

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

Decision with Statement of Reasons on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/23/0586 and FTS/HPC/PF/23/1222

Re: Property at Flat 3/2, 198 Newlands Road, Glasgow, G44 4EY ("the Property")

Parties:

Kashif Naeem, 223 Fauldhouse Road, Glasgow, G43 1DF ("the Homeowner")

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow, G3 7PL ("the Property Factor")

Tribunal Member:

**Melanie Barbour (Legal Member)
Andrew McFarlane (Ordinary (Surveyor) Member)**

Decision

The Factor failed to comply with (C2) dated 23 February 2023 Sections 2.1, 5.3 and 6.1 of the 2021 Code of Conduct and had failed to carry out its Property Factor's duties in terms of its written statement of services section 5.5 and 5.9. The decision is unanimous.

BACKGROUND

1. By the application (C2) dated 23 February 2023 the Homeowner ("Homeowner") complained to the Tribunal that the Property Factor ("Property Factor") was in breach of Sections OSP, 1.5A(1), 2.1, 2.6, 3.1, 3.2, 5.3, 5.8, 5.9, 6.3, 6.6, 6.7, and 6.9 of the 2021 Code of Conduct and had failed to carry out its Property Factor's duties as set out in section 7B of the application form.
2. A letter of complaint was issued by the Homeowner to the Property Factor on 28 March 2023. It alleged breaches of the 2021 Code as follows OSP1, OSP2, OSP34, ODSP4, OSP8, OSP11, A3, B45, D13,14,15, 2.1, 2.3, 2.4, 2.6, 2.7, 3.1,

3.2, 4.9, 4.10, 4.11, 5.3, 5.8,5.9, 6.1, 6.4, 6.6, 6.7, and 6.9. A letter of complaint dated 26 May 2023 regarding property factor duties was sent to the Property Factor.

3. An application was also made on application (C1) dated 26 May 2023 it alleged breaches under the 2012 Code and breaches of Property Factor duties.
4. By Notices of Acceptance dated 19 April 2023 and 22 June 2023, legal members of the Tribunal with delegated powers accepted both applications and a case management discussion was assigned to take place on 30 August 2023.
5. Written representations were submitted by the Property Factor in a letter dated 28 July 2023.
6. Both the Homeowner and Property Factor attended the case management discussion on 30 August 2023. A case management discussion note was issued together with a direction. The matter proceeded to a hearing on 5th December 2023. The Homeowner was not in a position to proceed with the hearing on that date and requested a postponement. A revised date of 8th January 2024 was fixed, and the Homeowner again requested a postponement. The Tribunal converted this to a further CMD. Reference is made to the CMD Note and Direction issued.
7. The Homeowner submitted written submissions together with productions on 15 January 2024 dealing with each alleged breach of the Code of Conduct 2012; Code of Conduct 2021; property factors duties up to August 2021; and property factors duties after August 2021.
8. The Property Factor responded to the Homeowners written submissions by letter dated 19 January 2024.
9. The applications proceeded to an in-person hearing on 1 May 2024.
10. In attendance was the Homeowner and his supporter Dr Tehreek Arshad. The Property Factor was represented by Gordon Buchanan, together with Daniel Kingham who attended as a supporter.

PRELIMINARY MATTER

11. There was a preliminary matter to be dealt with in relation to whether the Homeowner was entitled to have the tribunal consider certain alleged breaches

of the code which occurred either after the application had been made, or which were not included in the application itself.

12. The Homeowner advised that they wished to withdraw application (C1) Reference FTS/HPC/PF/23/0586. It related to matters under Code of Conduct 2012. The tribunal agreed that the application could be withdrawn.
13. The tribunal proceeded to consider application (C2) Reference FTS/HPC/PF/23/1222.
14. In terms of the C2 application the Property Factor moved to have the following parts of the application excluded from the tribunal's consideration: -
15. OSP 4 - The Property Factor referred to points 2-5 of the Homeowner's January 24 submission. They referred to Production 2.4. They submitted that these matters had not been referred to in the July CMD.
16. The Homeowner agreed that it was not explicitly mentioned in the application, but submitted that a letter of 19 July 2023 had been sent to the Property Factor. That letter set out and mentioned those matters. The Property Factor said that they were not parts of the original application. The Homeowner said that the parties could conclude all matters today and he would not have to put in another application. He considered that they had ample time to review and respond.
17. The Property Factor advised that they objected to the inclusion of these sections of the code. He submitted that the Homeowner needed to make an additional application to consider those matters. The application relates to events prior to May 2023 when the application was made, and it relates to a court order made in January 2023. He submitted that allowing new matters to be considered was not compliant with the Act. The Homeowners entitled to raise as many applications as he wants. The application was submitted in May 2023, there had been two CMDs, and the Property Factor wanted to get back to the sheriff court case.
18. Specifically, the Property Factor submitted that: - OSP 10.1 and 10.2 the complaint has not previously been included and post-dates the application.
19. 1 D 14 the emails are from June 2023. Therefore, could not form part of the complaint at the time of the application.

- 20.2.2 Reference is made in the applicant's document to point 2.1. The second part of the complaint has not previously been included and post-dates the application.
- 21.4.1 The complaint has not previously been included in the application.
- 22.7.1 The complaint has not previously been included in the application.
23. Alleged breaches in written statement of services: -
24. Page 1 refusal of lawful termination - not included in the original application.
25. Page 6 4.17, 5.7, 5.8, and page 7 7.3, 7.4 - these complaints have not previously been included in the application. They also appear to post-date the application.
26. The Homeowner made the same submission for allowing these matters to be considered. He submitted that he had provided a detailed letter in July 2023. He considered the Property Factor had notice of such matters. He submitted that it would be better for parties to have all matters determined in May 2024 rather than have to bring future applications.
27. *The tribunal determined that it would refuse to allow all of the matters raised by the Property Factor to be considered and it upheld the Property Factors objection. In coming to the decision we have had regard to the terms of section 17(3) of the Property Factors (Scotland) Act 2011, which states that no application may be made unless the Homeowner has notified the Property Factor in writing as to why the Homeowner considers that the Property Factor has failed to carry out his duties or breached the code; and the Property Factor has refused to resolve, or unreasonably delayed in attempting to resolve the Homeowners concern. Where the complaint related to matters which had not been included in the application or post-dated it, and the Property Factor had not therefore had a chance to resolve the matters then we do not consider that we should allow the matters to be included. Further, the Property Factor objects to these matters being included. We have considered the reasons given by the Homeowner however and note that in the main he submits that he would prefer to have all matters dealt with today, while we have some sympathy for this approach, we consider that the terms of Section 17(3) are clear, and the Homeowners application did not fully comply with this section.*

FINDINGS IN FACT

28. The Tribunal made the following findings in fact: -
29. The Property Factors are Hacking and Paterson.
30. The homeowner is Kashif Naeem.
31. The property is Flat 3/2, 198 Newlands Road, Glasgow.
32. The Property Factor was appointed by custom and practice.
33. The Property Factor's contract as factor was terminated in around May 2023 and their business relationship came to an end in around January 2024.
34. There is a written statement of services for the development.
35. The title deeds have conditions regulating common repairs, and the appointment of a factor, their remuneration and rights and powers.
36. The Property Factor has been appointed to act as factors for the development since at least 2010.
37. There were 12 properties in the development.
38. The Homeowner purchased the property in around 3rd October 2019.
39. The property was insured, this was arranged by the Property Factor. The Property Factor confirmed principal insurance details in a letter dated 17 June 2022
40. The cleaning contract had been put in place around 28 August 2019 which was a date prior to the Homeowner becoming the owner of the property.
41. On 18 February 2020 the Property Factor wrote to the Homeowner about a structural survey, noting that only 4 of 12 owners had agreed to the proposed common works.
42. On 6 October 2021 the Property Factor wrote to the Homeowner regarding instructing further inspection reports.
43. On 16 March 2022 the Property Factor wrote to the Homeowner advising that only 4 out of 12 owners wanted to do the further survey works. It also set out that as suggested by a Homeowner, the Property Factor had approached contractors to quote for the works needed to the property based on the original survey. The Property Factor sought a clear instruction from owners about how to proceed. They advised that they require a collective instruction. They also noted that there were three Homeowners who had outstanding debt, and this may impact on the Property Factors ability to instruct repairs. The Property

Factor sought a clear instruction from collective owners about how to progress matters.

44. On 18 May 2022 the Property Factor wrote to owners noting that they had not received a collective instruction from owners, noting that failure to maintain the property could lead to further damage to the property, and confirming that they would close their file on this matter. The Property Factor urged owners to consider the impact in not doing the repairs.
45. On 6 March 2023 the Property Factor wrote to Homeowner about a request from a third party to instruct a structural survey and noting that only 4 out of 12 owners wanted to instruct the survey.
46. Sometime after October 2019 the Homeowner approached the Property Factor and asked the Property Factor to meet and discuss putting in place repairs for the building.
47. The Property Factor could have done more to explain to the Homeowner about the following matters:- the history of the building in terms of surveys and outstanding repairs; what the Homeowner could try and do to move matters forward; and the Property Factor's further involvement may incur additional costs.
48. Section 5.3 of the 2021 Code states: If the agreement with homeowners includes arranging any type of building insurance or contents insurance, the following standards will apply: A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information setting out certain information including :- the basis upon which their share of the insurance premium is calculated. The letter regarding insurance from the Property Factor to the Homeowner does not state "*the basis upon which their share of the insurance premium is calculated*", however all other aspects set out in the bullet point list at section 5.3 are covered.

HEARING

Overarching Standards of Practice The following are the overarching standards of practice that property factors should apply in carrying out their work:

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

49. The Homeowner advised that he had paid the Property Factors invoices to begin with. From around December 2019, the purchaser had paid all invoices for the first year of his ownership, and the last payment he made was in October 2020. However, after discovering the reluctance of the Property Factor to do any works and their failure in their duty of care to the building he stopped paying. He noted that the Property Factor had acted as Property Factor for the last 40 years under custom and practice. It was their duty of care; they should have taken all reasonable and appropriate action to take care of the building for the owners. The Homeowner had started off acting openly and communicated in very positive and robust way to resolve issues, but the Property Factor was charging a monthly fee of £12 and only providing token letters and doing token actions. The Property Factor was not doing anything objective and substantive. The Homeowner said that this was their practice ongoing for a number of years. The Homeowner said that he pleaded with the Property Factor and asked them to sit and discuss matters with me in their Property Factor's office, to be open and transparent.

50. He advised that Glasgow City Council had been involved in 2010 about the building's condition and there had been no progress with the works since then. He was unhappy that the Property Factor kept getting surveys done, which showed issues with the building, but then there was no progress made to have the repair works carried out. He referred to the repeated surveys of 2017 and 2021. The Homeowner approached the other Homeowners about the surveys. He found that there had been similar ones carried out and there was a persistent approach of getting surveys, but no further action taken. He held the Property Factor responsible for the failure to act. He also wanted to get copies of these surveys to provide a picture of then and now: 2011, 2017 and 2021 surveys. He wanted to get a note of the surveys to provide a resolution of the

issues. The Homeowner emailed the Property Factor (Caitlyn Haddow) asking the Property Factor to get in touch with Glasgow City Council regarding works needed to the building. The Property Factor said that they would not do so. The Property Factor had contacted the council in the past. In 2012 the Property Factor was given advice by the council. They were told by the council that owners were unwilling to take matters forward. The Homeowner said that he should have been made aware of what happened in 2012. He wrote to the Property Factor in an email in April 2023. In [Homeowner Production 1.3] he wanted to instruct the Property Factor to contact Glasgow City Council relating to the works in around 2010. He advised that the Property Factor were not open or transparent as they did not give him a copy of the Glasgow City Council letter. The Property Factor wrote to him stating that it was not their responsibility. He expected a fuller response with all the information and all surveys done previously. The Homeowner advised that he had asked for the surveys, and they did not respond to that request.

51. The Property Factor advised that they do not hold records indefinitely and paperwork from 2010-2012. The Property Factor would not retain copies of them. They were not readily available to the team handling his inquiry. The Property Factor suggested that an owner may retain such information and use it as they see fit. The response from the Property Factor [Property Factor 1.3] they submitted it was open, honest and transparent. The overarching principle, the Property Factor referred to their productions submitted in July 2023 [Property Factor 2] which is a letter to the Homeowner, page 3, it addresses the failure to share the survey. They set out details and it is noted that two of the surveys led to votes on whether to do the works, the result being a majority of the Homeowners did not want to proceed. The Homeowner voted against proceeding with having a survey carried out. He referred [Property Factor 2.5] urging the owners to deal with their property and urging them to make contact with the Council.

52. The Homeowner referred to an inspection survey in 2010. The Homeowner said that if the document had been kept in the Property Factor's records and online system, then any new owner would have known what had been done. The Homeowner submitted that information had been intentionally and negligently withheld from the Homeowner. The Homeowner said that the point raised by

the surveys was that there were severe structural issues when he bought the property, he advised that because there was an appointed factor, he had thought that they would positively engage with the Homeowner and get all the works resolved.

53. The Homeowner alleged that the Property Factor had failed to be fair in dealing with arranging Homeowner meetings and attending them. [Homeowner1.1] and [Homeowner1.2] He advised that the Property Factor attached conditions to arrange a meeting. Prior to the meeting they asked Homeowners to have a vote on works. The Property Factor must deal with owners in a fair manner, due to the complexity of the building issues nothing was done by the Property Factor. No structural repairs had been done since 1988. Structural repairs were needed but none had been carried out because of the nature of the complexity of the issues; there were cracks which are huge. The Homeowner submitted that the owners rely on the competence of the Property Factor to engage with them and provide the Homeowners with property solutions. He said his intention was to collaborate and work together with the Property Factor and owners. He said that he had put it on himself to call a meeting, however as he did not have details of all owners, he had asked the Property Factor to communicate with them and arrange the meeting, but the Property Factor would not do so. The Homeowner thought it was unfair.
54. The Property Factor advised that the productions the Homeowner referred to had been responded to and they had explained their position. They referred back to 19 January 2023. The Property Factor would arrange a meeting as they considered necessary, but they were not obliged to arrange a meeting. They said that the owners were free to meet and discuss matters. The owners have been given assistance over the years. The Property Factor will attend meetings, however, at the time that this meeting was to be held the Homeowner had stopped paying his account. The owners were free to meet as they wished, and the Property Factor would attend as appropriate and as necessary. The Property Factor said that the Homeowner referred to coming to the office and speaking to the Property Factor, it was not the duty of the Property Factor to give the contact information for other owners. They said it was for the Homeowner to make the effort to meet his neighbours. They will treat any request on its merits but if someone is in dispute and not working in a way that

the Property Factor are looking to work, then they considered that they were able to choose not to convene a meeting.

55. The Homeowner had submitted a statement from a co-owner regarding communication and he submitted that it was not just him, but was a collective issue highlighted by other owners. The Property Factor did not engage and did not meet with owners, and nothing would happen in progressing the property issues. [Homeowner2.11]

56. The Homeowner said that he had sent an email in [2.2] and received a response that the Property Factor had blocked his email. He had sought legal advice on whether his email had been abusive to the Property Factor, [2.3] his lawyer responded and advised that they did not consider that the Homeowner had sent an unfair email. The Homeowner advised that the Property Factor are a huge company. He did not consider it acceptable for them to dismiss it as a mistake. He wanted to hold them to account.

57. The Property Factor advised that they use third party software. The email had fallen foul of this software.

58. In relation to the overarching standard of practice that property factors should apply in carrying out their work: that they must be honest, open, transparent and fair in their dealings with homeowners. The tribunal does not find that there has been any breach of this part of the code. The complaint relates to the condition of the fabric of the building. There have been a number of surveys over the years since 2010 and from the papers provided it was clear that these repairs were outstanding. The Homeowner appears to consider that the Property Factor was duty bound to arrange with the owners a programme of works to have the repairs carried out. There was evidence of letters sent by the Property Factor to owners, which continually noted that there was no majority consent to having works detailed in the structural survey reports done. It appears that the Property Factor had made owners aware of the issues and sought consent to progress with the repairs. The owners appear never to have collectively provided any instruction to the Property Factor. We did not find that the Property Factor's conduct was a breach of this section. It appeared to us

that they had been honest, open and transparent in their dealings. We also do not consider that the Property Factor is obliged to keep copies of records in excess of 10 years. We were not provided with information about their record retention scheme; however, we would not have thought that keeping such reports in excess of 10 years would be common practice. While it might be useful to keep old survey reports, we would expect a new owner to have carried out his own survey prior to purchase. We consider that the Property Factor is required to act within the terms of its WSS. We did not find in this case that it had failed to do so in terms of keeping survey reports and holding meetings. We note that there had never been a sufficient number of other owners to progress works to the building. The Property Factor as agent for the owners would not have been in a position to proceed further with setting up a programme of works. It appears to us that the Property Factor had clearly highlighted to owners the issues with the building and urged owners to take action.

OSP4. You must not provide information that is deliberately or negligently misleading or false.

59. The Homeowner referred to point 1 in his submission in respect of OSP 4 and submitted in support of this alleged breach the submission he had made in relation to the Glasgow City Council correspondence in 2010, that the Property Factor had deliberately withheld information; and intentionally misled the Homeowner about communicating with Glasgow City Council; about securing funding; and refusing to undertake any such activities as per OSP2.
60. The Property Factor advised that they do not keep records extending back to 2010. They note that the owners could retain the reports. It is relevant to consider that this complaint related to the 2021 Code. The Act came into force on 12 October 2012. The Homeowner purchased the property in 2019.
61. *In view of the fact that the issue pre-dates the Act being in force, the 2021 Code and the purchase of the property, we are not certain that this complaint is in fact competent. However, if we are wrong on that point, we do not find a breach, we*

have already addressed what we think of the Property Factor having to retain records for over 10 years. We also would have found it acceptable that the Property Factor did not hold records dating back to 2010. We consider it likely that the Property Factor would not necessarily have information about what happened in 2010 with Glasgow City Council. Importantly, we are not sure how much use could be made of such records, in 2024. Any progress with council funding and assistance would need to be based on current law and policy. We would comment that the letter submitted by the Homeowner from Glasgow City Council dated 23 May 2012 notes that the “owners were unwilling or unable to take matters forward”. This would appear to have been a recurring theme in relation to the outstanding repair works.

OSP5. You must apply your policies consistently and reasonably.

62. The Homeowner referred to his submission where he stated “HPMS had failed to apply their policies consistently and reasonably”. He had enumerated five points three of which he addressed specifically. Utilising his numbering (TWO) The Homeowner advised this has been considered in relation to the Glasgow City Council correspondence in 2010. The Property Factor acted inconsistently dealing with Glasgow City Council in 2010 but refusing to do so when he requested them to do so in around 2022. The Homeowner advised that there was reference in the WSS at page 3 about meeting local authorities were considered necessary. He said it was essential to meet with the local authority and homeowners to get the building works done. He said it was the Property Factors duty of care to the owners to meet the local authority and owners. The Homeowner advised that he had contacted the council, and asked them to do an inspection, they had not replied to this request. The council had asked if the building was factored, and when he advised it was, the council told him to contact the factors. (THREE) The Homeowner raised the voting system at paragraph 2.5 of the WSS (at page 2) and said that the Property Factor had not used voting system consistently or reasonably. (FOUR) The Homeowner raised the issues of custom and practice. There is a statement that they are bound by that. He said that the Property Factor was expected to negotiate terms and

conditions with the owners. The Homeowner submitted that the Property Factor had a duty of care to the building and the owners to carry out some form of repair work and do appropriate surveys.

63. The Property Factor advised that matters have changed, and their actions were not inconsistent or unreasonable. The 2010 engagement with the council predated the purchase of the Homeowners property. They also submitted that interaction with the Council was by Hacking and Paterson Surveyors and not Hacking and Paterson Management Services the property factor, a different company. There had been no inconsistency in applying the policies. The Property Factor advised that the Homeowner misunderstands what the Property Factor can do. The Homeowner suggests that the Property Factor can fix a building, that is not correct, the council can take action under the Building (Scotland) Acts, sections 28 and 29. The Homeowner stopped paying the Property Factor charges and he misunderstood what the Property Factor could do. They submitted that this misunderstanding had led to this application. There was no evidence the Property Factor had been inconsistent and unreasonable. Further, even if they had changed their policy and practice it was not unreasonable to have done so. The Property Factor advised that the WSS provides that the Property Factor can consult where they consider it to be necessary. The WSS allows the Property Factor to get on with their job with the authority of the customer. The owners can meet and decide to limit the Property Factors authority as they see fit. This is basic factoring practice. They use their professional judgment in making decisions. The Property Factor advised that they have a WSS in place. They did not know when they had originally become factor, they do not keep records back further than 10 years.

64. We do not find that there is any breach under this part of the Code. It is relevant to consider that this complaint related to the 2021 Code. The Act came into force on 12 October 2012. The Homeowner purchased the property in 2019. In view of the fact that the issue pre-dates the Act being in force, the 2021 Code and the purchase of the property, we do not find a breach. We do not know the facts as to why the Property Factor entered into communication in 2010 but not post-2021. We accept that different organisations may have been involved, although that may be relying on semantics. We do not consider that this OSP5

is relevant to Property Factor policy application in 2010 and 2020. We also do not find that the Property Factor applied their policy inconsistently in terms of the voting system. The WSS is drafted in such a way that the Property Factor has discretion as to how it discharges its duties. Given the terms of the WSS providing such discretion we do not find a breach under OSP5.

Section 1: Written Statement of Services

N.B. Section 1 covers the contents of the written statement of services (WSS) only. The provisions relating to service standards are covered in the later sections of the Code.

A. Authority to Act

a statement of the basis of the authority the property factor has to act on behalf of all the homeowners in the group³. Property factors operating under a custom and practice arrangement with no formal appointment should clearly indicate this arrangement to homeowners in the WSS. Where this is the case, homeowners and property factors may wish to consider formalising their appointment.

65. The Homeowner complained that the Property Factor were bound to formalise their appointment with the majority of owners and considered that they had imposed their unagreed terms and conditions without getting them validated.

66. *The tribunal did not find a breach under this section of the code. The WSS states that their authority to act was by custom and practice, such a statement is sufficient to comply with this part of the code. (See WSS Section 2.1).*

(3) where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.

67. The Homeowner's complaint related to Section 1.1A (3), he advised it referred to his previous complaint in 2.2., there was no specific delegated authority set out in the WSS. There was no specified financial threshold for works to be done. In the WSS there was no specific detail setting out the situations when the Property Factor will act. It is left to whatever the Property Factor considers is appropriate. He submitted that the WSS is not detailed enough. He submitted that the onus was on the Property Factor to have these matters set out in the WSS and not to do so is a violation of the Code. The Homeowner advised that he did not agree; that this section of the code was not mandatory. He said as it was set out in the code, he considered that the Property Factor was obliged to inform owners what they will do and will not do. He said that his letter [Homeowner2.22] referred to the WSS.

68. The Property Factor advised that Section 1A3 of the Code provides "*where applicable*". The wording is used as an example, and it is not mandatory. They advised that they do the works where stated. The owners could set a limit of specific authority, but they have not done so. He advised that the owners could convene a meeting and give the Property Factor instructions and they may agree to it or not; it may mean more cost and if so, the Property Factor would provide advice on that.

69. *We do not find that there is a breach of this section of the code. We agree that the wording "where applicable" means that that section is not mandatory. We do not consider that a WSS has to have a level of delegated authority contained in it. We consider that the owners could have agreed different terms and conditions with the Property Factor.*

Services Provided

(4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service).

(5) the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified to homeowners.

70. The Homeowner complained that the Property Factor had failed to provide core services. He referred to his submission about the Property Factor failing to meet the Homeowner, contractors, and Local authorities and other parties as appropriate. He advised that the Property Factor had not met with these parties even though the building was known to have structural issues. The Homeowner said that the frequency of property visits was not set out in the WSS. It says that the Property Factor will carry out "*periodic*" visits. [Production 2.7] The Property Factor had refused to attend any meetings with the owners.

71. The Property Factor referred to [Property Factor 1.B] they said it was a letter which showed that they had written out to owners regarding visits.

72. The tribunal does not find that there is a breach under this section. The WSS has been written in such a way as to leave considerable discretion to the Property Factor as to how they discharge their

Section 2: Communication and Consultation

2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure 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.

73. The Homeowner submitted a letter from another owner, Andrew Greig, [Homeowner2.11]. He had alleged that the Property Factor was incompetent. The Homeowner had made numerous requests to resolve matters with the Property Factor. Requests for meetings were denied by the Property Factor. Emails were blocked. The statement by Andrew Greig highlighted the same issues the Homeowner had encountered. He submitted that it had led to misunderstandings and disputes. He said he had tried his best to communicate with the Property Factor, but it had not been successful. The building had suffered so much damage and it was foreseeable and could have been sorted out with the Homeowner. Communication is the foundation to sorting out matters.

74. The Property Factor advised that Section 2.1 - good communication, does not require specific actions by the Property Factor. The Homeowner has to maintain the property to a good standard. The Property Factor will consult as appropriate and allow access to information; there were proposals for surveys; and providing quotes; and they had a web portal.

75. We consider that there has been a breach under this section. It appears to us that the Property Factor could have done more to explain to the Homeowner the extent of their duty. As noted already the WSS provides a large degree of discretion to the Property Factor as to how they discharge their duty. However, we do consider that the Property Factor could have done more to explain to the Homeowner the history of the building in terms of surveys and outstanding repairs; what the Homeowner could do to move matters forward; and the Property Factor could have advised that their involvement may incur costs.

2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be

made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

76. The Homeowner had wanted to obtain access to the old structural survey reports.

77. The Property Factor refers to section 5.9 of their WSS which explains how Homeowners can access information, documents and policies/procedures as required by Section 2.2 of the Code.

78. We do not find a breach under this section the Property Factor has a policy explaining how the Homeowner can access information.

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

79. The Homeowner submitted that unless there was delegated authority in place there must be a procedure in place to consult with owners and seek consent before proceeding to do any work. The Homeowner referred to [Homeowner2.17] there is a maintenance contract in place prior to him buying his property, he considered that there had to be agreement by all owners before any work could be instructed. He did not agree with the Property Factors interpretation of the Code at Section 2.6. He thought that owners should be consulted for all services provided. The owners have never been consulted for any services carried out, i.e. cleaning, or tree cutting.

80. The Property Factor stated that this is related to any additional services that the Property Factor incurs. If they are additional services, then the Property Factor we have to charge an additional fee. The Property Factor submitted that this was not related to third party maintenance contractors. They advised that no additional services have been provided by the Property Factor and no additional fees to the Property Factor have been incurred and therefore this section is not applicable to the Homeowners complaint.

81. *We do not find a breach under this section of the code, we agree it relates to additional services carried out, outwith the core services. The Property Factor's WSS at 3.4 refers to works beyond core services. At section 3.5 they confirm that where a service is provided by us which will incur additional fees, over and above those included within the core factoring services we will consult you, ..., in writing, for consent prior to incurring expenditure.*

Section 3: Financial Obligations

3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

3.2 The overriding objectives of this section are to ensure property factors:

protect homeowners' funds.

provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor.

make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.

Section 5: Insurance

5.3 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

- the basis upon which their share of the insurance premium is calculated.
- the sum insured.
- the premium paid.
- the main elements of insurance cover provided by the policy and any excesses which apply.
- the name of the company providing insurance cover; and
- any other terms of the policy.

This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.

5.8 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.

5.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available to homeowners on request.

82. The Homeowner referred to production [Homeowner1.7] the insurance premium document. He stated that it does not tell the reader what the premium paid for the building was, and in his opinion, it must do that. The premium paid should be included in the certificate; and the address of the property; and the value of it. The Homeowner advised he had asked for all details of the

insurance from the Property Factor. In relation to Section 3.1, the Homeowner's complaint was that the papers for the insurance did not contain the required information. In relation to section 3.2, he advised that the insurance documentation did not provide clarity and transparency. All information should be contained in the insurance documentation. The problem in not providing the proper documentation was that he had no confidence in the insurance provided. The Homeowner confirmed that he had received the covering letter and insurance schedule from the Property Factor. Homeowner advised the production provided by the Property Factor is not sufficient, it is an insurance summary and does not contain the necessary information with a covering letter from the Property Factor.

83. The Homeowner stated that there had been no tendering process. He submitted that on request the Property Factor needed to be able to demonstrate how they appointed their insurance company. He referred to [Homeowner1.6] He had asked for evidence of multiple quotes and the Property Factor referred him to the Housing and Property Tribunal. The Homeowner submitted that he understood the practice of using a broker however through using other factors, he noted that he had received more information, e.g. a table of providers, in this case, there is no information to show how competitive the policy was and to compare prices.
84. The Property Factor referred to their Production [Property Factor 1.2]. It was a letter from the Property Factor, and it included details about the insurance and attached the insurance schedule on the next page [Property Factor 1.3]. The share of the cost of the insurance was based on the cost of the common repairs, and this is defined in the title deeds. The Property Factor advised that the full policy document covers 100s or 1000s of addresses, so there is not a separate building or development specified on it.
85. The Property Factor referred to [Property Factor production 1] The letter of 31 August 2022. He advised that they used insurance broker Aon and they have selected Allianz. They advised that they do not enter directly into the insurance market, as it is highly complicated and regulated by the FSA. He said it is common practice in the factoring industry to use a broker, they provide expert advice and look at the whole market and for the best price.

86. Section 5.3 of the 2021 Code states:

If the agreement with homeowners includes arranging any type of building insurance or contents insurance, the following standards will apply:

5.3 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

the basis upon which their share of the insurance premium is calculated.

the sum insured.

the premium paid

the main elements of insurance cover provide by the policy and any excesses which apply.

the name of the company providing insurance cover; and

any other terms of the policy.

A. This information may be supplied in the form of a summary of cover, but full details must be available if requested by a homeowner.

87. The Respondent Factor's production [Property Factor1.2] (a letter dated 17 June 2022 and accompanying schedule from the Insurer) was stated by Mr Buchanan to be an "annual insurance statement" as required by Section 5.3 of the 2021 Code. The Homeowner confirmed he had received the letter and attached schedule forming production 1.2 from the Property Factor.

88. The letter from the Property Factor does not state "the basis upon which their share of the insurance premium is calculated", however all other aspects set out in the bullet point list at section 5.3 are covered.

89. We find that there has been a breach of section 5.3 in respect of the failure to state "the basis upon which their share of the insurance premium is calculated".

90. *We do not find the Property Factor has breached the other of these sections. In terms of section 3.1 the WSS at section 4.4 stated that “your proportion of charges for common works and service is detailed in the common charges’ accounts rendered by us. Clarification can also be provided upon request.” We do not consider that there was a breach under section 3.2. We saw no evidence of failure to protect Homeowners funds, or failure to provide clarity in their accounting procedures. The Property Factor explained how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.*

Section 6: Carrying out Repairs and Maintenance

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners’ responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

91. The Homeowner referred to Section 6.1 and referred to his previous submission about the Property Factors refusal to meet and discuss the repairs; relying on the letters previously sent out and not meeting up with the owners to discuss the substantive repairs and all past repairs. He advised that he had tried to establish good communication with the Property Factor. He worked out a proposal to progress matters. He had had no access to the other owners. The Property Factor would not assist in contacting the other owners to arrange a meeting or providing their addresses to him. The Homeowner said that the Property Factor should be held to account for taking no action on the repairs.

92. The Property Factor submitted that this is a “Preamble section” they said that the Property Factor can help. The letters submitted going back to 2020 [Property Factor Productions 2.2-2.6] show that the Property Factor offered the owners proposals to put in place repairs to the building, however, the owners failed to respond to those letters.

93. *We find there to be a partial breach under this section. The Homeowner complains that the Property Factor would not organise repairs to the property. 6.1 requires the Property Factor to help prevent further damage by seeking to make prompt repairs. The Property Factor provided evidence of letters sent out advising on the need for further, more detailed surveys to be done (see Property Factor 2.2 to 2.6). These letters show that the Property Factor was writing to the owners to raise the issue about repairs being required the property; they note that not all owners have responded; they suggest that owners could take advice from the Glasgow City Council; they highlight the need to do repairs to prevent further damage to the property. We consider that the Property Factor has attempted to help to prevent further damage. It is also relevant that this section of the Code confirms that it is the homeowner's responsibility and good practice to keep their property well maintained. It appears that the Property Factor has flagged up to owners over a number of years that repairs are required to the property, but a majority of the owners do not appear to have responded to those letters from the Property Factor. We therefore do not find that there is any breach for the general conduct of the Property Factor as set out in this paragraph.*

94. *Where we consider that there has been a breach of this section is in relation to the fact that the Property Factor could have spent time speaking to the Homeowner about the history of the building, what action they have taken to try and resolve the repairs, and what further action the Homeowner could take to try and progress matters, and what further work the Property Factor could take to try and progress building repairs, and confirming that further works may incur additional costs.*

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.

95. The Homeowner advised that there were three inspections letters sent by the Property Factor. The Homeowner made concerted personal efforts to get a programme of works in place, but nothing was progressed. Property Factor was aware of the condition of the building for the last five years, three surveys were done, yet, still, there was no programme of works put in place. He advised that the Property Factor sent letters out, there would be no reply and the status quo would continue. The letter from Glasgow City Council said that they could force the owners to do repairs, the Property Factor should have followed this through with the council. The Homeowner said that he had sent emails to the Property Factor, and gave them advice about obtaining a structural survey, and asked the Property Factor to hold a meeting as he did not know the other owners. He thought he was doing something good; they could call a meeting and move on with repairs.

96. The Property Factor stated that they do not carry out inspections as they are not qualified to do so.

97. The tribunal does not find a breach under this section. We find that the Property Factor had arranged survey reports to be carried out and had contacted the owners after that to enquire about progressing matters. From the papers provided by the Property Factor it was clear that they had written to owners about the condition of the property and the need for further assessment and works to be done, there was a lack of response from the owners. We do not agree that the Property Factor could have put in place a programme of works without the consent of the other owners.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate

professional expertise are involved in the development of the programme of works.

98. The Homeowner said that he did not specifically ask the Property Factor to carry out a periodic inspection. There had been three surveys carried out and the Property Factor needed to decide what to do about the findings in those reports and get consensus with the owners. They should have got in touch with the owners, request a meeting to discuss construction works. The Homeowner advised that he had spoken to Mr Buchanan from the Property Factor in 2022 and tried to discuss a middle ground. The Property Factor were only arranging for the cleaning, the minimum, the Homeowner wanted them to do more. The owners now have a new factor, and they have agreed to carry out repair works, they now have a majority of 7. He said that he had needed the help of the Property Factor, but it was not forthcoming.

99. The Property Factor advised that there was not a majority of owners voting for the repairs. They said that the owners can go and decide what works to do. There had not been any constructive dialogue ongoing. The Property Factor stated that they did not accept that characterisation in those actions.

100. *We do not find a breach under this section, the ongoing issue with this Homeowners complaint is that repair works were not put in place, the difficulty for the Property Factor is that a number of owners would not agree to take those repair works or further investigations forward. Given this it is unclear what more the Property Factor could have done to effect repair works.*

6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

101. The Homeowner said that in relation to all the services provided by the Property Factor, he had never been provided with information about the consultation process. He requested information about how contractors were

appointed, e.g. how the cleaning company was appointed, and he did not receive paperwork showing this.

102. The Property Factor referred to [Property Factor Production 2.1] this was sent prior to the Homeowner purchasing the property in 2019, it shows the most competitive quote obtained. The Homeowner was provided with this letter in April 2023. It states if there is no objection the preferred bidder will be appointed.

103. *We do not find that there is a breach under this ground, as the cleaning contract was in place prior to the Homeowner purchasing the property.*

WRITTEN STATEMENT OF SERVICES

Page 1 - Our Philosophy. - to factor out customer's property as it was our own

104. The Homeowner challenges this statement. The Homeowner advised that the owners have had three surveys done, and all showed that there were structural issues. No progress was made on the required repairs. He submitted this all pointed to evidence that the Property Factor does not treat the property as their own. The Property Factor denied this for the reasons previously set out.

105. The tribunal does not find any breach for the reasons previously set out.

2.1 Failure to get a majority to appoint the Property Factor. Custom and practice.

106. The Homeowner understood that you would expect the Property Factor to be appointed by a majority. The Property Factor advised that there is no requirement for the Property Factor to do so.

107. *The tribunal does not consider that there has been a breach of this duty, the Property Factor has been appointed under customer and practice, we do not consider that they were legally obliged to have the owners appoint them through a vote.*

2.5 Consultation duties.

108. The Homeowner advised the terms of the WSS allowed for “carte blanche” decisions to be made by the Property Factor. He advised that he did not agree with these terms but accepted that was not a breach.

3.1 we appoint contractors and service suppliers.

109. The Homeowner considered that there was a failure as contractors to deal with the repairs had not been appointed.

110. We do not consider that there is a breach under this section as such repairs would not fall within core services.

3.1 Page 3 refers to “meeting the owners” etc ... where necessary.

111. Again, the Homeowner said this allowed for the Property Factor to adopt a carte blanche approach acting as they liked. He said that the WSS was a nicely crafted statement. Use of the words “where appropriate” for example. He thought that the terms of the WSS were inherently unfair terms and conditions. Further, he said that there was a breach of this section, as the Property Factor had refused to meet with the owners and refused to contact Glasgow City Council. The Property Factor advised that there was reference in the WSS to having a wider meeting as appropriate.

112. *We do not find a breach under this section; the Homeowners complaint was that the Property Factor would not contact Glasgow City Council or arrange or meet the Homeowners. We did not find that the Property Factor would not*

attend a meeting, but we do note that the Property Factor refused to attend one meeting which was arranged, as they considered that they had not had enough notice of it.

3.2 failure to report identified structural repairs promptly.

113. The Homeowner advised that there has never been work done on the roof, or any other matter. Other work needed to be done as appropriate. There was a failure to report routine matters to an appropriate contractor in relation to the maintenance works relating to the roof, the void above the top floor flat and common areas. The Property Factor said that the statement was contradictory. The Homeowner identified work, and there was no evidence of failure to act.

114. *The Homeowner had provided no evidence to support this claim. We do not find a breach under this section.*

5.2 (Page 6) Formal Complaints Handling Policy

115. The Homeowner said that there had been seven emails where he requested an online complaint form to be provided. He was advised that his complaint could not be reviewed if the form was not posted. He said that there was nothing written down that the only way to receive a complaint was by filling out a form. The Property Factor confirmed that they ask for the complaint form to be completed and posted back. They said it was their procedure. The default procedure was to send it in hard copy. They said it was a more serious way of dealing with complaints.

116. *The tribunal does not find a breach under this section. However, we also did not understand the Property Factors refusal to accept an emailed complaint, which did not appear to the tribunal to be a reasonable approach to take, particularly when they encourage other interactions to via email/a website.*

5.5 response to enquiries

117. The Homeowner gave examples of letters which had been sent out, and have sent reminders [Homeowner2.5, 2.6; 1.4] The Property Factor admitted that they may have missed some of the timescales for responding, due to the volume of emails from the Homeowner. They apologised for any breach of their duty under this WSS.

118. *The tribunal finds that there has been a minor breach under this section given that there is an admission by the Property Factor that they may have missed the some timescales for responses, that said it is clear that the Property Factor did respond to the Homeowner in a reasonable time period, and we do not therefore consider that there was a blatant disregard of the timescales by the Property Factor. We note the Property Factor's apology under this duty.*

5.9 access to information

119. This related to inspection reports and the Glasgow City Council correspondence. The lack of availability of some documents. The Homeowner advised that they had disappeared from the portal. He had to ask the Property Factor to provide inspection reports, he thought they should all be available on the portal. It did not allow for proper scrutiny if the reports were not there. The Property Factor advised that any information on the portal can be downloaded, and owners can keep the information themselves. That there is a time limit for keeping the information and further that they cannot keep it all online, due to the size of data storage they would need.

120. *This section confirms that Homeowner can access information by visiting the H&P Portal or contacting the Factoring Team. The Property Factor advised that they do not keep all papers on the portal for more than around a year due to data usage. We consider that this clause could be clearer as it does refer to "all information" We find that there has been a breach under this section.*

RESOLUTION SOUGHT BY HOMEOWNER

121. The Homeowner advised that the owners had terminated their contract with the Property Factor on 15th May 2023. The Homeowner advised that the Property Factor no longer provided services from 8th January 2024. In terms of the suggested resolution, the Homeowner requested that the management fee be deducted for the time period that he had stopped paying and that the liability notices and fines be deducted completely too.
122. If all insurances were in order with the Code, then he would have no objection to paying that amount. If it is considered that all information provided by the Property Factor is fine and meets the requirement of the code then the Homeowner would be happy to pay all the insurances, but he considered that there were discrepancies.
123. The Homeowner confirmed that he did accept that the Property Factor had insurance in place; that the Property Factor instructed cleaners and as agents paid their contract. He accepted that there may have been ad *hoc* repairs carried out.
124. In refusing to have further surveys carried out, the Homeowner advised that he was not against having another survey, but he wanted to understand the next steps after the survey was completed. He wanted the whole discussion to start about repairs before the owners paid for another survey and nothing came of it. He said he would not pay for another, that the owners needed to sit and discuss a plan of works and get out of the “vicious circle of surveys”.

DECISION

125. Having considered what breaches of the code of conduct and Property Factors’ duties have been established we require to consider an appropriate remedy.

126. The 2011 Act seeks to resolve disputes between a factor and a Homeowner. Having regard to the application, the evidence before the tribunal and current circumstances of the parties as we understand them (as set out in the previous paragraphs) we do not consider that it would be appropriate or necessary to make a proposed order in this case.
127. The Homeowner states that he stopped paying for the Property Factor's fee and charges, because he did not consider that the Property Factor was discharging their duties appropriately. We consider that the matter is rather more nuanced. It appears that owners in the development had been advised over a long period there were structural repairs required to the property. The Property Factor has continued to contact the owners about these repairs over a number of years, they have suggested doing further investigation surveys, and they have also highlighted to the owners the need to consider these repair works. The ongoing stumbling block has been that more than half of the owners have never agreed to progress with more detailed surveys and repair works.
128. We note that the Homeowner was keen to see progress to the repair works. It seems that he had thought that the Property Factor had a duty to ensure these repairs were effected. We consider that this was unrealistic. We do consider however that the Property Factor could have been more proactive in setting out to the Homeowner what they did as Property Factors, and what they did not do. This may have assisted the Homeowner in considering what to do next. However thereafter we did not believe that the Property Factor could have done much more in terms of effecting repairs. We consider that the Homeowner must have known about the structural defects when he purchased the property, and we consider that he should have done his own due diligence at that time. We do not consider that he was entitled to assume that the Property Factor would be able to effect repairs to the building. We consider that the Property Factor was subject to the agreement of the owners, and that agreement never appeared to have been provided.
129. In respect of the insurance requirements in 5.3 the Property Factor has committed what might be seen as a "technical breach" in that the annual statement does not contain all the information required. The omitted information is provided elsewhere. The Property Factor defended his actions in many other instances based on the language of the Code. If he wishes to avail himself of

that, he can have no complaint when he falls foul of the clear provisions in other sections of the Code. We would expect that the Property Factor ensure, going forward, that they comply with the terms of the Code in relation to providing information about insurance.

130. We note that the Property Factor apologised for any delay in failing to adhere to timescales in responding to Homeowner's letters. We consider any breach under this section is minor.

131. In relation to the Homeowner's email being blocked. We note that the Property Factor blamed third-party software for this issue; we do not find a breach under this section of the overarching standard, as it appeared that this occurred on one occasion only, and it may have been an issue with third-party software. That said we would not have expected third-party software to have blocked such emails. We consider that the Property Factor should review the software to ensure that such emails are not blocked in future.

132. We do find that there have been breaches under Sections 2.1, 5.3 and 6.1 (partial) of the 2021 Code and 5.5 (minor) and 5.9 of the property factor's duties. We consider however, it is not appropriate or necessary in this application to propose imposing a property factor enforcement order. The reasons being are that the predominant issue in this application relates to outstanding building repairs, the owners have now instructed a new factor and the Homeowner indicated that the new Property Factor is taking forward discussions about a programme of repair works, we found the other breaches to be minor. In relation to the issue of the breach of the insurance section, we do not intend to impose a property factor enforcement order, but clearly our finding in respect of 5.3 has implications for all properties where the Property Factor offers services.

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.



Melanie Barbour Legal Member and Chair

4 June 2024 Date