

**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/23/4547 and FTS/HPC/PF/24/2551**

**Property: 27/6 Mortonhall Road, Edinburgh EH9 2HS (“the Property”)**

**The Parties:-**

**Mrs Lyndsay Ovenstone, 27/6 Mortonhall Road, Edinburgh EH9 2HS (“the homeowner”)**

**Myreside Management Limited, registered in Scotland (SC213664) and having their Registered Office at 3 Dalkeith Road Mews, Edinburgh EH16 5GA (“the property factors”)**

**Tribunal Members: George Clark (Legal Member/Chairman) and Carol Jones (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the property factors have failed to comply with OSP11 and Sections 2.7 and 7.2 of the Property Factors Code of Conduct effective from 16 August 2021 and with Section 7.1 of the Property Factors Code of Conduct effective from 1 October 2012. The Tribunal proposes to make a Property Factor Enforcement Order.**

**Background**

**First Application**

1. By application, dated 12 December 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with OSP1, OSP2, OSP3, OSP5, OSP6, OSP8 and OSP11 and Sections 1, 2.7, 6.6, 6.12 and 7.2 of the Property Factors Code of Conduct effective from 16 August 2021 (“the 2021 Code”). She also contended that the property factors had failed to comply with the Property Factor’s Duties but advised the Tribunal on 4 January 2024 that she no longer wished to include a breach of the factor’s duties as part of the application.
2. The homeowner’s complaint, in summary, is that when the property factors arranged the roof replacement of the block of which the Property forms part, they did not take reasonable care, or appear to have sufficient knowledge of, roof insulation requirements, to ensure the roof replacement met building

standards (OSP6 and Section 6.6 of the Code). A full consultation on the roof replacement was not undertaken with the flat owners and the homeowner was not informed that the roof was not going to be insulated to current building standards (OSP1, OSP2 and Section 2.7 of the Code). The options for roof insulation were not fully considered or discussed with the owners when the roof replacement was organised. Professional advice should have been taken if there was any doubt as to the modern requirements for roof insulation (Section 6.6 of the Code).

3. The contractor who provided the roof replacement has not been required to give an explanation of the failure to insulate the roof to building standards, Verbal feedback from the property factors indicated that the contractor was of the opinion that the owners did not want the expense of adequate roof insulation, when there was no verbal or written consultation with all flat owners on this (OSP1, OSP2, OSP3, OSP8 and Section 6.12 of the Code).
4. The response to the homeowner's requests for quotations for adding roof insulation retrospectively had not been timely. In well over a year, no detailed verbal or written quotations had been provided, despite the homeowner's repeated requests (OSP3, OSP11 and Section 2.7 of the Code).
5. The property factors' Written Statement of Services ("WSS") states that complaints will be dealt with within 7 working days, but the homeowner did not receive a response to her letter of complaint of 21 November 2023 until 12 December 2023. In addition, there was no response to her previous communication, an email sent 23 October 2023, notifying the property factors of the homeowner's intention to issue a formal complaint if there was no indication of progress regarding the roof insulation issue (OSP11 and Section 7.2 of the Code).
6. The homeowner stated in her application that she was seeking a written response from the property factors explaining why they organised a roof replacement which did not meet building standards, the provision of three written quotations from building contractors for the retrospective addition of insulation, an update from the property factors regarding the issue and a staged plan for resolving it. Her view was that the property factors should contribute, either wholly or in part, to the cost of the work required to make the work on the roof compliant with building standards.
7. The homeowner provided the Tribunal with a copy of the property factors' WSS, and copies of various email exchanges between the Parties. She also provided copies of an email of 29 November 2019 sent by another owner ("JR") to the property factors' then Managing Director ("PB") and of his responses. JR specifically asked PB about roof insulation, stating that the three owner-occupiers in the Block "are particularly mindful of the timeliness of checking the position w.r.t. roof insulation before anything proceeds." She

asked PB to confirm whether there was any roof insulation, if so, what did it comprise and could it be improved upon. She also asked if it met anticipated standards for energy efficiency within the lifetime of a new flat roof. The view of the three owner-occupiers was that it would be sensible for the matter of roof insulation to be addressed hand-in-hand with replacement of the flat roof. PB's response of 2 December was that, having spoken to the contractor who had made repairs to the roof, he could confirm that there is insulation currently in place, but it was not possible without a core sample to say how much there is. He Added "I can confirm that there will be a minimum of either 30mm/50mm." The view of the homeowner was that replacement of the roof should not have proceeded without further consultation about the roof insulation.

8. On 31 January and 4 March 2024, the homeowner provided further documentation to the Tribunal. It included copies of emails between the Parties between July and October 2023. In an email of 5 July 2023, the homeowner stated to the property factors that the roof was replaced in 2020 without insulation of the thickness required by building standards at the time. She said that she had asked CK of Myreside Management Limited, as a starting point, to arrange quotes for adding roof insulation retrospectively and that she had repeatedly had to follow up on this request. There were further "chasing" emails of 17 August, 1 October and 23 October 2023. The documents also include a copy of a lengthy email of 20 November 2019 to PB, in which JR raised a number of technical questions related to the quotes that had been received and of PB's responses of 25 and 26 November. There was no mention of insulation in these emails, but JR then sent the email of 29 November referred to in paragraph 7 above.
9. The homeowner provided a copy of her response of 31 January 2024 to an email from the property factors of 17 January, but not a copy of that email. It appeared that the property factors had said that it was evident from various email threads that all owners were informed about the proposal to re-cover the flat roof and that discussions ensued, particularly regarding insulation, to which PB provided detailed responses, following which the owners collectively voted to proceed with the preferred contractor, with no further mention of concerns regarding insulation. The homeowner's response was that, although there was discussion about insulation, none of it was initiated by the property factors, and PB did not give detailed answers or fully address the points made by JR regarding insulation. In an email of 26 November 2019, three days before the deadline for voting on work, he stated that the thermal values of roof felt are not great and that is why you find insulation boards placed under the felt to allow for additional insulation and heat retention. He said that he had no way of knowing what sort of insulation was currently in place, but that he could ask the question of the contractor who did an install repair and could revert back to everyone. His response is contained in the email of 2 December 2019 referred to in paragraph 7 above. In her response of 31 January 2024 to the property factors' email of 17 January, the homeowner expressed the view that the property factors were at fault for not presenting any option for roof replacement which would include adequate insulation, despite repeated questioning on the

matter. She said that she first contacted the property factors by telephone in February 2023 and CK had assured her he would look back through the correspondence regarding the roof replacement and speak to the contractor and then get back to her. She had waited some time and had then called him back. He said he had obtained verbal feedback from the original roofer that the owners had not wanted the building standards thickness of insulation when the roof was replaced and that it would be expensive to add it retrospectively. CK had agreed to source quotes for adding the insulation retrospectively. She waited and then phoned the property factors, to be told that there had been no progress on the quotes and that her new office contact would be RL, who she emailed on 5 July 2023, explaining the issues and asking for assistance in obtaining the quotes. Following a further email of 17 August 2023, a roofing contractor looked at the roof on 14 September. The homeowner had left several messages for RL to call her back and when she was able to speak to him, she learned that the contractor had told him it would be costly but had not provided a verbal or written quotation. The homeowner sent further emails on 1 and 23 October.

10. It appeared from their email of 17 January 2024 that the property factors had been in touch with the contractor again. The contractor was on holiday at the time and the property factors had reached out to them that day (17 January) for further information on likely costs.
11. In an email of 26 January 2024, the property factors' Managing Director, Mr Leigh Collins told the homeowner that he had encountered challenges regarding communication between them and the owners due to PB's departure from the company two years earlier, access to his emails being either restricted or unavailable, but, reviewing email threads, it was evident that all owners were informed about the proposal to re-cover the flat roof, that discussions ensued, particularly regarding insulation, to which PB had provided detailed responses, disseminated to all owners, who had, following this, collectively voted to proceed with the preferred contractor, with no further mention of concerns regarding insulation.
12. The homeowner's further representations of 4 March 2024 comprised a copy of an email to her from Mr Collins of 14 February, in which he stated that the property factors do not assume responsibility for overseeing work of this nature, ensuring its suitability, or guaranteeing compliance with relevant standards. They lack the necessary professional qualifications and indemnity to provide such oversight. Their role involves obtaining quotes, presenting them to the owners, relaying questions to contractors and seeking instructions on how to proceed. While there had been enquiries about insulation from others, responses were provided based on available information. There were no objections or request for insulation to be part of the works. If there had been, PB would have sought updated quotes from contractors and presented them to all owners. Initially the issue was water ingress, with the proposed solution being to re-cover the roof, not replace it. Following the period of

consultation the owners returned their votes, to appoint Tecx Roofing to proceed with the works per their quotation. In hindsight, insulation could have been included, but it wasn't a priority or requested by any owner. Mr Collins apologised for any inconvenience caused to the homeowner by the property factors having been unable to find previous correspondence, copies of which the homeowner had had to provide. He summarised three insulation options, with verbal quotes from one company for two of them and said that RL had verbally relayed to the homeowner an estimated cost of £15,000 for Option 1 and £30,000 for Option 2, subject to a core sample. No quotes had been received for Option 3 as yet.

13. The homeowner's response to the property factors referred to an email from PB of 25 November 2019 in which he stated that had he had "both vast experience and knowledge of the current roofing system being discussed". This was at odds with the property factors' assertion regarding the reasons for the limited nature of their involvement in overseeing work. She also referred to the email from JR to PB of 29 November 2019, in which JR asked detailed questions about the insulation, which PB had not fully answered. She stated that the verbal quotation had never been relayed to her by RL and asked the property factors to provide three written quotations for Options 2 and 3, as she understood there could be condensation issues with Option 1.

### **Case Management Discussion**

14. A Case Management Discussion was held on the morning of 22 April 2024. The homeowner was present. The property factors were represented by Mr Leigh Collins, their Managing Director.
15. The homeowner told the Tribunal that there had been no further progress regarding obtaining quotes for retrospectively fitting insulation. JR had taken the "lead" in 2019 on behalf of the owners, but she no longer lives in the Block. All owners had been copied in on JR's emails to the property factors. The roof work had started prior to the COVID-19 restrictions and had been completed after lockdown ended. PB had given the impression that he was a bit of an expert on this roofing system, and it had not occurred to her that the job might not comply with building regulations. The contractors had apparently said the owners had not wanted the insulation work added, but that had not been given to them as an option. It was now more than a year since she had asked for retro-fitting quotes.
16. Mr Collins told the Tribunal that he did not as yet have any written quotes, although they had been requested.
17. The Tribunal told the homeowner that it appeared that her complaints regarding events in 2019 and 2020 were not covered by the Code effective from 16 August 2021 ("the 2021 Code") and that it would be necessary for her

to make a separate application under the Code effective from 1 October 2012. The 2012 Code does not contain any OSPs, so the Tribunal's determination on alleged failure to comply with OSPs would be limited to the complaints regarding failures to respond to emails in 2023 and to obtain quotes.

18. The Tribunal also noted that it had not seen the specification and estimate that was put to the owners in 2019. It might be important for the Tribunal to determine whether the roof was to be replaced, as the homeowner stated or whether it was, in effect to be a mere replacement of the roofing felt.
19. The Tribunal noted that many of the emails provided by the homeowner were "interspersed" with her comments/responses. The Tribunal would wish to see copies of all relevant emails in the format in which they were originally sent. The Tribunal did not appear to have a copy of the property factors' email to the homeowner of 17 January 2024.
20. The property factors had stated that the contractors had told them that the owners did not want insulation included in the work carried out in 2020 but have provided no evidence to support this statement.
21. The Tribunal decided to continue the case to a further Case Management Discussion and to issue appropriate Directions to the Parties. In the meantime, however, the Tribunal would hope that the property factors will use their best endeavours to obtain the written quotes that the homeowner asked for many months ago.

## **Second Application**

22. The homeowner made a second application to the Tribunal on 28 May 2024, under the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 1 October 2012 ("the 2012 Code). She contended that the property factors had failed to comply with Sections 2.1, 2.4, 2.5, 7.1 and 7.2 of the 2012 Code. She also ticked the box on the form to include Section 6 but this complaint was not notified to the property factors so could not be considered by the Tribunal.
23. The homeowner stated that the property factors had arranged quotes for a roof replacement in 2019. Repair had been an option, but the owners had requested quotes for replacement as there was a history of failed repairs. Initially, the owners were informed that a meeting would be arranged with the owners regarding the quotes, but this was never actioned by the property factors and, although the owners had tried to have a meeting, it was cancelled as no quotes had been received from the property factors in time.

24. The quotes were distributed by the property factors on 13 November 2019 and PB confirmed in an email of 20 November and in the voting slip that they were essentially for the same work. What was not made clear, however, was that none of the quotes included adequate insulation to meet modern standards. The subsequent consultation by email regarding the quotes was disjointed and unsatisfactory, leaving important questions unanswered.
  
25. Prior to the vote, the property factors did not have adequate measures in place to ensure there was proper consultation with a group of homeowners (contrary to Section 2.4 of the 2012 Code). The consultation took place via a disorganised series of emails, which did not always include all residents. Highly relevant questions were asked by a homeowner, June Rapson ("JR"), on behalf of the other homeowners. The responses answered some questions relating to the work but ignored those about the roof insulation. JR reminded the owners on 29 November 2019 of the importance of roof insulation and then sent a further email to PB on behalf of the owners, but his response of 2 December only went to two owners, neither of whom had a top floor flat (contrary to Section 2.4 of the 2012 Code). He merely stated that it would not be possible to determine the thickness of the existing insulation without a core sample, but that there would be a minimum of "either 30mm/50mm." The fact that this level did not meet current energy conservation requirements was never addressed by him. He had previously claimed in an email of 25 November 2019 to have "vast experience and knowledge of the current roofing system". This reassurance was misleading (contrary to Section 2.1 of the 2012 Code). PB provided false reassurance, as none of the quotes mentioned insulation.
  
26. PB had also provided assurances about the quality of work of the company the property factors would be recommending. This could also be construed as misleading, as the roof replacement, subsequently carried out by them, did not, in fact, meet building standards. He was sent a link in an email of 20 November 2019 from June Rapson to A Householder's Guide to Flat Roofing, published by the National Federation of Builders, a document which was unequivocal about the requirement for insulation that meets energy guidelines when a flat roof is replaced or refurbished. The homeowner conceded that it was possible there were further exchanges between PB and June Rapson after his email to her of 2 December 2019 which were not shared with everyone, but in the next communication the homeowner had, June Rapson had told PB that she was happy to proceed. The homeowner suggested that, as June Rapson had a ground floor flat, she might have felt that the insulation issue was not worth pursuing further.
  
27. The homeowner also voted in favour, having incorrectly assumed the issue of insulation had been addressed. She had been unaware that none of the quotes included replacement of insulation.

28. The commencement of the roof replacement was delayed by various factors, including the COVID-19 lockdown, but was finally completed in the summer of 2020.
29. When she realised that the insulation was probably not compliant with the standard required under building standards for a complete new roof, the homeowner notified the property factors of her concerns by telephone in February 2023. She suggested that if that was the case, the property factors should obtain three quotes for retrospectively fitting insulation. It appears that the property factors did no more than to speak to the original contractor, whom they quoted as saying the owners had not wanted additional roof insulation. There is no evidence that the owners were consulted on this (contrary to Section 2.4 of the 2012 Code).
30. When, after five months, no progress had been made in obtaining quotes (contrary to Section 2.5 of the 2012 Code), the homeowner telephoned the property factors and was advised to contact another employee, RL. She sent him an email on 5 July 2023, explaining the situation and requesting assistance in obtaining the quotes. Despite his assurances, it took a further email on 17 August 2023 before a roofing contractor examined the roof on 14 September. The only information relayed to her from this meeting was that insulating the roof would be expensive. The homeowner emailed RL on 1 October 2023. He responded the following day, but there were no further responses. Her follow up email on 23 October to him, copied to Mr Collins was left unanswered (contrary to Sections 2.5 and 2.7 of the 2012 Code). The homeowner then sent a letter of complaint dated 20 November 2023 to the property factors, but did not receive a response within the seven working days period specified in the WSS (contrary to Sections 2.5 and 2.7 of the 2012 Code).
31. Mr Collins acknowledged the complaint on 12 December 2023. This was followed by a more detailed email 6 weeks later, on 26 January 2024. In it, Mr Collins stated that, regarding the individuals she had contacted in the previous 12 months “no one has come forward with the mentioned communication”. The homeowner regarded this statement as false and misleading, as there was clear evidence of her email communication (copies of which she provided) with the property factors in the preceding six months. This was contrary to Section 2.1 of the 2012 Code.
32. On 14 February 2024, Mr Collins sent the homeowner another email with reference to three insulation options, with a very approximate estimated cost from one contractor for two of the options. There were, at the date of the application, still no quotations, despite her having asked for them more than a year ago by telephone and 10 months ago by email (contrary to Section 2.5 of the 2012 Code).



33. The view of the homeowner was that the property will devalue, as the only way to improve its EPC rating from E to C is to install roof insulation to building standards. She wanted a written response from the original contractor, to explain why roof insulation was not placed to building standards, a written response from the property factors to explain why they organised a roof replacement which did not meet building standards on insulation, provision of three written quotes for the retrospective addition of roof insulation, which would probably involve replacing the roof, the property factors to update the six flat owners regarding the issue and produce a staged plan for resolving it, and compensation for failing to consult properly with the flat owners and, as a result, failing to make the work on replacing the roof compliant with building standards.
34. The homeowner provided the Tribunal with copies of all the emails to which she referred in her application.
35. The Tribunal decided that the two cases should be conjoined, and a Case Management Discussion was set for 11 September 2024.

## **Second Case Management Discussion**

36. The second Case Management Discussion took place by means of a telephone conference call on the morning of 11 September 2024. The homeowner was present, and the property factors were again represented by Mr Leigh Collins.
37. Mr Collins confirmed that quotations for retrofitting insulation had not yet been obtained. Three options had been discussed with the owners. TECX Roofing had said the most viable option involved placing insulation on the top of the existing roof and the property factors had approached a further contractor, who had provided a verbal quote, but had subsequently advised that they did not want to be included. The property factors were struggling to find anyone prepared to retrofit, as this would void the manufacturers' 20-year guarantee for the materials used in the roof work that had been done.
38. The homeowner told the Tribunal that she had had no further communication from the property factors about any of this. They were no further forward, and it now appeared that replacing the flat roof without insulation meant that it could not now be fitted retrospectively. The homeowner understood that fitting insulation from the inside was not viable in a flat roofed property and would create a "cold" void. JR had asked questions about insulation, but the answers had only been shared with two of the owners. PB had said that he had vast experience of the roofing system and the owners took that as reassurance that they had expertise on the property factor's part and that the builders would be of high quality. The consultation had been chaotic and, in retrospect, the homeowner regretted not having enquired further at the time. JR had provided the lead and she had not relayed the comments of the property factors on 2

December 2019 that the contractors had said there was insulation, but its depth could only be ascertained by a core sample.

39. Mr Collins added that none of the three contractors had stated in their estimates that insulation should be a consideration. The homeowner responded that there had been a missed opportunity to upgrade the insulation, and this was due to chaotic communication and lack of proper consultation.
40. The Tribunal questioned Mr Collins as to what work was actually carried out on the roof. He stated that the contractors removed the existing roof felt and replaced it, so they did not go down to the timber decking beneath. He said the top flats were having ongoing problems with water ingress and there was a time element with a narrow window to make a choice on the quotes.
41. The discussion then turned to complaints resolution. Mr Collins told the Tribunal that the property factors have recently made changes to their procedures, but in the present case, there was an acknowledgement of the complaint, with an indication that the property factors were trying to resolve it, but the situation moved from the property factors being asked to obtain quotes for retrofitting insulation to the homeowner saying that they were at fault for not including insulation in the original work. The homeowner dealt with RL, who told her he was trying to go back through emails over the previous four years to and from an employee who was no longer with the firm. Ultimately nothing had been forthcoming and the homeowner had said she was not happy with the response and was going to the Tribunal.
42. The homeowner told the Tribunal that her request to seek estimates for retrofitting had been a perfectly reasonable one. RL had seemed willing to progress this but then did not correspond further and she felt that she then had no option but to apply to the Tribunal. Even this, however, had not resulted in any information being provided until the Case Management Discussion itself. The homeowner had wanted to have a rough idea of cost before involving any other owners, so had not discussed the matter with them when she contacted the property factors in February 2023. Mr Collins confirmed that the property factors have not been in touch with any of the other owners and have received no questions from them as to whether they can have additional insulation in the roof.
43. The Parties told the Tribunal that they were content for the application to be decided on the basis of their written representations and the evidence they had given at the Case Management Discussions and that neither of them wished to have an evidential Hearing.

## Findings of Fact

- i. The homeowner is the proprietor of the property, which is one of two top floor flats in a block of six, arranged over three floors at 27 Mortonhall Road, Edinburgh.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors are registered on The Scottish Property Factor Register.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have breached the Codes of Conduct under the Act.
- vi. The homeowner made applications to the First-tier Tribunal for Scotland Housing and Property Chamber on 12 December 2023 and 28 May 2024, under Section 17(1) of the Act.

## Reasons for Decision

44. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing. The Parties had also stated that they were content that the application should be decided without a full Hearing.
45. The Tribunal considered carefully all the evidence and documentation before it. There was a large amount of written material to examine. The application is made under a large number of Sections of the 2012 and 2021 Codes of Conduct. The Tribunal has considered everything presented to it, even if not every adminicle of evidence is set out or referred to in this Decision.
46. The Tribunal then considered the complaints in detail.
47. The homeowner complained that the property factors had not made it clear when distributing the quotes on 13 November 2019 that none of them included adequate insulation to meet modern standards. The Tribunal accepted that PB had said in an email of 25 November 2019 that he had both vast experience and knowledge of the current roofing system, but this was in response to a question by JR regarding supervision of the proposed work and he had added that the property factors could arrange for an independent surveyor if the owners wished. None of the quotes made any suggestion that roof insulation be checked with a view to upgrading if necessary. The proposed work would not involve anything below the timber decking and that was where the insulating material was located.

The quotes were not for replacing the entire roof. They were limited to replacing the roof covering on a like-for-like basis. The view of the Tribunal was that there was no reason for PB to proactively raise the matter of insulation and that his professed experience and knowledge must be regarded as being related to the works which were proposed in terms of the quotes, none of which made any mention of insulation. This also meant that there was no requirement for the property factors to consider building standards regulation and guidance in relation to roof insulation, given the limited scope of the work being carried out.

48. On 29 November 2019, JR raised the matter of insulation in an email to PB. She said that if there was no or inadequate insulation, three of the owners were of the view that it would be sensible to address it hand-in-hand with replacement of the flat roof. Her email was copied to all owners. She then sent another email to PB on 2 December 2019, stating that in her view roof insulation should also be quoted for. PB's response, also on 2 December 2019, was that he had spoken with the contractors who had made repairs to the roof. They had confirmed that there was roof insulation, but that it was not possible to confirm the thickness without a core sample. His email was sent only to JR and one other owner. The Tribunal noted, however, that JR's email sent earlier that day had also only been copied to one other owner and it was to that email that PB was responding. The Tribunal did not, therefore, uphold the homeowner's complaint that his email had not been sent to everyone. It appears that JR did not forward it directly to the other owners, but later on the same day, she copied in all owners to an email to PB in which she said "On the basis of your reply today and communications during November '19, some of which are copied below, I am very content to proceed with the contractors recommended by Myreside", subject to two provisos which related to communication regarding proposed timescales and on-site liaison in the lead-up to and during the work. The communications "copied below" to which JR referred included PB's response about his having spoken with the contractor who had made repairs to the roof.
49. The Tribunal accepted that JR led the discussions with the property factors in 2019 and 2020. Prior to a quote being accepted, she had, on behalf of the owners, asked a number of detailed questions. These had been answered by PB on 25 November 2019. The view of the Tribunal was that the property factors had answered her question regarding insulation and that their response had been forwarded to all the owners by JR having included it in her second email of 2 December 2019.
50. It does not appear that, thereafter, any of the owners raised the question of insulation again before they all agreed to accept the quotation
51. The Tribunal then considered the complaint regarding the delay in obtaining quotes for retrofitting. The view of the Tribunal was that the homeowner's request for such quotes was reasonable, as she was concerned about the EPC rating of the Property should she decide to sell it. She stated in her application that she first contacted the property factors by telephone in February 2023 and

indicated that, if the insulation was not compliant with building standards she wished them to provide three quotes for retrospectively fitting insulation. Her first contact was CK and the only action he appeared to have taken was to speak to the original contractor, whom he quoted as saying the owners had not wanted additional insulation, although there was no evidence that the owners were consulted on this. When, after five months, no progress had been made, the homeowner contacted the property factors again and was directed to RL. She sent him an email on 5 July 2023. It took a further follow up email on 17 August 2023 before a roofing contractor examined the roof on 14 September 2023. No verbal or written quotation was relayed to the homeowner and when she telephoned RL to enquire, she was told that insulating the roof would be expensive. She heard nothing further, so sent RL a further email on 1 October 2023. He replied on the following day, to say he was trying to establish the details as to whether insulation had been installed and, once he had completed his report, he would let her know what was going on. She did not receive anything further and on 23 October 2023, she sent RL a further email, which she also copied to Mr Collins, the property factors' managing Director. That email also went unanswered.

52. The homeowner then lodged a formal complaint letter dated 20 November 2023 with the property factors, who acknowledged receipt on 12 December 2023. This was followed by a more detailed response on 26 January 2024, six weeks later. They stated that, regarding the individuals she had contacted over the previous 12 months, "no-one has come forward with the mentioned communications". This, she said, was false and misleading, as there was clear evidence of her email communication with the property factors over that period.

53. On 14 February 2024, Mr Collins emailed the homeowner and apologised for any inconvenience caused to her by his statement that no-one had come forward with the communications to which she had referred in her complaint. At the time of his asking CK and RL, they were unable to find any correspondence, but he now accepted that, as the homeowner had evidenced, that was not correct. He set out three insulation options, with indicative costs for two of them, but confirmed that no written quotes had yet been obtained. He stated that the two verbal estimates had been relayed to the homeowner by telephone, following the contractors' visit on 21 September 2023. This was denied by the homeowner.

## The 2012 Code

54. Section 2.1 states "You must not provide information which is misleading or false." The detail of this complaint related to the property factors' treatment of her complaint of 12 December 2023. By this date, the 2021 Code had come into force, so the Tribunal **did not uphold** the complaint under Section 2.1 of the 2012 Code. The Tribunal noted that the homeowner had not made a complaint under the equivalent part of the 2021 Code, namely OSP4, but, for completeness, confirmed that it would not have upheld the complaint relating to Mr Collins' statement in his email of 26 January 2024 in which he stated "no-one has come forward with the mentioned communications". That statement meant

that the employees had not provided emails to him, not that they had not been sent and appeared to be based on enquiries he had made of the individuals involved. The homeowner had also complained that the statement by PB on 25 November 2019 that he had “both vast experience and knowledge of the current roof system being discussed” was misleading, as was his reassurance regarding the quality of the contractor’s work. The Tribunal did not uphold these complaints as there was no evidence of poor workmanship and PB’s comments on this and in regard to his own experience had to be considered in the context of the work under consideration being the replacement of the roof covering only, not a completely new roof structure.

55. Section 2.4 states “You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service.” The Tribunal **did not uphold** the complaint under this Section. There was clear evidence of consultation with homeowners prior to the roof work being instructed. The main contact had been through JR, but the relevant emails in response to detailed questions JR had asked about the quotes were all copied to or, on 2 December 2019, forwarded to the owners, including the homeowner. The owners then gave unanimous approval to the work going ahead.
56. Section 2.5 states “You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.” The Tribunal **did not uphold** the complaint under this Section, as it related to events in 2023 and 2024, so the 2012 Code no longer applied. It was, however, considered in relation to the 2021 Code.
57. Section 7.1 states “You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.” The Tribunal **upheld in part** the complaint under this Section as, whilst the WSS contains a Complaints Procedure, it does not include how the property factors will handle complaints against contractors. The formal complaint to the property factors had not, however, been made before the 2012 Code was replaced, so the Tribunal did not consider, under the 2012 Code, the wider elements of the property factors’ complaints procedure.
58. Section 7.2 states “When your in-house procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Tribunal”. The Tribunal **did not uphold** this complaint under the 2012 Code, as the complaint to the property factors was not made until November 2023.

## The 2021 Code

59. The Tribunal had told the homeowner at the first Case Management Discussion that, as her complaints relating to events in 2019 and 2020 predated the 2021 Code, the Tribunal's determination on alleged failure to comply with OSPs would be limited to the complaints regarding failures to respond to emails in 2023 and to obtain quotes.
60. OSP1 states "You must conduct your business in a way that complies with all relevant legislation." The Tribunal **did not uphold** the complaint, as the events to which it relates occurred before the introduction of the 2021 Code. The Tribunal noted that it would not have upheld this head of complaint anyway, for the reasons set out in Paragraph 47 of this Decision.
61. OSP2 states "You must be honest, open, transparent and fair in your dealings with homeowners". The homeowner's complaint related to her assertion that the property factors did not discuss roof insulation options and had not required the contractors to insulate the roof to building standards. This was, in essence, the same as the complaint under OSP1 and, for the reasons set out in the immediately preceding Paragraph of this Decision, the Tribunal **did not uphold** it.
62. OSP3 states "You must provide information in a clear and accessible way." The Tribunal **did not uphold** the complaint under this Section, partly as it related to events prior to the 2021 Code coming into force. The homeowner had referred to the delay in responding to her request for adding roof insulation retrospectively, but the Tribunal's view was that this was more appropriately dealt with under OSP11 and any delay did not involve a failure to comply with OSP3.
63. OSP5 states "You must apply your policies consistently and reasonably." No evidence was provided in support of the complaint under OSP5 and the Tribunal, therefore, **did not uphold** it.
64. OSP6 states "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." The homeowner's complaint related to events prior to the introduction of the 2021 Code, so the Tribunal **did not uphold** it.
65. OSP8 states "You must ensure all staff and 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." Again, this complaint related to events in 2019 and 2020, so the Tribunal **did not uphold** it.
66. OSP11 states "You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure". Although there was no supportive evidence, such as an email confirmation, of a

telephone call in February 2023, there was a clear email trail from 5 July 2023 regarding the homeowner's concerns in relation to roof insulation. It demonstrates that she was asking the property factors to obtain quotes for retrofitting but even at the date of the second Case Management Discussion, no quotes appear to have been obtained. A number of emails went unanswered or were only responded to after reminders were sent by the homeowner.

67. The Tribunal noted that the WSS states that the property factors will respond or deal with complaints within seven working days. The homeowner told RL in an email of 23 October 2023 that if she did not receive the information she was seeking by 10 November 2023, she would be sending that email to the property factors as notification of a formal complaint and she did this on 20 November 2023. The property factors acknowledged the complaint on 12 December 2023, and the Tribunal decided that they had failed to respond within seven working days. The property factors' substantive response was not, however, sent until 26 January 2024 and, whilst the Tribunal recognised that it would have taken Mr Collins some time to investigate the complaint, a six-week delay was a clear failure to comply with the requirement to respond to complaints within reasonable timescales and in line with their complaints handling procedure. Accordingly, the Tribunal **upheld** the complaint under OSP11.

68. The homeowner included in her application a complaint under Section 1 of the 2021 Code and referred to "Invoicing and complaints procedure". The Tribunal did not find any evidence relating to Invoicing. Section 1.5(D)(15) requires that the WSS sets out "the property factor's complaints handling procedures." The Tribunal **did not uphold** the complaint under this Section. The property factors' WSS sets out their Complaints Procedure and a complaint that they did not follow it would more correctly fall under OSP11 and Section 2.7 of the 2021 Code.

69. Section 2.7 states "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 timetable". The Tribunal **upheld** the complaint under this Section, for the reasons set out in Paragraph 67 of this Decision relating to OSP11.

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



complaint under this Section, as it related to events prior to the introduction of the 2021 Code.

71. Section 6.12 states “If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their authority to act in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners.” The Tribunal **did not uphold** the complaint under this Section, as there was no evidence of any defective work or service on the part of contractors.
72. Section 7.2 states “When a property factor’s in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing”. The Tribunal **upheld** the complaint under this Section. There was no evidence that the property factors’ email of 26 January 2024 or their subsequent email of 12 February represented their final decision. They do not appear at any point to have confirmed their final position to the homeowner, although the Tribunal noted that, by the time the response of 26 January 2024 was sent, the homeowner had already made an application to the Tribunal.

### **Property Factor Enforcement Order**

73. The complaint upheld in respect of Section 7.1 of the 2012 Code was technical in nature and had no impact on the homeowner, as her complaints relating to roof insulation were not upheld, so there would have been no requirement to pursue the contractors for defective work.
74. The failure of the property factors under Section 7.2 of the 2021 Code was not regarded by the Tribunal as significant in the present case, but only because the homeowner had made her first application to the Tribunal before the property factors responded in detail to her formal complaint. The Tribunal would, however, recommend that, if they have not already done so, the property factors should revise their WSS, as the Complaints Procedure does not set out a series of steps that they will take in response to complaints, how they will communicate their final decision and that, if not satisfied, how an owner may apply to the Tribunal.
75. Although most of the complaints made by the homeowner were not upheld, those made under OSP11 and Section 2.7 of the 2021 Code were regarded by the Tribunal as serious. There has been a pattern of poor communication by the property factors, including failures to respond to emails or lengthy delays requiring the homeowner to send frequent reminders. The homeowner had to deal with a number of members of staff, some of whom appeared to have left their employment without the business being able to access fully records of actions taken (or not taken) following email enquiries. Promises of responses were made and not kept, and the property factors do not seem to have taken a

grip of the reasonable and straightforward request by the homeowner for estimates for retrofitting insulation to the roof of the block.

76. All of this caused the homeowner significant inconvenience, and the view of the Tribunal was that a Property Factor Enforcement Order requiring the property factors to pay compensation would be appropriate, The Tribunal decided that the sum of £500 would be fair, reasonable and appropriate in all the circumstances. The Tribunal proposes making a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision.

77. The Tribunal's Decision was unanimous.

### **Right of Appeal**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**George Clark**

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**8 October 2024**

**Legal Member**

**Date**