples of breaches of this section of the Code since 16 August 2021.
22. **Section 2.7 of the 2021 Code.** Ms McGoldrick advised the Tribunal that her only example of this was the correspondence from 10 August and 9 September 2022 which the Tribunal had already decided could not be considered as it had not been lodged in advance of the hearing.
23. **Section 6.4 of the 2021 Code.** The Tribunal noted that this is essentially the same complaint as was made in relation to 6.1 of the 2012 Code, namely that the Property Factor has failed to provide Ms McGoldrick with progress reports on the installation of an adapted handset. However, the Property Factor's position is that they cannot provide a progress report on work which has not been instructed. They have advised Ms McGoldrick that she will have to pay for the handset. She has refused to do so. Following discussion, Ms McGoldrick conceded that this section may not apply to her complaint.
24. **Section 6.6 of the 2021 Code.** Ms McGoldrick referred the Tribunal to her previous evidence in relation to the need for an additional/adapted handset.

25. **Property Factor duties.** In the application, Ms McGoldrick had identified three failures to carry out property factor duties. Firstly, she frequently receives mail in the wrong font size. Secondly, she has not received responses in a timely manner. Thirdly, the door entry system does not meet her requirements. The Tribunal noted that both parties had already given evidence on these issues in relation to the Code complaints. Ms McGoldrick said that a handset that meets her needs is a priority. If someone goes to the door, she can't hear them and cannot establish who is there. She stated that, as she has already paid for her handset, she should not have to pay again for one which meets her needs.
26. Ms Frances McGoldrick told the Tribunal that her sister has been caused a great deal of stress and that the Property Factor is at fault. She also stated that the receptionist at RCL told them that there was a fault with the door entry system and stated that she had been unable to hear the handset ringing when she was in her sister's home.
27. Mr McMenemy concluded by saying that the handset in the property is a private matter and not the responsibility of the factor. He added that RCH could not use rental income from tenanted properties to pay for a handset for a homeowner.

**The Tribunal make the following findings in fact:**

28. The Homeowner is the heritable proprietor of the property. She purchased the property in 2003.
29. The Property Factor is the property factor for the property.
30. The Homeowner did not notify the Property Factor of her hearing impairment until September 2019.
31. The Homeowner did not notify the Property Factor that she required all correspondence to be issued in Font 60 until September 2019. Prior to September 2019 correspondence was usually issued in Font 36.
32. The Property Factor has no record of the Homeowner's hearing impairment until September 2019.
33. The door entry at the property is in working order.
34. The handset located in the Homeowner's property is not suitable for the Homeowner due to her hearing impairment.
35. The Homeowner did not request an adapted or additional handset when the door entry system was installed.



36. Correspondence issued to the Homeowner by RCH is usually issued in Font 60.
37. The Property Factor's staff are aware of the requirement to issue correspondence in Font 60 and aware of her hearing impairment.
38. The Property Factor has not discriminated against the Homeowner.
39. There has been no failure by the Property Factor to respond to enquiries and complaints within reasonable timescales since 16 August 2021.
40. Property Factor staff have not communicated with the Homeowner in a way that is intimidating, abusive or threatening since 16 August 2021.

### **Reasons for Decision**

41. At the CMD the Tribunal noted that several of the Homeowner's complaints related to the door entry system at the property. It was suggested by the Homeowner that the system was defective, although this had not been stated in either the application form or the letter to the Property Factor notifying them of the complaints. Following the CMD, the Property Factor arranged for the system to be inspected. The contractor provided them with a report which confirms that it is in working order. It was not clear whether this is disputed by the Homeowner. Her sister, Frances McGoldrick said that she could not hear the handset buzzing when she was in the property. This had also been mentioned at the CMD and appears to pre-date the visit by the engineer who stated that an adjustment had been made to ensure that the "audio is as clear as possible". Ms Frances McGoldrick also stated that a receptionist at RCH had told them that there was a defect. Again, this was not confirmed by Ms McGoldrick who told the Tribunal that she could hear the handset if it buzzed, when she stood next to it during the contractor's visit. However, when she is elsewhere in the property, she is unable to do so. The other issue is that she cannot hear who is speaking when she answers the call. The Tribunal is satisfied, from the VWS report, that the door entry system is currently working.
42. The principal complaint regarding the door entry system is that the handset which was installed in 2017 does not meet the needs of the Homeowner. As a result of her hearing impairment, she requires an additional, adapted handset. This is not disputed by the Property Factor and is supported by the contractors' report which provides information about the type of handset which should be installed, although it does not mention cost. Mr McMenemie was unable to provide this information. Ms McGoldrick said that she had previously been quoted £50 but had recently been told it would be £749 or £849. Neither party lodged any documents regarding the cost although the Tribunal notes that the letter of 27 September 2019 refers to an invoice which was not lodged.

- 43.** The Tribunal is satisfied that the installation of an additional, adapted handset in the Homeowner's property is not the responsibility of the Property Factor. RCH is responsible for managing the common areas on behalf of the proprietors and arranging for the maintenance and repair of those areas. This being the case, they are under no obligation to assist the Homeowner in relation to a handset located inside her property. Since they arranged for the system to be installed, it would not be unreasonable to expect RCH to provide Ms McGoldrick with information about how to go about purchasing an adapted handset. In fact, they are prepared to do more than this. They are willing to arrange for its installation if Ms McGoldrick agrees to pay the associated cost. They have explained that RCH cannot bear the cost as they cannot use rental revenue for the benefit of a homeowner. The Tribunal also notes that all work carried out by a property factor is usually divided among all homeowners and to charge others in the block for work which is exclusive to the Homeowner's flat would be unlawful.
- 44.** The main reason for the Homeowner's assertion that the Property Factor should pay for the handset is that they knew or ought to have known about her dual sensory impairments. She told the Tribunal that she has worn hearing aids since 2005, which was before the transfer of housing stock to RCH in 2007. She stated that Inverclyde Council were aware of both impairments and ought to have told RCH in 2007. They appear to have been told about the visual impairment, as correspondence has generally been issued to her in large font, although not Font 60 which she did not require until 2017 or 2018. However, Ms McGoldrick has been unable to obtain any information about the information which was passed from the Council to RCH. This is not surprising. The stock transfer was in 2007. Ms McGoldrick had purchased her flat in 2003, not under Right to Buy. In relation to the property, which is the subject of the application, she was never a tenant. The Council may have factored the property but the Code and 2011 Act did not come into force until 2012, so neither the Council nor RCH were required to comply with these at the time of the transfer. The Tribunal was advised that, as a social landlord, RCH holds certain information about tenants which it is neither necessary nor appropriate for them to hold in relation to homeowners. Their role as factor is much more limited and clearly defined. The Tribunal also notes that Ms McGoldrick was sent a letter in September 2019 which specifically stated that they had not been aware of her hearing impairment or that she required Font 60. The letter confirmed that they had updated their records. Ms McGoldrick may have expected or assumed that information about her impairments had been passed on in 2007. She may have had good reason for this assumption if all correspondence was in large font from the outset. However, as a Homeowner, it was her responsibility to provide the Property Factor with any necessary information about her needs and the Property Factor cannot be at fault if neither the Council, nor the Homeowner herself, provided that information.
- 45.** The Tribunal proceeded to consider the Homeowner's complaints

## Property Factor Duties

46. Section 17(5) of the 2011 Act states “In this Act, “property factor duties” means, in relation to a homeowner – (a) duties in relation to the management of the common parts of land owned by the homeowner, or (b) duties in relation to the management or maintenance of land (i) adjoining or neighbouring residential property owned by the homeowner, and (ii) available for use by the homeowner.” Property Factor duties are usually found in the title deeds of a property or the written statement of services.
47. The Tribunal is not persuaded that the issuing of correspondence in the wrong font or the failure to provide a prompt response to enquiries or complaints are failures to carry out property factor duties as they do not relate to the services provided by the Property Factor in relation to the common parts within the block of flats or development. The Tribunal is satisfied that the installation of the door entry system at the property was arranged by RHC in their capacity as property factor, for properties no longer in RCH ownership. However, once installed, only the parts of the system located within the common parts remain within the Property Factor’s remit. If a repair is required, they should arrange for it to be rectified, with the cost being apportioned among all properties in the block, unless the defect is due to damage caused by one of the tenants or homeowners. However, the handset located within the Homeowner’s own property is not the Property Factor’s responsibility. Furthermore, it was the Homeowner’s responsibility to notify the Property Factor if she needed a different or additional handset either at the time of installation, or subsequently, and to pay any additional costs associated with this.
48. The Tribunal is satisfied that the Homeowner has not established that a failure to carry out property factor duties.
49. During the hearing the Tribunal noted that Ms McGoldrick had not fully understood the difference between the two Codes or that her complaints under the 2021 could only relate to actions or failures by the Property Factor between the new Code coming into force on 16 August 2021 and the lodging of her application with the Tribunal
- 50. OSP 3 of the 2021 Code.** The only evidence relating to this complaint was a letter that the Homeowner received recently from a housing officer. It had not been lodged in advance of the hearing and was not specifically addressed to the Homeowner. It appeared to be a general letter issued to all residents in the block about a problem with the bins. It is in standard font. Mr McMenemie said that the letter had been issued by a housing officer who had probably not checked the system before issuing the letter. He stated that all staff in the factoring department were aware of the need for Font 60. The Tribunal noted that the application was accepted by the Tribunal on 4 March 2022. The housing officer letter was not received until a week or two before the hearing and could therefore not be the subject matter of the application. Letters were also lodged at the CMD. However, only one of these was from the Property

Factor. It is dated 27 September 2022 and is in Font 60. In the absence of any evidence that the Property Factor sent correspondence in the wrong font between 16 August 2021 and 4 March 2022, the Tribunal is satisfied that the Homeowner has not established a breach of this section of the Code.

- 51. OSP 6 of the 2021 Code.** In her evidence the Homeowner referred to two issues. The first was a failure by a staff member to pass on an enquiry about a missed call. The second was about the same staff member and how he handled a call from her. Ms McGoldrick said that he kept insisting that her complaint was not a factoring issue. Mr McMenemie did not lead or give evidence about either call but advised the Tribunal that staff are trained to keep calls short and terminate them if they do not relate to factoring issues.
- 52.** It is clear that Ms McGoldrick did not understand why the staff member kept insisting that he could not discuss her complaint. It is perhaps unfortunate that he did not take more time to listen and explain why he could not assist. However, it was established that this discussion with “Jamie” was in July 2021, before the 2021 Code applied. The other complaint is covered by the stage 1 response dated 22 July 2021, which Ms McGoldrick lodged with her application. It therefore appears that this incident also took place before the 2021 Code applied. The Tribunal concludes that no breach of this section of the 2021 Code has been established.
- 53. OSP 7 of the 2021 Code.** There are two aspects to this complaint. The first is about how the Homeowner is treated by staff during phone calls. The second is the failure to provide an adapted handset. The only phone calls referred to in evidence are detailed in paragraphs 51 and 52 above and predate the 2021 Code. Otherwise, Ms McGoldrick could only speak very generally about how she feels when speaking to staff on the phone. She said that she feels as though staff are laughing at her. It was clear to the Tribunal that she finds telephone calls to RCH very stressful. She told the Tribunal that she has terminated calls on occasion. However, she was unable to provide the Tribunal with any specific examples of staff laughing at her or failing to treat her enquiry seriously since 16 August 2021.
- 54.** In terms of the other complaint, the Tribunal is satisfied that the Property Factor is obliged to make reasonable adjustments to accommodate the Homeowner’s disability. Sending correspondence in Font 60 is an adjustment that is already in place. However, Ms McGoldrick is a homeowner. RCH may be a housing association, but their only obligations to Ms McGoldrick are in their capacity as property factor. OSP 7 stipulates that they must not discriminate against Ms McGoldrick because of that disability. There is no evidence that they have done so in their dealings with her regarding the handset. It is not reasonable to expect the Property Factor to bear the cost of the additional or adapted handset. They did not become aware of her need for this until September 2019. Since then, they have offered to arrange for an adapted handset to be installed. As the handset is internal to the property, they can only do so if she is willing to pay for it. In the circumstances, no breach of this section has been established.

- 55. OSP 11 of the 2021 Code.** The Homeowner had been directed to lodge any documents she required for the hearing in advance. She did not do so. At the hearing, she tried to refer to letters which she brought with her. The Tribunal refused the request to introduce these letters, as Mr McMenemy had not had fair notice of them. In any event, the Tribunal noted from the Homeowner's oral evidence that she wrote to RCH on 10 August 2022 and received a response on 9 September 2022. This does not seem to be an excessive period for a response to a written enquiry. Furthermore, as the application was accepted on 3 March 2022, the complaint under this section could not have related to this correspondence. No other examples or evidence were provided of a breach of this section of the Code and the Tribunal is satisfied that it is not established.
- 56. OSP 12 of the 2021 Code.** The Tribunal notes that the way in which some telephone calls were handled by RCH staff caused the Homeowner some distress. By July 2021, when two of the calls took place, the Property Factor was fully aware of both her hearing and sight impairment. A blanket policy of terminating calls which do not relate to factoring issues should perhaps be reviewed. However, the Homeowner was unable to provide the Tribunal with any evidence (in any call which took place after 16 August 2021) that she was subjected to "abusive, intimidating or threatening" language. No breach of this section has been established.
- 57. Section 2.1 of the 2021 Code.** As the only information and evidence provided about a failure to consult and communicate related to the installation of the door entry system in 2017, the Tribunal is satisfied that no breach of this section of the 2021 Code has been established.
- 58. Section 2.7 of the 2021 Code.** As with the complaint under OSP 11, the only evidence given by the Homeowner related to correspondence dated 10 August and 9 September 2022, not lodged in advance of the hearing. For the reasons outlined in paragraph 55, no breach of this section is established.
- 59. Section 6.4 of the 2021 Code.** During her evidence, Ms McGoldrick conceded that this section may not be relevant. The Tribunal notes that the Homeowner has not been given progress reports about an adapted handset. However, this is because the work has not been instructed and will not be instructed until Ms McGoldrick agrees to pay for it. The Tribunal also notes that, as the installation of an individual, internal handset would not usually be part of the Property Factor's duties or services, the Code may not apply.
- 60. Section 6.6 of the 2021 Code.** In the application, the Homeowner states that she was not given a "range of options on repair". She confirmed at the hearing that this complaint again relates to the failure to offer an adapted handset. The Tribunal notes that the installation of the door entry system predates the Code by several years. Furthermore, this section relates to repair and maintenance of common areas, obtaining estimates for repair work and appointing contractors. The Tribunal is satisfied that the door entry system is in working order and does not need to be repaired. The only issue is the installation of an internal handset in the property, to meet the needs of a

homeowner with a hearing impairment. No breach of this section is established.

## **Appeals**

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



Josephine Bonnar, Legal Member

19 October 2022