

Housing and Property Chamber
First-tier Tribunal for Scotland



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/PF/18/1380

The Property: 21 Kincardine Court, Stonehaven AB39 2FS (“the property”)

The Parties:

Leonard David Edwards, 21 Kincardine Court, Stonehaven AB39 2FS (“the homeowner”)

And

The Property Management Company, having a place of business at Little Square, Oldmeldrum AB51 0AY (“the property factors”)

Tribunal Members – George Clark (Legal Member) and Angus Anderson (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 Act”)

The Tribunal has jurisdiction to deal with the application.

The property factors have not failed to comply with their duties in terms of the Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011 (“the Act”) and have not failed to carry out the Property Factor’s duties.

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” or “the Code”; 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 the application by the homeowner received on 11 June 2018, with supporting documentation, extensive further written representations from the homeowner received on 7 August, 16 August and 28 August 2018, including a Case Overview, and written representations from the property factors, received on 19 October 2018.

Summary of Written Representations

(a) By the homeowner

The following is a summary of the content of the homeowner’s application to the Tribunal:-

The property was built 9½ years ago and is cracking externally and internally. The car park “floods” in storm weather and prolonged rain. The property factors have not taken complaints with sufficient urgency and have not differentiated between routine and urgent maintenance, despite several surveys and warning comments from the Council. The property factors display avoidance to involvement and co-operation at the most senior level of management. This has affected the homeowner financially, as the equity and marketability of the Property is substantially diminished. The property factors’ lack of action is risking much more serious losses as the 10 year period of NHBC cover is nearing an end.

In his Case Overview, the homeowner stated that he had purchased the Property in October 2015. Approximately one month later, the seasonal weather conditions had resulted in the homeowner’s car parking area becoming subject to “ponding” of surface water. The homeowner observed what appeared to be a blocked surface grid and asked the property factors to investigate tree debris. Frequent repetition of the “ponding” led to more requests to which the property factors seemed unable to respond satisfactorily.

The homeowner believed that the “ponding” was a chronic contributory cause of cracking in the gable wall of the Property. Cracks had not been present at the time of

the survey carried out when he purchased the Property, but were now widespread to the southern gable and movement joints had opened vertically on the west wall to the roof.

The homeowner had initially sought a co-operative approach with the property factors, but due to their limited response and with respect to the immediacy of the insurance policy expiry (31 December 2017), he had initiated a direct claim with the insurers of the site.

The property factors did not renew insurance cover with the insurer with whom the homeowner had made the claim, but by then those insurers had instructed a subsidence specialist loss adjuster. The insurers had, however, then declined to meet the claim, citing policy exclusions, one of which was the fact that the building still had NHBC Buildmark cover, due to expire in November 2018. The homeowner then made an individual claim with NHBC, who set up a joint case identity for a communal claim, the case being administered on behalf of the owners by the property factors.

NHBC had recently declined liability with regard to drainage.

The homeowner had placed a formal request before Aberdeenshire Council's planning enforcement department in January 2018, to consider whether a breach of the planning conditions had occurred at the time of construction, but this had been held by the Council to be time-barred.

A recent seller's survey in relation to another property in the development had mentioned the damage to the building. This had been prepared by the same surveyors who had carried out the survey on which the homeowner had relied at the time of his purchase. This led the homeowner to the conclusion that he had suffered loss of equity.

Generally, in relation to Section 2 of the Code of Conduct, the homeowner's complaint was that the property factors had become progressively more protracted in their response and action. In relation to Section 5 of the Code of Conduct, the complaint was that they had changed the insurer, but had not displayed details of this for three months. With regard to the complaint under Section 6 of the code of Conduct, the view of the homeowner was that the property factors were not giving owners the opportunity to make any community opinions and decisions known.

The homeowner contended that the property factors had failed to comply with Sections 2.4, 2.5, 5.2, 5.4, 5.5, 5.8, 6.1, 6.2, 6.3 and 6.4 of the Code of Conduct.

(b) By the property factors

The following is a summary of the written representations made by the property factors and received by the Tribunal on 19 October 2018:-

As the managing agents of the properties at 1-23 Kincardine Court, the property factors were obligated to look after the needs of 23 properties. They were in regular contact with all owners and, specifically pertinent to this case, with one owner who was unhappy and would like the ongoing issue to be completed in a manner that suited him rather than the majority. They had received negative feedback from only one owner, the homeowner. They had liaised with owners on every letter, report or email that was pertinent to the ongoing NHBC claim.

On the development there was a drain that had always taken time to clear after heavy rainfall, but it did clear. It was possible that the drainage laid by the developer was not coping with heavy rainfall. The other owners accepted this position and, after a meeting held with the Managing Director, Mr Burnett, on 9 October 2018, confirmed they believed there was no cause for concern. The homeowner had "found" a drain which nobody knew existed. It was not on any plan from the developer or the local authority. On the instructions of NHBC, the property factors had recently had this drain cleared and had been asked to monitor it, which they would do. There would need to be heavy rainfall in order to be certain that the drain was completely cleared. The last contractor had advised a clear flow after their work was completed and the owners had expressed that they had no desire to dig up the car park or track a drain which might or might not be meant to be a part of the development. After recent heavy rainfall, it had been discovered that the drain was still not coping with the water and the property factors would be discussing this at a meeting with owners on 23 October 2018.

The property factors believed that it was paramount that the wishes of the majority of the owners were adhered to and not just the wishes of one owner. The rest of the owners were currently in support of the property factors.

Dealing with the specifics of the complaint, the property factors acknowledged that the homeowner had requested a meeting regarding the cracks on the development just before Christmas. The meeting had then been arranged for April, the hold-up being that they had no information from insurers or contractors regarding the outcome of any investigations. In terms of the title deeds, they were not obliged to call a meeting unless requested to do so by at least one-third of the owners.

The trees on the development came with Tree Preservation Orders requiring them to be cut annually to a height of 6 metres. The property factors had taken the view that, rather than deal with the homeowner's request regarding tree debris on a one-off basis, it would make sense to seek quotes to have all the trees done at the same

time. They had sought quotes and consulted with the homeowners, allowing them time to object.

On 16 November 2017, the owner involved in the discovery of the issue with the cracking (not the homeowner) had called the property factors, asking Ms Pearson to get back to him. She had called him and asked him to give more details and any pictures that he had. He had responded on Friday 17 November. On 23 November, the next date that both were available, Mr Burnett and Ms Pearson had visited the development and, immediately afterwards, had instructed a firm of chartered surveyors, Graham, and Sibbald, for a detailed inspection and report. They had chased this and had received it on 1 December. The report suggested CCTV imaging and this was instructed on 19 December after costings had been obtained. The owners had been made aware on 14 December that this would be happening. The homeowner had contacted the insurance company directly rather than going through the property factors and their brokers.

The property factors had notified NHBC on 21 November 2017 of a potential claim.

The property factors had been contacted by a claims handler, GS Group ("GS") acting for the insurers following the homeowner making contact, and had been advised that the claims handlers would like the property factors to attend a meeting regarding the development and this had taken place on 17 January 2018. On 25 January, GS provided the property factors with a report provided by Crawford Specialist Property Services UK ("Crawford"). The property factors provided the owners with this report on 31 January. The report advised that a soil specialist would be attending and gave the date and time and the NHBC reference number. After the visit, the property factors received a report on 6 March 2018, which was sent to the owners on 9 March. Owners were made aware at that time that the insurers would not be taking the claim forward.

The property factors tendered the insurance cover each year through their broker, GS Group. The certificates had been late in arriving. Ms Pearson had been given them on 23 February to put on the notice board. As she had already inspected the property on 20 February, she did not go back to pin up the certificates until her next scheduled visit in March. The homeowner had, however, requested the insurance certificate electronically on 1 February and it had been emailed to him the following day.

THE HEARING

A hearing took place at The Credo Centre, 14-20 John Street, Aberdeen on the morning of 29 October 2018. The homeowner was present at the hearing. The property factors' Managing Director, Richard Burnett, and their Senior Property

Manager, Dionne Pearson attended the hearing. They were represented by Catriona Stewart of Clyde and Co, solicitors.

Summary of Oral Evidence

The chairman told the parties that they 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 then invited the homeowner to address the Tribunal with reference to his complaints under each Section of the Code of Conduct. The wording of the relevant portions of each Section of the Code included in the application is set out below, followed by a summary of the oral evidence given by the parties in respect of that Section.

The homeowner began his evidence by offering a detailed explanation of the topography of the land on which the development is built, the ground levels and the lines of drainage pipes. He also directed the Tribunal to various plans and photographs that had been included in his written representations, in order to demonstrate the issue of ponding water in the car park.

Section 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." The homeowner told the Tribunal that there had been no consultation prior to the decision by the property factors to instruct Graham & Sibbald to carry out a survey in November 2017, a drains survey by Diamond Drainage Scotland Limited in January 2018 and Tilia Tree Care for tree works in June 2018. The homeowner was not criticising the decisions, but would like to have been consulted beforehand. He would, for example, rather a Structural Survey was undertaken, but accepted that this might not be the majority view.

The property factors' solicitor, Miss Stewart, stated that the concern about the crack, raised by an owner, was well understood and that it had been notified to NHBC on 21 November 2017. It was of paramount importance that NHBC could lead the process, which was slow and careful, as it had to be. The property factors recognised that ponding was an issue, but the car park could not be dug up to tackle the issue while the NHBC investigation was ongoing. Miss Stewart stated that the owners had agreed that drainage surveys could continue, provided the surface of the car park was not disturbed. The Graham and Sibbald survey had been commissioned on the back of the property factors being advised of a crack. It had been treated as an emergency. The surveyors had confirmed it was a crack, but that the building was not in danger of collapse. It had been carried out by a Building Surveyor, not a Valuation Surveyor, and was part of the process of proceeding with an insurance claim or a claim against NHBC.

Section 2.5. “You must respond to enquiries and complaints received by letter or email within prompt timescales.” The homeowner’s complaint was that things go on and on. Practically one year on, no progress had been made, There was no residents’ association , so all inter-communication was via the property factors and was protracted and repetitive.

The property factors’ view was that responding within prompt timescales was exactly what they aimed to do and this was demonstrated within their submissions. At all times, they had responded as fully as they could and the timescales stated in their written statement of services seemed to have been met on all occasions. They had also kept the homeowner informed. As an example, the homeowner had requested a telephone call on 22 January 2018. Ms Pearson had not been able to call him back immediately, so had sent him an e-mail. The property factors had made enormous efforts to meet their obligations under Section 2.5 of the Code of Conduct. Meetings of owners could, in terms of the title deeds, be called by the owners of one-third of the flats. A meeting of owners had been requested by the homeowner alone in December 2017, but it had taken some time to get to the stage of holding a meeting, as the property factors were waiting for sufficient information to become available. The insurance claim and the NHBC claim had been made and loss adjusters were involved. It was quite clear that every effort had been made to respond within prompt timescales.

Section 5.2. “You must provide each homeowner with...the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be provided in the form of a summary of cover, but full details must be available for inspection on request at no charge...” The homeowner stated that he did not know about the change of insurer and did not recognise the company selected as being normal insurers. He thought they were commercial insurers, providing such things as landlord insurance cover. He accepted that he had received a copy of the Summary of Cover when he had asked for it, but was concerned that owners did not get details in advance, so had to go along with the actions of the property factors and their brokers. The homeowner said that at no point had the property factors explained that they could not put a laminate of the summary of insurance cover on the notice board in the block until March 2018.

The property factors’ solicitor told the Tribunal that the method of providing insurance details was by way of a summary, a laminated copy of which would be posted on a notice board in the building, but there was no requirement under Section 5.2 of the Code of Conduct to display the insurance details in the building. Miss Stewart also reiterated that the homeowner had been sent an electronic copy on 2 March 2018,

the day after he had requested it and, by doing so, they had complied with their obligation..

Section 5.4. “If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly...” The homeowner stated that he had followed the procedure in the written statement of services. He referred to the comment in an e-mail from the property factors of 19 December 2017, where they had said that the issue of the crack was not normally something that the insurers would be paying for, but the crack had not even been looked at at that point. Realising then that the insurance cover expired on 31 December 2017 and that the property factors had not registered a claim, the homeowner contacted the insurers, LV, directly and intimated a claim.

The property factors referred to their written representations, which set out the steps they had taken immediately upon being informed by an owner of the issue of a crack in the building. This had happened on 16 November 2017. The property factors had asked the owner to provide any photographs he had and these were received the following day. Three business days later, the property factors had visited the Property, but before that, they had contacted NHBC on 21 November 2017, notifying them of a possible claim. An email of 22 December 2018, a copy of which was with the written representations, from the insurance brokers to the property factors confirmed that the procedure for notifying an insurance claim had been followed. Loss adjusters had by then been appointed and by 24 January 2018, they had visited the Property and had prepared a report, which had been sent by the property factors to the homeowner and the other owners on 31 January 2018. That letter also confirmed to the homeowner and other owners that a claim had been lodged with NHBC.

In a further report dated 5 March 2018, the loss adjusters had recommended additional drainage investigation works and stated that in their opinion, the damage fell within the scope of three exclusions on the LV policy, which meant that the policy could not operate in this instance. The outcome of that report was reported to the owners on 9 March 2018.

The property factors had adopted a dualbased approach with the insurers and with NHBC, but by March 2018, the insurance route had ended and they had gone back to NHBC. NHBC required information which was sent to them over a period of a few weeks, as there was the need to obtain information from each individual owner. NHBC had, by the end of March, everything that the property factors could provide. The owners had been updated by letter on 10 and 25 April 2018 and a meeting with owners had taken place on 2 May. An update from NHBC of 16 May had stated that their engineers would attend the site and they did so on 25 May. The homeowner had participated in that meeting, the report of which had not been available until 29 June 2018, although there had been an update from NHBC to the property factors on

27 June. The actual report had reached the property factors on 5 July 2018 and had been sent to the owners the following day.

Section 5.8. “You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance...” At the hearing, the homeowner withdrew this element of his complaint and it was not considered by the Tribunal.

Section 6.1. “You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention...” The homeowner said that his main issue was the failure of the property factors to keep owners informed of progress.

The property factors again referred to the written representations of both parties. There was provision in the procedures in the Written Statement of Services for the property factors to be contacted by email or by telephone. The homeowner had not complained about the frequency of their responses, but rather about the contents of some of them.

Section 6.2. “If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service)...” The homeowner told the Tribunal that he had included this heading in his application because he absolutely felt the matter was urgent. That was why, for example, he had contacted the insurers himself. The property factors were not progressing the matter. He did not, however, accept that the urgency of the situation had justified the property factors in going directly to Graham and Sibbald and Diamond Drainage.

The property factors pointed out that they did have emergency arrangements. An automatic response to any emails provided details of the out-of-hours service. In addition, when the owner of another flat in the block had raised the issue of cracking with them, the property factors had taken prompt steps to address it.

Section 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.” The homeowner had no problem with Proserv Property Services, who carried out the general repairs and maintenance. It was simply that he did not feel the owners always got value for money. He accepted that two contractors had been removed from the list of recommended companies.

The property factors directed the Tribunal to their written representations, stating that no request had been made..

Section 6.4. “If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.” The homeowner said that he had

no additional evidence to provide to the Tribunal, but accepted that there were monthly inspections. He added that he did not see the outcomes of the monthly inspections, nor was he given the opportunity to comment on them.

The property factors confirmed that they carried out monthly inspections and their reports were logged on their website. Any owner could obtain a hard copy by request. There was also a half-yearly audit of the properties and this could be accessed via a link which was shown on the quarterly bills,

Failure to carry out the Property Factor's duties

The homeowner did not provide any evidence at the hearing in respect of this aspect of his complaint.

Closing Remarks

The homeowner concluded by referring to the property factors' written representations, telling the Tribunal that his criticism of the property factors was their inability or lack of desire to do anything regarding calling the meeting of owners so long after he had asked for it. He took on board the statement by the property factors about when they contacted NHBC, but he did not accept that NHBC treated it as a claim until much later. The process with NHBC had been far too lengthy. He was concerned that, a year on, no progress was being made regarding the ongoing drainage problem and the owners did not know where the ponding water was eventually going. It was not sufficient for the property factors simply to say "We don't know either". The homeowner wished to record his objection to remarks in the property factors' submissions relating to his conduct, remarks which he felt were unsubstantiated and defamatory.

For the property factors, Mr Burnett told the Tribunal that he accepted there was a degree of frustration, but they had dealt with NHBC and had chased them at every stage. There had been four meetings of owners in the past year and the property factors were acting for and doing the bidding of all the owners. Monitoring movement in a building was a slow process and NHBC needed to be given as much time as they needed to do that. When NHBC come out with a report, the property factors will act accordingly

The parties 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 flats 1-23 Kincardine Court, The County, Arduthie Road, Stonehaven. There are 7 flats in the homeowner's block.
- 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 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 section 14 of the Act.
- The homeowner made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") dated 9 October 2017 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner's satisfaction.
- On 5 September 2018, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a tribunal for determination.

Reasons for the Decision

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 2.4 of the Code of Conduct. The Tribunal considered that the property factors had acted decisively in having the survey by Graham and Sibbald carried out, as they had to, with the cracking issue being an emergency. They had commissioned a building survey from a reputable firm in order to obtain the information they required to take the matter forward. The surveyor had recommended instructing an engineer to report on the building and NHBC had then appointed an engineer to advise them. The survey had incurred charges in addition to those relating to the core service, but, given the urgency of the situation, the property factors had been justified in instructing Graham and Sibbald and the specialist drainage firm without consulting with the group of owners and seeking their written approval in advance.

The Tribunal did not uphold the homeowner's complaint under Section 2.5 of the Code of Conduct. The Tribunal held that, on assessing all the evidence before it, the property factors had responded reasonably promptly to the homeowner's enquiries and complaints. The Tribunal accepted the evidence led by the property factors that getting to the bottom of the cracking problem was a process that would take some time. The Tribunal felt that the property factors could have been more empathetic in some of their correspondence with the homeowner, but did not hold that this amounted to a failure to comply with Section 2.5 of the Code of Conduct.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 5.2 of the Code of Conduct. The Tribunal noted that there had been a delay of some weeks in posting details of the insurance cover on the notice board within the block. The property factors' internal meeting minutes and internal e-mails within their written representations disclose a delay in receiving these from the insurers/broker and that laminated copies were not available to Ms Pearson until 23 February 2018. It would have been helpful if the homeowner had been advised of this at the time. The Tribunal also noted that the owners had been advised at a meeting on 15 January 2018 that the certificates were late in arriving and at a meeting on 6 February 2018 that they were still awaited. No evidence had been presented demonstrating that there had been a break in continuity of insurance cover. Ms Pearson had not acted unreasonably in waiting until her next scheduled visit to pin the certificate on the notice board, when it had arrived only three days after her February visit. It seems that the homeowner's initial request for insurance details was overlooked by the property factors in the profusion of correspondence that followed, but when the request was repeated on 1 February 2018, it was responded to on the next day.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 5.4 of the Code of Conduct. The property factors had demonstrated that their Written Statement of Services did contain a procedure for submitting insurance claims on behalf of the owners and the view of the Tribunal was that they had followed it promptly and efficiently.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 6.1 of the Code of Conduct. The property factors had demonstrated that they did have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. It was clearly set out in their Written Statement of Services. Their written representations demonstrated the notification procedure and progress reporting.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 6.2 of the Code of Conduct. They had explained to the Tribunal that the message on their answering machine provided out-of-hours contact numbers. The Tribunal also held that the property factors had

treated the issue of cracking as an emergency until they had been advised by the surveyors that it was not.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with Section 6.3 of the Code of Conduct. The Tribunal had already held, in relation to the complaint under Section 2.4 of the Code of Conduct that instructing the surveyors' inspection and report without seeking prior approval was perfectly appropriate in the circumstances. The fee charged by the surveyors had been, in the view of the Tribunal, reasonable. The homeowner had also told the Tribunal in evidence that he was content to use Proserv Property Services for the general maintenance work, although, the Tribunal noted, he sometimes wondered if they gave value for money.

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. The Tribunal accepted the property factors' explanation of the inspection process which was carried out monthly and the availability of their reports and audits. The Tribunal would recommend that the owners consider instructing a drains specialist to lift manholes and inspect the drains annually, but it would be for the owners as a group to approve that expenditure, as it fell outwith the core services provided by the property factors.

The Tribunal did not uphold the homeowner's complaint that the property factors had failed to comply with the Property Factor's duties. No evidence relating specifically to this aspect of the complaint was provided to the Tribunal. Considering the evidence as a whole, the Tribunal did not find that the property factors had failed to comply with their duties.

In arriving at its Decision, the Tribunal was not in any way underestimating the anxiety that would have been caused to the homeowner by the discovery of cracking in the gable wall of his building, with the possible ramifications for the property value and his concern that NHBC Buildmark cover might expire, but the Tribunal was satisfied that the property factors had instigated appropriate initial investigations whenever it had been brought to their attention and had treated it as an urgent matter to establish that the building was safe. They had first become aware of a possible problem on 16 November 2017 and had asked for photographs, which the owner reporting the matter had provided the following day, which was a Friday. Mr Burnett and Ms Pearson had carried out a site visit on 23 November and had immediately thereafter instructed Graham and Sibbald, whose report was received on 1 December. Graham and Sibbald had reported that the building was not in imminent danger of collapse and had recommended that a specialist drainage firm carry out a cctv inspection of the underground drainage system. The drainage specialists had been instructed by the property factors on 19 December after costs had been obtained. Meanwhile, on 21 November 2017, the property factors had notified NHBC of a potential claim and had advised all the owners by letter on 14

December that a crack had been brought to their attention and had provided owners with a copy of the Graham and Sibbald report. They also advised the owners on 31 January 2018 that they had already lodged a claim with NHBC, so the homeowner should have been aware at that date that the question of NHBC Buildmark cover running out was no longer an issue. The view of the Tribunal was that the property factors had acted promptly and appropriately when the existence of the crack was reported to them and had advised the owners timeously of the next steps to be taken. When the matter was taken up by NHBC, control of the scope and pace of investigations passed entirely to that body and the Tribunal is satisfied that the property factors have done all that could reasonably be expected of them throughout the process.

Property Factor Enforcement Order

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 29 November 2018