

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/23/2738

Re: Property at Flat 0/2, 4 Lochend Path, Easterhouse, Glasgow, G34 0NN (“the Property”)

Parties:

George Smith, residing at Worlds End, Cottage, Church Street, Whitby, YO22 4AE, the Trustee and Executor of the late Helen Smith, latterly of Flat 0/2, 4 Lochend Path, Easterhouse, Glasgow, G34 0NN (“the Homeowner”)

Lowther Homes, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Property Factor”)

Tribunal Member:

Melanie Barbour (Legal Member)

Mary Lyden (Ordinary Member)

DECISION

The Factor failed to comply with OSP 3, 6, 8, 9 and Section 6.4 of the 2021 Code of Conduct. The decision is unanimous.

BACKGROUND

1. By the application dated 14 August 2023, the Homeowner complained to the Tribunal that the Property Factor was in breach of Overarching Standards of Practice including: OSP3, OSP4, OSP5, OSP6, OSP8, OSP9, OSP10, OSP11; Communication and Consultation including 2.3, 2.5, 2.6,2.7; Carrying out Repairs and Maintenance at 6.4. and Complaints Resolution at 7.1 of the 2021 Code of Conduct.

2. By Notices of Acceptance dated 17 October 2023, legal members of the Tribunal with delegated powers accepted the application and a case management discussion was assigned to take place on 21 December 2023. Both parties submitted written representations in response to a direction issued.
3. The case called for a case management hearing on 21 December 2023. The application was continued at that date in order to provide the Property Factor an opportunity to provide written representations to the Homeowners application. The tribunal issued a direction on that date setting out further procedure. Reference is made to the case management hearing note and the direction.
4. The application called for a second case management hearing on 18 March 2024. The property factor had submitted written representations on 19 January 2024. The homeowner confirmed that he had received a copy of the property factor's written representations and had had the opportunity to consider them. No other documentation was submitted by either party.
5. In attendance at the case management hearing was Mr George Smith the Homeowner, accompanying him was his wife, Mrs Smith as his supporter. In attendance for the property factor was Ms Vicki Aitken, Property Manager, and Mr David Adams solicitor, as the representative.
6. The case management hearing took place by telephone conference call.
7. The tribunal and parties had before them a copy of the homeowner's application and the property factor's written submission.

FINDINGS IN FACT

8. The Tribunal made the following findings in fact: -
9. The Property Factors are Lowther Homes.
10. The homeowner in this application is the Executor of the late Helen Smith.
11. The property is Flat 0/2, 4 Lochend Path, G34 0NN.

12. The late Helen Smith died in December 2022. Her son, George Smith, was named as executor for his mother and Mr Smith's siblings were also joint beneficiaries.
13. The Executor of the Homeowner proceeded to market the property for sale, and he accepted an offer in April 2023.
14. Also, in April 2023 a third party reported a repair to the Property Factor, which would affect the property, as the repair related to the larger building of which the property formed part.
15. The Property Factor instructed investigation works for the repair. The investigation works showed that the building of which the property formed part was not of a standard construction, and this made the repair investigation more complicated and timescales for investigation and repair had to be extended.
16. The Executor of the Homeowner and their solicitor contacted the Property Factor about what was happening with the repairs. The Property Factor did not provide information to keep the Executor of the Homeowner updated on a number of occasions, despite several requests to do so by the Executor of the Homeowner. When timescales for the repair had to be extended, there were failures to explain what was happening to the Executor of the Homeowner.
17. The Property Factor's front-line staff did not refer the Executor of the Homeowner to more specialised teams within the Property Factor's organisation to assist the Executor of the Homeowner with their questions.
18. The Executor of the Homeowner's solicitor was asked in error for a mandate before the Property Factor would speak to them.
19. The Property Factor did not update the Homeowner's records after being advised that the Homeowner had passed away.
20. A stage complaint 1, made, by the Executor of the Homeowner, the response was sent to the late Homeowner's email address.
21. The Property Factor failed to effectively communicate with the Executor of the Homeowner and their solicitor on a number of occasions, this failure caused the Executor of the Homeowner stress and inconvenience.

DISCUSSION

22. In summary, this application is brought by the Executor of the Homeowner. The Homeowner had passed away and her son, the Executor, who brought the application. The Executor had been dealing with the sale of his late mother's property. He advised that other family members had been involved in the property sale too, as they were beneficiaries. For ease of reference, the tribunal in the rest of this decision will refer to the "executor of the homeowner" as "the Homeowner".
23. During the course of the sale and marketing of the property, the property factor received a repair request from a third party. The repair had taken time to investigate and carry out. There were issues with poor communication between the Homeowner and Property Factor during the investigation and repair period. The Homeowner said that these communication issues had delayed the sale of the Homeowner's property; there was a reduction in the sale price, and these issues had caused the Homeowner distress.

OSP3. You must provide information in a clear and easily accessible way.

24. The Homeowner advised that he was not satisfied with the Property Factor's response to this ground. He advised that he was not happy with the wording they had used in their response. He had been contacting the Property Factor when he was trying to sell his late mother's property. He had asked to speak to someone more senior, who understood the issues he was raising. The Property Factor had said that he had wanted to speak to someone more senior immediately. He said that this was not correct. He would ask that someone called him back, no one would call. He said the Property Factor was implying that he had been overzealous. He did not agree, but he had to escalate his case due to the lack of response or incorrect response he had received. He had been sent emails which were incorrect.
25. The Property Factor advised that having regard to the terms of the OSP 3, they submitted information in a clear and accessible way. They submitted that the Homeowner's complaint was more about the detail of the information which he had received. It appears that Homeowner wanted more detail and wanted to speak to more relevant people who could deal with his case. The Property Factor

considered that there was an overlap with some of the sections of the code, and they considered that some of the issues raised by the Homeowner sat better under other sections of the code which had been referred to by the Homeowner.

26. The Property Factor advised that they accepted that there had been communication difficulties in Mr Smith's case, however, in terms of OSP 3 they did not consider that there was a breach under this section, as Mr Smith's complaint appeared to be that he wished to speak to more senior staff.

27. Mr Smith advised that he had not been asking for an immediate response, but on speaking to the staff, he had difficulty getting a response. He confirmed that he had wanted someone more senior to deal with his case, he wanted someone to assist him and his solicitor in order to understand what was going on with his case. He advised that he was worried that the lack of information about what was happening would impact on the house sale. He said he and his solicitor had been trying to do all they could do. He felt that it was as if everything the Property Factor did was to block progress with his sale. He did not think the Property Factor were acting reasonably.

28. The Property Factor advised that he understood the Homeowners frustration, however, they did not consider that the Homeowner's concerns breached OSP3. they advised that their response at the last case conference was they advised that some staff who had handled the Homeowner call had not handled it properly. The Property Factor believed that the information was available on their system. They considered that any breach for failure would fall under Section 3 Communication.

29. The Property Factor advised that they had taken action to address the issue. They had carried out refresher work to front-line staff on the processes and systems they were using; and had also carried out retraining to ensure that all staff were able to provide the correct information to Homeowners and also, that they were able to ensure if more complex matters arose with Homeowners that they understood that these matters could be passed to another (more appropriate) team. They were also carrying out monthly audit for self-assurance for house sales. They advised

that they had checks in place for the house sales process, to make sure accurate information is provided to Homeowners and solicitors.

30. They were asked if staff knew now how to escalate matters, if urgent. The Property Factor advised that they have front line staff who answer calls, and if more complex, they have other teams, and the front-line stage will pass more complex matters to the appropriate team. They have staff who deal with housing stock; and a separate team who deal with house sales. The Property Factor advised that they accepted that there had been a failure in communication in this case.
31. The Property Factor advised that they had changed their practice after considering this complaint. They had refreshed their training with the frontline call handlers; they answer for the whole group and also provided access to the house sales team. In Mr Smith's case, the front-line call handlers should have passed the case to the house sales team.
32. The Homeowner advised that this was the first time that he had heard that there was a dedicated house sales team. He advised that he had been asking for that, someone who had knowledge about this issue, and he had never been advised there was such a team. He advised that it had been difficult to deal with a different person every time he called.
33. He advised that he thought it was really good, that the Property Factor have a house sales team and he hoped that other Homeowners will be passed to the correct team in the future.
34. *The tribunal finds that there has been a breach under this section. The Homeowner had sought information from the Property Factor, and he had not found the information to be provided in a clear and accessible way. While the Property Factor disputes that there was a breach under this section, we would disagree. There was an acceptance by the Property Factor that the Homeowner was not provided with the correct information when he contacted the Property Factor; it also appears that the front-line staff who spoke to him did not always have the correct information and did not appreciate that they could pass the Homeowner onto someone else to*

speak to. We note that the Property Factor has undertaken retraining for front line staff as there were training issues identified following the Homeowner's complaint. These factors also support a finding that the information was not clear or accessible.

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

35. The Homeowner advised that he was not claiming that the Property Factor had deliberately misled or provided false information, but he did consider that they had provided it to a standard that was negligent. He referred to the emails dated 14 June 2023 in support of his position. He had been told he would get an email response from the Property Factor, but then nothing would be received. He would query the information received and be told it was correct, then later it would come to light it was incorrect. He received notice of invoices which were subsequently wrong and timescales which were not correct. This happened on numerous occasions. Some of the issues were minor issues, however, it was being passed to the buyer's solicitor and when it turned out to be wrong it eroded confidence in his solicitor with the other party to the sale. He gave the example that on 14 June he was advised that someone was on site yesterday about the suspected common repairs and that they would get back to him next week with an estimate of repair costs, but no follow-up with costs was provided.

36. The Property Factor advised that it appears that the complaint is related to a specific matter. It appeared that the complaint that Mr Smith was making was that further information would be made available, but it did not become available in the timescales given. He submitted that this does not mean that the information had not been given in good faith, it was just that it may have taken longer than anticipated to provide it.

37. The Property Factor advised that the complaint centred on the common repair raised in April 2023. She advised that further time was taken to get the structural survey done, this was as it had originally been thought to be a brickwork issue; but

then further matters required investigation. However, at the time of giving advice, the advice was correct.

38. The Homeowner advised that he guessed they were not in agreement if it is negligent or not. He said that when you continually tell people something will happen but then it does not happen, and if there are repercussions for his solicitor, then he considered that was negligence.

39. He felt there was nothing the Property Factor told me which could be trusted. He had been trying to do the best with all that he was hearing from the Property Factor. It was so difficult when someone was a customer. It felt as though it should have not happened, and it happened continually.

40. The Property Factor advised that the repairs issued had been raised by the neighbour for the brick work. It had instructed that contractors were to investigate the matter. This was done and it was determined that it needed a structural survey carried out. It had not been known at the outset what kind of repair it was. It took time to find this out. At first the Property Factor believed that it was a common repair, but further investigation was needed to determine it. There was further complexity as the building was a non-standard construction.

41. The Homeowner also referred to the email of 22 July. He received a bill ref: 3976046/1 - repair to clean a common path. He queried it and told it had been sent to him in error. He said that this did not happen once, it happened several times. He could not trust anything he heard from the Property Factor.

42. The Property Factor advised that this was an error in the paperwork, she advised that she not say that it amounts to negligence. She advised that there had billing issues. The repair should have been recognised as not to be paid for by the Homeowner, she considered that there had been a lack of attention to detail in issuing the letter, but it was not negligent. The Property Factor advised that they had spoken to the team who issues bills and that they make sure that they are aware of the billing system and that they needed to check what they were billing for was accurate.

43. Property Factor advised when a communal repair is raised, it will be raised against the block and a notification will be sent out to all owners and it will say a repair has been requested. These letters are sent out and sometimes the Property Factor gets calls about it. Once the job is done it will be downloaded onto the Property Factor system, the Property Factor will check it has been completed and then it will be billed. She advised that there are four stages to repairs and billing.

44. *The tribunal does not find that there is a breach under this section of the code. The tribunal finds that there were a number of incidents of poor communication by the Property Factor in their dealings with the Homeowner, but we do not consider that this amounted to the Property Factor deliberately or negligently providing information that was misleading or false. We find that some of the incidents where the communication with the Homeowner was impacted by third party contractors not reporting back when they said they would, and this then impacting on the Property Factor not reporting back to the Homeowner. Also, while the Property Factor had provided information about timescales which later were not met, again we considered that this was more to do with the fact that the building construction turned out to be non-standard and this led to more time being needed to ascertain what repair was needed. What appears to have been the real issues was a failure to discuss this with the Homeowner in order that they could understand property what was happening. While we find that the Property Factors practice could have been better, we do not consider that there was any intention on the part of the Property Factor to provide information which was deliberately or negligently misleading or false.*

OSP5. You must apply your policies consistently and reasonably.

45. The Property Factor advised in the present application the request for the solicitor to provide a mandate was an error, but they submitted that it was a one-off error. She did not consider that it was the Property Factor not applying their policies consistently and reasonably.

46. She advised that there had been training issues in how the Homeowner's issues had been dealt with. She advised that the member of staff was retrained about when mandates were required, and that they were not required from a solicitor. It was a training issue, there had been a lack of knowledge. She advised that it was being monitored by the staff member's line manager.
47. It was queried if this was something which would be handled by the new house sales team. The Property Factor advised that the main route is coming into to the Property Factor is to speak to the customer first centre. She advised that all solicitors, MPs and councillors are not asked for a mandate for third parties. Property Factor advised that he appreciated that it is a sensitive time for the family, and they apologised for this.
48. The Homeowner advised that he accepted the explanation from the Property Factor on this point and agreed it does appear to be a training issue, however he advised that more than one staff member had said a mandate was required. He also referred to receiving final bills and the errors here. He felt that there was a disconnect between policies and practice. He also said while he accepted what the Property Factor were saying, he was not completely happy with the response, as the error had created grief for him and his family. He understood technical issues occurred, but it had caused a couple of days of worry, and it caused issues with the house sale.
49. *The tribunal does not find that there is a breach under this section, we did not find that the Property Factor failed to apply its policies consistently and reasonably. The Property Factor accepts that it was an error to have asked for the solicitor to provide a mandate. They explained what their policies are for mandates. They explained that it was a staffing issue, and they have retrained the staff member on this issue. We note that the Homeowner advised that this had happened on more than one occasion with more than one member of staff. Given that there are policies in place and given that the Property Factor advises that they have retrained the member of staff, then on this occasion, we do not consider that this was so much of a failure to apply policies concisely and reasonably, but more to do with ensuring that staff are properly trained.*

OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

50. The Property Factor admitted this should have happened but did not. Property Factor accepted that under this section there had been a breach. They do now have a team doing house sales.

51. The Homeowner noted what the Property Factor was saying in response. He noted that the Property Factor said that they had systems in place, and he agreed the house sale and the repair issue had been a complex issue. He noted that the Property Factor accepted that his case should have been referred to the house sales team.

52. The tribunal finds that there was a breach under this section as acknowledged by the Property Factor.

OSP8. You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property.

53. The Property Factor did not consider that there had been a breach under this section.

54. The Homeowner advised that staff did not seem aware of them. He accepted that staff may be aware of them but did not adhere to the provisions of the Code. He said he absolutely acknowledged it was complex case but given that, effective communication from the Property Factor was even more important. Given it was complex, that should ring alarms bells and the Property Factor should have taken his case seriously. He thought that communication with sub-contractors seemed to be very poor, and when the Property Factor had something on their systems to

happen on a certain date, if the Homeowner contacted them on that day, they would be told no contractor had confirmed/updated the Property Factor. He thought that the support staff did not have any system in place to contact the contractor.

55. The Property Factor said that when a repair is raised, it will go to their main contractor, they have a framework of sub-contractors, and we select a contractor from that framework. The manager will liaise with the Property Factor about the contracted work and notify the Property Factor once they have the report. She advised that it could take time to provide the report and it did take time to get the report completed in this case.

56. The Property Factor advised that the repair was notified in April 2023 and the survey report was received on 14 July 2023. The Property Factor advised that this survey had taken slightly longer to obtain due to the non-standard construction of the property. The Property Factor advised that they could provide the drawings in the survey report to show matters. The contractors had needed to go right under the foundations of the property in order to assess the matter and provide the recommendation for repair. Surveys usually take around 8-12 weeks. In terms of systems in place to get in touch with the customer, she advised that the Homeowner had been contacted on 25 July 2023. She accepted that this contact could have taken place as soon as the report was provided. She advised that there were written processes in place for this.

57. The Homeowner advised that this was the first time he had heard that they have a process for notifying the homeowner.

58. *The Tribunal finds that the Property Factor failed to ensure all staff were aware of relevant provisions in the Code. It is clear that there were aspects of the Property Factors practice by staff which showed a deficiency in good communication practice and a failure of staff to understand that there were other teams in the Property Factor's organisation who could have better assisted the Homeowner's queries. The Property Factor has admitted during the hearing that there were some training issues identified following the Homeowner's complaint. We consider that there were errors in communication with the Homeowner and given this we find*

that this section of the code has been partially breached. We do not consider that there has been a breach in terms of third-party contractors, as was acknowledged by both parties, this repair was complicated, and we consider that it is not unusual for a more complicated repair to take more time. We consider that this was a communication issue, and we would have expected the Property Factor and not the third party to be reasonable for ensuring that all parties were kept informed of repair timescales.

OSP9. You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

59. The Property Factor said that there had been no breach under this section.

60. The Homeowner advised that the Property Factor had not asked him to update the main email contact after his mother (the homeowner) had died. He said that they were selling the house, and they had been communicating with him and his solicitors. He considered therefore when he made a stage 1 complaint the Property Factor's response should have been sent to him. The Homeowner advised that the Property Factor had all necessary information, and they should have updated his email address, and further, he considered it self-evident if he sent in a complaint that the Property Factor should respond to him.

61. The Property Factor advised that they have systems in place, customer management systems, while they had been corresponding with the Homeowner and his solicitor, official contact details were still in his late mother's name, and they had not received any instruction to change those details. The Property Factor went on to say that if they are notified that someone has passed away, then we will ask for the death certificate, and they should also ask for information about new contact and update the details. They agreed that this was not done in this case. The Property Factor advised that they have template letters, and they can refresh this procedure with the teams.

62. *The tribunal finds that there is a breach under this section. The Executors for the Homeowner were dealing with the sale of the property. It appears that the Property Factor did not ensure that contact details for the Homeowner were updated. There appears to have been some error in not having the contact details updated. We were not clear why this was, however as the complaint at stage 1 was made after the Property Factor became aware that the Homeowner had passed away, we cannot understand why the Property Factor would have sent a response to the late Homeowner. We consider that this was evidence that the Property Factor had not maintained appropriate records for the Homeowner.*

OSP10. You must ensure you handle all personal information sensitively and in-line with legal requirements on data protection.

63. The Property Factor considered that there was no breach under this section. They did accept that they should have updated the Homeowners contact details on finding out that the Homeowners mother had passed away.

64. The Homeowner considered that this was not a reasonable explanation. He had not been asked to update the contact email address.

65. *The tribunal does not find that there is a breach under this section, we do not consider that there was a failure to deal with personal information legally. We have however dealt with the failure to update the contact records in the previous section of this decision.*

OSP11. You must respond to inquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

66. The Property Factor did not consider that there had been a breach and stated that they had responded to the Homeowners complaint timeously. Although the Property Factor accepted that they had not responded to some email correspondence timeously. They considered there had been a high volume of it. The Property Factor advised that had the Homeowner been passed to the right team in the first place, he would have not had to constantly call as often.
67. The Homeowner accepted the Property Factor's position in response. He noted however that while it was said that it was ok to say that he should have been sent to the right teams, his stage 1 complaint was not upheld, and his stage 2 complaint was upheld, and he was told it was resolved but he did not get any further explanation from the Property Factor about the matters he had raised. He had felt that the stage 2 complaint did not really explain how they had addressed the issues he had raised.
68. *The tribunal does not uphold a complaint under these two sections. The Property Factor did respond to the Homeowner, we consider that any delays were de minimus and we do not consider that we should uphold a breach for those delays. What we consider, which is a theme running through the complaint and the decision, is that there were aspects of the Property Factors' practice where there was poor communication and many of the Homeowner's complaints stem from that poor communication, we have dealt with that issue earlier in this decision.*

Section 2: Communication and Consultation

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.

69. The Homeowner advised that his concern was that in the stage 1 response, the Property Factor said that they notified the Homeowner of initial work on 27 April, but this was inaccurate. On 27 April the other neighbour raised the repair when raised, the notification would have been sent out to the neighbours. It was suggested that the Property Factor may have notified the late Homeowner on 27 April, as hers was the registered email address. The Homeowner pointed out his mother had been dead for 6 months by that time.

70. *The tribunal does not find that there was a breach under this section. The issues raised in this section have been considered elsewhere by the tribunal and we do not consider that those issues sit under this section of the code.*

2.5 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.

71. The Homeowner advised that he ring the centre, but they would not be able to escalate the matter, and they would say that contractors were going out, they would say they had no contact with the contractors. The Homeowner would ask them to chase it up and would be told that the Property Factor could not do that. He said that he could not get past customer service front line.

72. The Property Factor advised that they have all information available online and in their written statement and complaints process was followed.

73. The Homeowner said that he did not feel that anyone was taking responsibility for his complaint. He felt that there was poor coordination. He knew the matter was complex, and the passing of his mother added to the complexity, but it was very frustrating to know no one co-ordinating it in the Property Factors organisation. He

advised he was crying out for someone to speak to, my lawyer had the same position, she noted that the emails were read but none responded to, and the first time he was able speak to anyone senior was after the first case management discussion.

74. The tribunal asked the Property Factor if any lessons had been learned, if there was always someone different to speak to then you have to keep re-explaining. The Property Factor was asked could a team not take responsibility? The Property Factor advised that they had taken on board that there had been communication issues. They advised that they are introducing a dedicated background team, to deal with owners' inquiries and it will put Homeowners through to the same person, if that person is online. They are hoping to launch this system in the next couple of months. They understood that people get frustrated having to speak to different people and getting a different answer.

75. *We do not find that there is breach under this section of the code. The Property Factor had contact details for reporting issues or making enquiries. The other issues raised under this section are dealt with elsewhere in this decision.*

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.

76. The Homeowner added that he had nothing further to add as these matters have been addressed already.

77. *The tribunal does not find that there is breach under this section of the code. We did not find evidence that the property factor did not 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 of service, before providing work or services which will incur charges or fees in addition to those relating to the core service.*

Section 6: Carrying out Repairs and Maintenance

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.

78. The Property Factor advised that they should have called the Homeowner on the day that they received the survey report to confirm the outcome of the survey.

79. The Homeowner advised that he considered that the Property Factor should have contacted them once they had all the information to advise them of the survey report outcome.

80. *The tribunal finds that there is a breach under this section of the Code in that the property factor had not informed the Homeowner of the progress of this work, on the day that the outcome of the survey report had been obtained.*

Section 7: Complaints Resolution

Property Factor Complaints Handling Procedure

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.

The complaints process must, at some point, require the homeowner to make their complaint in writing.

Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.

How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.

Where the property factor provides access to alternative dispute resolution services, information on this.

81. The Property Factor accept that the stage 1 response went to the wrong email address. The Property Factor accepted that there had been an issue in stage 1 response, they had emailed the Homeowner at stage 2. They advised that had the Homeowner not been happy with that response they would respond if they received a further email, it was not acceptable not to do so and it would be omission on their part.

82. The Homeowner advised he was not happy with the stage 1 response. He advised that this was not acknowledged in the stage 2 response. The Homeowner advised that when the complaint got to stage 2, the Property Factor's response was

superficial, glossed over matters and finished abruptly. The response irked him. He wrote an email response to that, and he assumed he would get a response, but he got no further response.

83. *We do not find that there is a breach under this section. There was no argument made that the Property Factor did not have a complaints procedure in place. The complaint centres on a. sending the stage 1 complaint response to the late Homeowner, and 2. Not following up with the Homeowner when he had responded to the stage 2 outcome. These matters relate to record keeping and communication and the tribunal has considered them in the earlier sections of this decision.*

COMPLAINT RESOLUTION SOUGHT

84. The Homeowner advised that he first, wanted an acknowledgement that there had been problems with the way that the Property Factor had dealt with his family. He said that had now been achieved having regard to the Property Factors oral response in the first-tier tribunal hearing.

85. He advised that it had been a complicated set of circumstances to deal with in relation to the house sale, the repairs work, and the death of his mother, the homeowner. He said that this situation was exacerbated due to the fact that the family were also grieving the loss of his mother. It had not been an easy time for them. He said that the last thing the family had needed was for the Property Factor to fail to respond to their queries. He wanted to be able to hand over the house sale to his lawyer and be done with it, but he became embroiled in a world of complexity. Everyone acknowledged that there were red flags with this sale. The Property Factor should have upped their game. He said that the Property Factor needed to take a long look at their processes. Lastly, he felt that the family had lost out financially, in relation to the sale of his late mother's home. He advised that they had had to accept a reduced offer, after the first sale had fallen through. He said that even if a faster timeframe could not have been achieved, had the Homeowner been given the correct information, then that would have been better, than having to provide different advice to the purchaser time and time again. The

Homeowner said that they had lost out financially and the Property Factor was accountable for that.

86. The Property Factor advised that there was no evidence that the delay or communication issues caused the Homeowner's financial loss. The Property Factor appreciated that there was a reduction in the price obtained at the sale, but the timescales involved in the survey work, due to the complexity of the building were reasonable. They had at times no further information to pass on to the Homeowner or his solicitor. They had communicated with the Homeowner to their best possible ability. They did not consider that further information would have led to a different sale outcome for the Homeowner. They advised that their processes were followed. After the stage 2 complaint, they are obliged to advise that the next stage is a referral to the first-tier tribunal. However, they were also clear that there were still opportunities for further discussion with a Homeowner after that stage. The Property Factor advised that communication was an issue in this case, and they had reviewed their communication, and a number of changes were being made by the Property Factor following this case.

DECISION

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

88. 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 consider that it would be appropriate to make a proposed order in this case.

89. The application has centred on the Property Factor's ability to communicate clearly and effectively with the Homeowner. We consider that there were a number of occasions where the Property Factor failed to do so during the time that the Homeowner was in the course of selling the late Homeowners property.

We also consider that there was evidence of poor record-keeping and staff training issues. These matters are set out in detail above.

90. We acknowledge that the Property Factor was apologetic for a number of errors, the Property Factor also appeared to have reflected on issues arising from what had happened in this case. They had also already carried out some refresher training for staff. We also note that the Property Factor was putting in place new software in order that, if possible, homeowners will get to speak to the same staff member dealing with an issue for them. We consider that all of these actions point to a finding that the Property Factor who had acknowledged failures in practice and was being proactive about improving practice. Given this we did not consider that the tribunal should impose any order on the Property Factor in terms of changes to practice.

91. We did find that the failures made by the Property Factor had caused the Homeowner stress, anxiety and inconvenience at a time in his life which was already stressful. We do not consider that we are in a position to find that the delay in identifying the repairs, led to the Homeowner having to take a reduction in the purchase price. We also consider that such a claim is outwith this tribunal's jurisdiction. We do however consider that there should be some compensation paid for the inconvenience and stress caused to the Homeowner during the sale of the property and we shall order that the Property Factor pay the sum of £500 compensation to the Homeowner. Accordingly, we attach the proposed Property Enforcement Order with this decision.

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