

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/1162, FTS/HPC/PF/23/1163, FTS/HPC/PF/23/1164,
FTS/HPC/PF/23/1165, FTS/HPC/23/1166**

**Flats 0/2, 3/2, 2/1, 2/2 and 1/2, 30 Thornwood Avenue, Glasgow G11 7QY
("the Properties")**

The Parties:-

**Mr Kenneth Macleod, 149 Crown Road South, Glasgow G12 9DP, Miss Holly Fox, Flat 3/2 30 Thornwood Avenue, Glasgow G11 7QY, Dr Zia Hussain, 146 Kelley Road, Renfrew PA4 8BP, Mr Blair Scott, 526 Clarkston Road, Glasgow G44 3RT, Mr James Murphy, Ballyline, Callan, Co. Kilkenny, Republic of Ireland R95 TF30
("the Homeowners")**

**Partick Housing Association, 10 Mansfield Street, Glasgow G11 5QP
("the Factor")**

**Tribunal Members:
Graham Harding (Legal Member)
Mike Links (Ordinary Member)**

DECISION

The Factor has not failed to carry out its property factor's duties.

The decision is unanimous

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Factor became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By email dated 13 April 2023 the Homeowners' representative, Mr Kenneth Macleod submitted applications on behalf of the Homeowners complaining that the Factor had failed to carry out its property factors duties. Mr Macleod submitted an indexed and paginated Inventory of Productions in support of the applications. In particular the Homeowners complained that the Factor had (i) failed to timeously advise them that a major repair was required. (ii) failed to correctly advise homeowners of grant criteria. (iii) failed to make a small alteration to documentation timeously resulting in a tender becoming invalid. (iv) failed to check the current status of grant funding percentage available. (v) failed to apply the correct grant funding to the tender. They submitted that these failures demonstrated a failure on the part of the Factor to carry out its property factors duties to a reasonable standard.
2. By notices of Acceptance dated 10 May 2023 a legal member of the Tribunal with delegated powers accepted the applications and a Case Management Discussion ("CMD") was assigned.
3. By email dated 29 June 2023 the Factor's representatives, BTO Solicitors LLP, Glasgow submitted written representations and a First Inventory of Productions.
4. By email dated 19 July 2023 the Factor's representatives submitted a Second Inventory of Productions.
5. By email dated 21 July 2023 the homeowners' representative submitted further written representations.
6. A CMD was held by teleconference on 25 July 2023 and the Tribunal heard submissions from both the Homeowners' representative and the Factor's representative and continued the applications to a hearing for the Homeowners to submit detailed submissions regarding quantification of their losses and for the Factor to lodge a further Inventory of Productions.
7. By email dated 21 August 2023 the Homeowners representative submitted further written representations.
8. By email dated 3 October 2023 the Factor's representatives submitted further written representations together with a third Inventory of Productions.

Hearing

9. A hearing was held at Glasgow Tribunals Centre on 10 October 2023. The homeowners were represented by Mr Kenneth Macleod. The Factor was represented by Ms Jacqueline McCutcheon and from the Factor's representatives, Miss Rhona Wark.

10. By way of a preliminary matter the Tribunal noted that although Mr Macleod owned three properties within the block at 30 Thornwood Avenue, he had only submitted one application in respect of Flat 0/2.
11. Mr Macleod went on to explain the background as to how the Factor had been appointed. He said that the block had previously been factored by Morag Davies Management until about 2002 or 2003. He explained that about that time Partick housing association were building property at the rear of the block and wished to purchase some of the rear garden. He explained that it had been agreed that the Factor would take over the factoring of the block and pay for any works needing done at that time as part of the agreement to purchase the ground at the rear.
12. Mr Macleod went on to say that the Factor was guilty of four service failures and referred the Tribunal to Appendix 4 of the applications and to his letter of complaint of 26 May 2022. He went on to say that this set out the four areas of the Homeowners complaint namely the timespan between the Factor obtaining the structural engineer's report and advising the Homeowners of its content; the information then provided to Homeowners; the length of time taken to obtain information and the failure to obtain the correct information in respect of available grant percentages.
13. Mr Macleod referred the Tribunal to the Factor's invoice for the first quarter of 2018 dated 09/04/2018 and contained in appendix 5 of the applications. He said it showed a fee for the structural survey of the wall on the Crathie Drive elevation in January 2018. He said he would have expected in light of that to have been advised either that there was a problem or that there was not. He went on to say that in about June of that year he telephoned to ask for a copy of the report and when it was not forthcoming called again in July. He said that owners were then received a letter dated 14 September 2018 asking them to attend a meeting on 10 October 2018 some 10 months after the problem had been identified. Mr MacLeod said that following his complaint the Factor had in its letter of 14 July 2022 attributed this to an administrative error. Mr Macleod referred the Tribunal to the letter from the Factor's Mr Brian Lochrie dated 19 November 2018 which had been sent to all owners along with the minutes of the meeting of 12 November 2018 and the Structural Engineer's report. Mr Macleod submitted that this was a serious service failure.
14. With regards to the information provided to Homeowners, Mr Macleod submitted it took a number of attempts to obtain a quorum of owners at a meeting in November 2018. It also transpired that not all owners had been sent a copy of the structural engineer's report in advance of the meeting for which Mr Lochrie had apologised. Mr Macleod went on to say that one item on the agenda at the meeting was the potential for the availability of a private Sector grant of up to 50%. He said that owners were advised that Glasgow city council had funds available but were not advised as to all the conditions that had to be met for the grants to be paid such as the whole building being brought up to standard. Mr Macleod said that the Factor had proposed that each owner pay £6000 in advance to the Factor to progress the repair and

that a second option was to carry out the tender works at a lower cost. He said by a vote of 5 to nil the owners voted for the second option. He confirmed that he had three of the votes. Mr Macleod went on to say that a letter was then sent out to owners along with a mandate. He said the owners had always accepted that the Council grant was discretionary but that owners should have been told what the criteria were for eligibility and that the Factor and Mr Lochrie should have known what they were. By not knowing and not advising the owners there was a serious service failure.

15. With regards to the third part of the Homeowners' complaint, Mr Macleod referred the Tribunal to Appendix 7 of the applications. He said there had been a delay of over eight months between the tender return of 9 October 2020 and a response that new windows and other non-essential items be removed to reduce the cost. He said the Factor did not respond until 17 June 2021 and by then the tender validity period had expired. Mr Macleod noted from the Factor's Second Inventory of Productions that Glasgow City Council had been emailed by the Factor on 8 June 2021 and the Council had replied to them on 10 June 2021 with an apology for the delay in replying. He contrasted that with the Factor's delay of eight months and submitted that was a serious service failure.
16. With regards to the Homeowners' fourth complaint that the Factor had not applied the correct percentage of grant available to the Homeowners, Mr Macleod explained that although Glasgow City Council had 50% grants available for a year, the Factor had still used 40% in its calculations and this made a significant difference to owners when considering how to proceed. Mr Macleod once again submitted that this was a serious service failure.
17. Mr Macleod went on to say that by letter dated 22 February 2022 the Factor advised the Homeowners it was terminating its factoring agreement and gave the required period of notice. It said that one owner had not agreed to fund the cost of the repairs and all options with Glasgow City Council had been exhausted. Mr Macleod said that subsequently he had been advised the Council might meet the missing owner's share and had asked the Factor to extend their contract but they had refused.
18. Mr Macleod went on to say that in May 2022 the stone facing on the gable wall deteriorated further and Glasgow City Council became involved and temporary work was carried out at a cost of £10000.00. Mr Macleod said a letter of complaint was sent to the Factor on 26 May 2022 which was acknowledged on 30 May 2022 and after some delay the Factor responded by letter dated 14 July 2022. Mr Macleod said he replied to that letter pointing out errors and received a reply dated 2 August 2022 saying the Factor had nothing to add. The Tribunal noted that subsequently Mr Macleod intimated his intention to complain to the Housing and Property Chamber and received a further response dated 30 January 2023.
19. Mr Macleod raised an issue with the Tribunal that the Factor's representatives had not complied with the Tribunal's oral direction at the CMD to submit their written representations and Inventory of Productions within four weeks of

receiving Mr Macleod's further written representations. The documents had not been submitted until 3 October 2023 and made reference to legal cases and Mr Macleod submitted gave him insufficient time to prepare and consider. The Tribunal queried if Mr Macleod wished the hearing to be adjourned and noted that he did not. That being the case the Tribunal proceeded to allow Miss Wark to cross-examine Mr Macleod.

20. Miss Wark asked Mr Macleod how often he visited the properties. Mr Macleod said that it might have been about twice a year. He said that most of his tenants were long term but that he paid attention to the properties.
21. Miss Wark asked if Mr Macleod understood what a factor did and He confirmed he did. Miss Wark referred Mr Macleod to his title deeds and to Burden 3 (Sixth) on page eight of the deed., She asked if he accepted that the Factor was appointed "to supervise the use, maintenance and repair of the common subjects and instruct and pay the accounts of tradesmen, to pay the ground burdens and common insurance premiums and to collect from the proprietors of each house such proprietors share of all such mutual charges and of the factor's own remunerations." Mr Macleod acknowledged that was what was in the title deed. Miss Wark asked Mr Macleod to say where it said it was the Factor's role to tell owners what to repair to which Mr Macleod said he would have to read the title. Miss Wark then referred Mr Macleod to Burden 3 and the definition of "common subjects" and asked if Mr Macleod accepted that definition which he did. Miss Wark then again asked Mr Macleod if he was disputing the role of the Factor as defined in Clause sixth of Burden 3 and Mr Macleod confirmed he was not disputing it.
22. Miss Wark then referred Mr Macleod to Clause (Eighth) of Burden 3 which said that any proprietor of any one of the houses shall have power to call a meeting of the proprietors, She asked if any of the owners call a meeting. Mr Macleod answered by explaining that he was not a lawyer and then went on to say that he was not aware of any owner calling a meeting. He suggested that the Factor did not operate like that.
23. Miss Wark referred again to clause Eighth of Burden 3 and to the fact that any owner could, if necessary, carry out repairs to the common subjects in order to keep premises owned by him wind and watertight and then convene a meeting to sanction such repairs. She asked Mr Macleod if that had happened. Mr Macleod explained that it had still been able for the properties to remain occupied despite the bulge to the gable wall and it had not been something that had been done. He also said that as an owner it had been difficult to obtain the details of the other owners and at the first meeting only two owners had attended. He said he didn't consider calling a meeting himself as he thought the Factor would progress matters.
24. Miss Wark said that as Mr Macleod understood that the Factor had to be instructed then on what basis would it have authority to call a meeting and progress matters? Mr Macleod answered by saying that she was going down a legal route to which Miss Wark asked Mr Macleod to clarify in what way it was incumbent on the Factor to carry out the duties alleged by the Applicants.

Miss Wark said that the Factor had not disputed that it had failed to advise the Homeowners timeously of the structural engineers' report. She went on to ask Mr Macleod if the owners had asked the Factor at the meeting in November 2018 for more information. Mr Macleod said that Mr Lochrie told them about the problem and what the procedure was and about the repairs grant and asked for £5000.00 up front. He said that he had asked Mr Lochrie where he had obtained that cost from and had been told it was from previous similar projects. He said that he had said that they could not ask owners for funds without knowing the final cost and proposed obtaining competitive quotes and going out to tender.

25. Miss Wark asked if the owners instructed something different to that which had been proposed by the Factor and Mr Macleod confirmed that was the case. He said the owners were not happy with the Factor's proposal. He also said it was never disputed that the grant was discretionary.
26. In response to a query from Miss Wark as to why he did not accept the Factor's proposal to pay £6000.00, Mr Macleod said that in his experience any job like that always doubled in price and therefore he had to get more information.
27. Miss Wark asked if he accepted that the Factor acted upon his instructions and Mr Macleod agreed. He went on to say that he had known there had been a bulge in the gable wall of the building as it had been surveyed lots of times over the previous 20 years and a previous structural engineer's report was frequently relied on which said that the bulge was longstanding and non-progressive.
28. Miss Wark asked Mr Macleod if the Factor would instruct work without being paid up front. Mr Macleod said that the owners had been deceived by the Factor. They had been told they might get a 50% grant and that the Council had money for stonework repairs but in fact they would only have been given the grant if the building met the required standard and they had not been told that. He said that the owners had made a decision not to proceed because the information provided had been incorrect. Miss Wark said that she was struggling to see how this could be a service failure.
29. With regards to the length of time it took the Factor to deal with the return of the tender documents following the request to remove certain items, Miss Wark asked Mr Macleod if he was aware of what had happened in 2020. Mr Macleod said there had been the Covid outbreak. Miss Wark said there had been a pandemic and things were not normal.
30. Mr Macleod went on to say that he had been aware in January and February 2020 that a lockdown was coming and there had only been one tender response by 14 February 2020. He said this was then followed by the shutdown and then owners were written to in June or July and a meeting was held in September. He said at the meeting the owners asked that costs were reduced and it took from then until June 2021 for that to happen.

31. Miss Wark asked Mr Macleod if during that time he chased the Factor up. Mr Macleod said that in about March or April he wrote to Gill Montgomery but did not receive a reply. The Tribunal noted that Ms Montgomery was an external consultant who had been brought in by the Factor and who had not been well and was not under contract to the Factor. Mr Macleod said he had thought she was working part-time for the Factor.
32. Miss Wark queried what difference the delay made. Mr Macleod said that the tender documentation was no longer valid.
33. With regards to the issue of grant funding Miss Wark suggested to Mr Macleod that as not all the owners had signed mandates it would not have been possible to submit an application for a grant in any event. Mr Macleod said that that was information that came after the event. Miss Wark went on to say that the Factor had tried to get Owner 8 to sign a mandate and it had not been told that other funds could be made available, it was therefore pure speculation that the repairs could have gone ahead. Mr Macleod denied that it was speculation.
34. Miss Wark said that the Factor accepted there had been delays but that it was not clear how fault could be laid at the Factor's doorstep when it was accepted that not all mandates had been returned. Mr Macleod said he would have expected the Factor to advise on the funding that was available.
35. Miss Wark suggested to Mr Macleod that the Factor's role had been to obtain expert reports and had obtained confirmation from Glasgow City Council that discretionary grants of up to 50% had been available. She said the Factor had informed owners of this. She said not all owners had agreed to go ahead and again asked Mr Macleod why the Factor would instruct work if it was not paid given that the Factor acts as agent for the owners on the basis of instructions. Mr Macleod again submitted that the Factor had caused delay and that the problems had been cumulative.
36. Miss Wark referred Mr Macleod to the Factor's 3rd Inventory and Production 52 an email from Mr Macleod to Christine Cunningham in which he was offering to purchase Owner 8's property. Mr Macleod explained he had known owner 8's father and he had not wanted to purchase the property at a low price and then sell at a profit but he would have done something to help owner 8 however she had not engaged with him and then the stones had come out of the wall and something had to be done quickly. Miss Wark again queried how that could be a service failure on the part of the Factor when there was no mandate from the eighth owner.
37. Miss Wark went on to query the losses claimed by the Homeowners and suggested to Mr Macleod that not a single receipt had been produced. Mr Macleod referred the Tribunal to Section 10 of the applications and the Invoices contained therein. Miss Wark said that the owners had instructed these costs were incurred and that they had allowed the owners to make the decisions that they made. Mr Macleod said that they had also asked for items to be removed.

38. Miss Wark queried why the Factor should be liable for the cost of the stabilisation work when the bulge had been there for 20 years without the owners taking action. Mr Macleod said that previous engineer's report had said that no action was required. Miss Wark again asked why the Factor should be liable for the cost of the stabilisation work and Mr Macleod said it was because of the delay and because of the misinformation as regards the available grant funding. He said if the correct information had been provided the work would have been done.
39. Miss Wark went on to say that the Mr Macleod had provided no evidence to support the homeowners claim for damages of £5000.00 each for distress and inconvenience and referred the Tribunal to the authorities submitted with their written representations of 3 October 2023. In response Mr Macleod said that the Tribunal could make an award for inconvenience in terms of the decision in Mack v Glasgow City Council [2006] CSIH 18.
40. Miss Wark did not lead any witnesses from the Factor and relied upon the written representations and documents.

Closing submissions

41. Mr Macleod explained that the Homeowners had made their applications because of how badly they had been let down by the Factor. He said that a survey was done in 2018 and it was November 2019 before owners had sight of it. He submitted that had there been a meeting right away the owners could have gone down an immediate repair route. He said at that time Glasgow City Council had 50% grants available and could have funded a missing owner's share. He said from the information he had been given he would have expected that the Factor would have provided the options open to owners but it appeared that the Factor did not have a clue about the grants which were only available if the building was brought up to a certain standard. Mr Macleod went on to say that following the issues with Covid the proposed cost of the repairs at £42000.00 per owner was too much and it would have been a simple matter for the Factor to have written to the Glasgow City Council to obtain a response with regards to proposed changes while the tender was still open for acceptance for a further eight weeks but it took another eight months. Mr Macleod said that he could excuse there being an error in the grant percentage in the first couple of letters sent by the Factor but later the increase back to 50% would have made a big difference to the bottom line for owners. He said that by taking the owners' contribution down to £30000.00 it had always been his intention to find a way to progress the repairs. He submitted that there had been serious service failures on the part of the Factor.
42. For the Factor Miss Wark adopted the written submissions and documents submitted on behalf of the Factor. She submitted that Mr Macleod had all but conceded every point that had been put to him with regards to the role of the Factor. She said that the Factor cannot act without instructions and queried that any failings on the part of the Factor amounted to serious service failures.

She submitted at best the Factor had been in breach of the Code but that the Homeowners had not complained of breaches under the Code. Miss Wark went on to say that there had been difficulties in communication but the Factor had arranged a meeting of owners although it had been difficult to obtain a quorum. Thereafter as instructed the Factor had put the repairs out to tender but progress had been hindered due to Covid and the lockdown. Miss Wark said that there had been difficulty getting the eighth owner to engage and she had been involved only once. She also said that the failure to obtain any changes to the tender was down to the contractor and not the Factor. The delay had not been helpful but was understandable and during the time period there had only been one communication from Mr Macleod. Miss Wark went on to say that there was no basis for reimbursement of the charges being claimed by the homeowners and there was no evidence to support their claim for stress and inconvenience. She referred the Tribunal to the case of Mills v Findlay 1994 SCLR 397 which was a case for breach of contract. Miss Wark submitted that any lapses on the part of the Factor did not amount to a service breach. She also submitted that no medical reports had been submitted and there was no evidence of inconvenience.

The Tribunal make the following findings in fact:

43. The Homeowners are the owners of the properties at Flats 0/2, 3/2, 2/1, 2/2 and 1/2, 30 Thornwood Avenue, Glasgow G11 7QY ("the properties")
44. The Properties are flats within 30 Thornwood Avenue. Glasgow G11 7QY (hereinafter "the Development").
45. The Factor performed the role of the property factor of the Development until 31 May 2022.
46. The Homeowners were aware of a longstanding bulge in the south facing gable wall of the development.
47. At some time in January 2018 a maintenance Officer of the Factor visited the development and subsequently the Factor obtained a structural report from The Structural Partnership Ltd, Glasgow.
48. The report dated 6 February 2018 recommended that a defective section of the wall extending for 8-10 metres from street level to sill level be taken down and rebuilt. It was also recommended that the defective cover bay was tied back to the timber floors at all levels and the Crathie Drive elevation be tied back to the floors at ground and first floor levels.
49. The report was not sent to the Homeowners until after a meeting of owners took place on 12 November 2018.
50. One of the Homeowners, Mr Macleod queried with the Factor in June 2018 what the structural report had said but did not receive a reply.

51. A meeting of owners was due to take place on 10 October 2018 but did not proceed as there was not a quorum.
52. At the meeting on 12 November 2018 two owners representing five properties attended and agreed to commission a further report to obtain a detailed survey of the works required with all eight owners contributing £500.00 each to meet the cost.
53. At the meeting on 12 November 2018 the Factor had proposed that each owner pay £5000.00 to cover the anticipated cost of the repairs. The Factor also advised the owners present that a discretionary grant of up to 50% was available to owners from Glasgow City Council.
54. Following the meeting on 12 November 2018 the Factor sent the minutes of the meeting and a request for payment of £500.00.
55. One owner did not pay and her share was eventually paid by Mr Macleod.
56. Allied Surveyors were instructed by the Factor in April 2019 to produce a detailed survey with estimated costs.
57. The final survey report was received by the Factor on 14 August 2019 and sent to the Homeowners the same day and a meeting arranged to take place on 9 September 2019.
58. At the meeting on 9 September 2019 owners were advised that a 50% grant might be available but only where a comprehensive repair contract was agreed by owners.
59. The estimated cost of the repairs per owner was £31541.40 with a possible 50% grant reducing this to £15770.70.
60. Owners were advised that if only stonework repairs were carried out the estimated costs would be around £10000.00 per owner with no grant funding available.
61. At the meeting on 9 September the owners agreed to instruct the Factor to progress the repairs to the tender stage.
62. On 4 October 2019 the Factor advised the Homeowners that Glasgow City Council had reduced the grants available to 40% and requested that owners advise if this altered their decision to proceed to tender.
63. Only one tender was returned by the closing date of 16 March 2020 and a further tendering exercise was carried out resulting in the lowest tender from Cairn Building Solutions in the sum of £394681.10.
64. In a letter to Homeowners dated 16 September 2020 the Factor confirmed the repairs could be eligible for 40% grant funding but not for the installation of new windows.

65. A meeting of owners was held on 9 October 2020. At that meeting it was agreed that the Factor should see if some cost savings could be made by removing the replacement of the windows and other costs.
66. No progress was made on the proposed repairs until the Factor sent an email to the Homeowners on 17 June 2021 with amended costs.
67. Mr Macleod wrote to Gill Montgomery on 16 April 2021 asking for an update as it had been about six months since the last meeting.
68. The Factor wrote to the owners on 1 September 2021 with a revised estimate of costs and requested owners to return signed mandates together with their share of the cost amounting to £35617.00 each after allowing for a grant of 40%.
69. Only seven out of the required eight mandates were returned.
70. The Factor did not check with Glasgow City Council at that time if the grant funding available was still 40% or if it had again increased to 50%.
71. On 24 November 2021 the Factor was advised that the remaining owners were unable to pay the non-participating owner's share.
72. The role of the Factor at the development in terms of the title deeds is "to supervise the use, maintenance and repair of the common subjects and instruct, pay the accounts of tradesmen, to pay the ground burdens and common insurance premiums and to collect from the proprietor of each house such proprietor's share of all such mutual charges and of the factor's own remuneration."
73. The Factor provided services to the Homeowners in terms of its Written Statement of Services.
74. The Covid pandemic had an impact on the working practices of the Factor.

Reasons for Decision

75. Property factor duties complaints can include alleged breaches of the Written Statement of Services ("the WSS") or title deed conditions or a factoring contract or contraventions of the law of agency. If the application is made on the basis of breach of property factor duties, the Homeowners need to specify the document or provision which they consider contains the duty which the Factor has not met. The Tribunal has had some difficulty trying to identify the duties that the Factor has failed to undertake and whether these arise from the WSS, titles or some other document. With regards to the first issue namely the delay in circulating the structural report, it was accepted by the Factor that there had been a delay in communicating the structural report to the Homeowners. The WSS provides that the Factor will carry out an annual

property inspection. It also allows for the Factor to instruct work up to £1000.00 without the prior consent of owners. The WSS is silent on the provision of information to owners following receipt of, as in this case a structural report. It may be that the Factor was in breach of one or more sections of the Code by failing to communicate timeously with the Homeowners but their applications are not in respect of any alleged breaches of the Code but that the Factor has failed to carry out its property Factor's duties. The Homeowners have argued that by failing to provide the report timeously the Factor has not "communicated in a professional manner at all times" nor "put at the heart of everything we do and provide the best service we can". The Tribunal does not accept that the Factor has failed to communicate in a professional manner but does agree that the service provided by delaying issuing the report was below that which the Homeowners could reasonably expect. However, this was acknowledged by the Factor in their Stage 2 complaint letter of 14 July 2022 and an apology was issued. The title deeds clearly set out the role of the Factor in Clause (Sixth) of Burden 3 and again the timing of communications to owners is not mentioned. The Tribunal was not directed to any other documents or contractual provisions that would indicate that there was a specific timescale under which the factor had a duty to provide the Homeowners with the structural report. Therefore, whilst the Tribunal acknowledges that the delay was unsatisfactory it does not accept it was a breach of the property factor's duties. It should also be said that the Tribunal does not accept that if the Homeowners had been advised in February 2018 of the contents of the report that all the repairs would have been completed prior to the Covid pandemic at lower cost. The figures submitted in September 2019 were not provided by surveyors and there was no evidence before the Tribunal that the eighth owner would have agreed to meet their share or that they would have reached an agreement with Mr Macleod.

76. The Homeowners' second complaint was that the Homeowners were not advised by the Factor at the meeting on 12 November 2018 that grant funding was only available if the full building was surveyed and brought up to an approved standard. It does appear to the Tribunal that the information provided to the owners present at the meeting with regards to the availability of grant funding was quite limited although it was made clear it was discretionary. The Tribunal is being asked to accept after the event that the owners' decision would have been different had they known at the time that the Council's grant criteria was more complex. Against that it appears that subsequently the majority of owners decided to go ahead and accept repairs involving upgrade to the whole development. Furthermore, the Homeowners did not agree to the Factor's proposals at the meeting on 12 November 2018 but instructed the Factor to obtain a further more detailed report. The Tribunal is not satisfied that the Factor has failed to carry out its property factor's duties either in terms of the WSS or the titles.
77. With regards to the Homeowners third complaint that it took eight months after the 9 October 2020 meeting to alter the tender documentation the Tribunal whilst acknowledging that under normal times such a delay would be unacceptable took account of the difficult conditions resulting from the Covid

pandemic and also that during that time apart from a single email from Mr Macleod in April 2021 none of the Homeowners raised any concerns with the factor about the delay in progressing matters. The Tribunal also acknowledged that the Factor accepted in its Stage 2 Complaint letter of 14 July 2022 that it could have been in contact with owners sooner to advise on progress or lack of progress. The Homeowners submitted that the time limit for acceptance of the tender had as a result of the delay passed and was no longer valid but the Tribunal did not have any evidence before it to confirm that this was indeed the case or that costs would have risen by as much as 25% as suggested by the Homeowners. In any event the repairs could not proceed as not all eight owners returned signed mandates. Taking everything into account, the Tribunal concluded that although far from ideal the delay in dealing with the amendment to the tender did not amount to a breach of its property factor's duties.

78. The Homeowners submitted that had the factor provided them with up-to-date information as regards the percentage grants available to them they may have taken a different decision with regards to progressing the repairs. The Tribunal was not persuaded that any increase from a 40% grant to 50% would have had any significant impact either on the eighth owner who had failed to effectively participate throughout the whole process or that the remaining owners would have agreed to contribute the missing owner's share. The Tribunal had no evidence before it that supported that conclusion. It appeared to the Tribunal that the availability of council grants varied from time to time depending on what funds Glasgow City Council had available and were always discretionary. Therefore any grant could only be calculated when an application was made and that could only be done when the factor had mandates from all the owners. The Homeowners have also submitted that as a result of the Factor's failures there has been further delay in addressing the repairs that has resulted in the need to carry out temporary shoring work at a cost of £9408.00. The Homeowners have argued that this work became necessary as a result of the Factor failing in its duties however the Tribunal has concluded that the Factor cannot be held liable for the cost of these repairs. Much of the delay came about as a result of the eighth owner not signing a mandate and also the owners seeking to reduce the cost of the repairs. The Tribunal is therefore not satisfied that the Factor was in breach of its property factor's duties. As the Tribunal has not upheld the homeowners' complaints it is not necessary for it to consider the Homeowners' claim for distress and inconvenience.

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.



Graham Harding Legal Member and Chair

20 October 2023 Date