



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

**STATEMENT OF DECISION:** in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

**Chamber Ref: FTS/HPC/PF/23/0271**

**Re: Property at Flat 0/1, 33 St Andrews Crescent, Pollokshields, Glasgow, G41 5SE (“the Property”)**

**Parties:**

**Mr Alexander Gillespie, Flat 0/1, 33 St Andrews Crescent, Pollokshields, Glasgow, G41 5SE (“the Applicant”)**

**Southside Factoring and Related Services Limited, Southside House, 135 Fifty Pitches Road, Glasgow, G51 4EB (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms C Jones (Ordinary Member)**

**Decision**

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs 2.7, 6.1 and 6.4 of the 2021 Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

**Background**

1. By application received in the period between 30<sup>th</sup> January and 11<sup>th</sup> May 2023, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraphs 2.1, 2.7, 5.1, 5.3, 5.4, 5.5, 5.8, 6.1, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.12, 7.1, 7.2 and 7.4 of the Code, and had failed to carry out its property factor duties.
2. The Property Factor lodged written representations on 1<sup>st</sup> August 2023.

3. A Case Management Discussion (“CMD”) took place by telephone conference on 16<sup>th</sup> August 2023. The Homeowner was in attendance. The Property Factor was represented by Mrs Claire Mullen, Solicitor. Mr Brian McNeillie was in attendance on behalf of the Property Factor. A preliminary point was made on behalf of the Property Factor regarding a lack of notification to the Property Factor of paragraphs 5.5, 6.9, 6.12, 7.1, and 7.4 of the Code, which the Homeowner had included in the application form. The Homeowner confirmed he was no longer insisting on those paragraphs. The CMD was continued to a hearing.
4. The Property Factor lodged a first inventory of productions on 1<sup>st</sup> November 2023.
5. A hearing was convened on 16<sup>th</sup> November 2023. The hearing was adjourned due to the late lodging of documents by the Homeowner. A hearing was set down for 19<sup>th</sup> February 2024. A Direction was issued to the Homeowner regarding the presentation and lodging of the documents, ordering that they be lodged within 7 days
6. The Homeowner lodged his documents, comprising a first inventory of productions, on 1<sup>st</sup> February 2024.
7. By email dated 7<sup>th</sup> February 2024, the Property Factor’s representative objected to the late lodging of the Homeowner’s documents, requesting an adjournment of the forthcoming hearing, in the event that the Tribunal was not minded to reject the documents.
8. The Tribunal issued a Direction to the Homeowner dated 9<sup>th</sup> February 2024, ordering him to explain why his productions were not lodged in accordance with the Direction and requesting his views on the proposed adjournment of the hearing.
9. By email dated 9<sup>th</sup> February 2024, the Homeowner responded, stating that he had misunderstood the Direction and believed he could lodge his productions no later than 14 days before the hearing. The Homeowner did not object to the proposed adjournment.
10. The Tribunal decided to postpone the hearing set down for 19<sup>th</sup> February 2024. The decision to postpone was not based on the late lodging of the documents, but on the basis that the Homeowner had failed to comply with the Direction in respect of numbering each page of the productions, which would lead to confusion at the hearing.
11. By email dated 25<sup>th</sup> February 2024, the Homeowner lodged his first inventory of productions.
12. By email dated 12<sup>th</sup> April 2024, the Property Factor lodged a second inventory of productions and a witness list.

13. By email dated 11<sup>th</sup> April 2024, the Property Factor requested an adjournment of the hearing set down for 29<sup>th</sup> April 2024 due to the unavailability of Mr McNeillie. The Tribunal granted the request for an adjournment.
14. Both parties requested an adjournment of a hearing set down for 1<sup>st</sup> July 2024. The Tribunal granted the request for an adjournment.
15. On or around 6<sup>th</sup> September 2024, the Homeowner lodged a second inventory of productions.

## **The Hearing**

16. A hearing took place on 18<sup>th</sup> September 2024. The Homeowner was in attendance. The Property Factor was represented by Mrs Claire Mullen, Solicitor. Mr Brian McNeillie was in attendance on behalf of the Property Factor. The Legal Member attended by video conference, with the others present at the Glasgow Tribunal Centre.

## **The Homeowner's position**

### **Paragraph 2.1**

*Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.*

17. The Homeowner referred to an issue with the installation of bike storage units at the Development in 2022. Homeowners had not been informed by letter that the installation was to be carried out. On the day contractors attended with a crane, the Homeowner had to stand under the crane as the contractors were going to install the units on top of the fire hydrant. They eventually put one at the rear of the Homeowner's block under his window. They have been installed in breach of the Deed of Conditions, which states that the area must remain open.

### **Paragraph 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.*

18. The Homeowner pointed out that the Property Factor had accepted a failure to comply with this paragraph. It was his position that the Property Factor had not investigated the matter and they were still looking into it.

### **Paragraph 5.1**

*A property factor must have, and maintain, an adequate professional indemnity insurance policy, and ensure that it is appropriate for its level of income and type of services offered. This applies to a property factor that is a local authority or housing association unless it is able to arrange equivalent protections through another route. Details of the policy (including name of provider, policy number and summary) or equivalent protections must be made available if requested by a homeowner who wishes to verify the policy is in place.*

19. The Homeowner said he accepted the Property Factor maintained adequate professional indemnity insurance. His complaint related to the cost of buildings insurance. He was aware that other insurers charged half the cost of their common insurance policy, which they were tied into for 5 years. There was an additional cost of contents insurance.

### **Paragraph 5.3**

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

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

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

20. The Homeowner referred to his previous submissions on insurance. The Property Factor had failed to provide the homeowners with quotes, and had sent them an invoice for the insurance with no consultation. The homeowners have been provided with letters with some information, but they have no say in the appointment of the insurer, and they cannot change the insurer. The Homeowner has to deal with two different companies for his buildings and contents insurance. He has had to take the buildings insurer to the Ombudsman in respect of being re-homed while works were carried out to the Property. There had been problems getting his kitchen replaced. The broker had been abysmal.

#### **Paragraph 5.4**

*Homeowners must be notified of any substantial change to the cover provided by the policy.*

21. The Homeowner said he accepted the representations from the Property Factor that there had been no change to the cover provided.

#### **Paragraph 5.8**

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

22. The Homeowner said he accepted the Property Factor's representations that there had been no failure to comply with this paragraph. His concern was that the policy was in existence for 5 years.

#### **Paragraph 6.1**

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

23. The Homeowner pointed out that the Property Factor accepts they failed to comply with the paragraph. The Homeowner said most of the evidence indicated how badly they had failed. There are ongoing issues, with repairs still outstanding, but the Property Factor has taken huge steps forward.

#### **Paragraph 6.3**

*A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.*

24. The Homeowner said the Property Factor had phoned him last week to say works are still ongoing. Prior to that call, he had heard nothing since February. The Property Factor has not told him what was done. The Homeowner has phoned the Property Factor time after time, and spoken to a different person each time. There is no way of proving matters are looked into, and no reference number is provided by the Property Factor, which would make matters easier.

#### **Paragraph 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.*

25. The Homeowner pointed out that the Property Factor had accepted a failure to comply with this paragraph.

#### **Paragraph 6.5**

*If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.*

26. The Homeowner said the Property Factor had failed to gain access to a property on the fifth floor. The homeowner would not allow access. There was a leak from that property running through the block, and this was an emergency. The Property Factor did not do enough to gain access. This should have been done under the Tenement (Scotland) Act 2004. The Property Factor eventually gained access to the property in May 2023.

#### **Paragraph 6.6**

*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.*

27. The Homeowner said there is no communication from the Property Factor. There is no explanation on the monthly invoices as to why some costs are being charged monthly, e.g. monthly checks on the lift/door entry system/CCTV in the building. Nothing is received by the homeowners to show why this is necessary. Responding to questions from the Tribunal, the Homeowner said it would be too difficult to find an example of an invoice. The Tribunal referred the Homeowner to item 15.3 on the Respondent's Second IOP. The Homeowner said the door entry system check was an example of a monthly charge. This should only be happening every six to twelve months.

#### **Paragraph 6.7**

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

28. The Homeowner said the Property Factor claims that visits are undertaken and visual inspection carried out, but the homeowners have not seen the visits take place. They are never told of the visits and there is no communication whatsoever. The Homeowner referred to page 21/14 onwards in his Second IOP, which shows photographs of damage to the common close, including a cracked ceiling which has been in this condition for five years. The photographs were taken two weeks before the hearing. The photographs show cracks to the ceiling, floor, and walls, some of which was caused by a pipe that leaked on and off for decades. The Property Factor has scraped off some plasterwork, but the damage has been evident for years. The Property Factor is not maintaining the common parts properly and the homeowner has to carry out repairs. The Property Factor put a wheelie bin underneath a leak, which showed they knew the leak was there.

### **Paragraph 7.2**

*When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.*

29. The Homeowner said the Property Factor had mentioned a final decision in one communication in the past, but he had nothing in writing. Asked by the Tribunal to clarify how the communication had been made, if not in writing, the Homeowner said he did not know. The Homeowner said nothing had been put in writing by the Property Factor to say what was required at the stage 1 complaint process. That was why the Homeowner took the application to the Tribunal. A leaflet had been provided by the Property Factor, but that put the onus on the Homeowner to do the work.

### **Property Factor Duties**

30. The Homeowner said the Property Factor had failed in its duties by failing to observe timescales for repairs and relocation. They had also allowed issues to accumulate, which led to destruction of the common property.

31. The Homeowner referred to the charging for the concierge service, stating that homeowners should not be responsible for paying the associated costs for what was a caretaker service. He had received information from the Property Factor which showed homeowners were paying towards the staff pension, holiday pay, sick pay, work clothing, management, and cleaning materials. Homeowners are paying £30 per month towards the service, but they are only getting the service of one caretaker at a time, so should be paying £8 per month. The Homeowner said they should not be paying for a manager for the service. He compared this to the window cleaning service and said homeowners were not paying for the window cleaning solution or management costs. The Homeowner said they are not employing the caretakers. They are employed by the Property Factor, who should meet their costs.

## **The Property Factor's position**

### **Evidence of Mr Sean McCann**

32. The witness is the property services officer for the Property Factor. The witness adopted the affidavit (PF 5/1) lodged on behalf of the Property Factor as his evidence. The witness spoke to a report lodged regarding leaks affecting the Property and the common block (PF5/6). The witness said this was a useful way to keep a timeline of issues. He updated the report after visits to several flats within the block. The witness described the procedure for investigating leaks and said it was not always easy to identify the source.
33. The witness spoke to emails between the Homeowner and an environmental health officer regarding the leak, where the environmental health officer had stated that there were contradictions in the witness's report. The witness denied there were contradictions in his report. He recorded what he found on his visits over a period of months. The witness described issues from flat 1-4, which affected other properties, including the Property. The witness said he noted that the issues within 1-4, when visiting with a plumber on a later occasion, were caused by severe condensation around a pipe connected to the overflow stack. He also noted an issue in the homeowner's flat when visiting with the plumber from Paradigm relating to a flexi waste pipe and a gap around the shower tray/wet wall, the Homeowner was responsible for addressing those issues. He said there were several issues which stemmed from flat 5-3 where a disconnected tank was overflowing, several joints in the stack were affected in the flats above the homeowner's Property.
34. The witness said he thought matters had been dealt with in May 2023 after the work to address the flow of water from the tank in flat 5-3 was completed, but he was called out again in August 2023 with a report of further leaking pipework. There was a dribble of water from the ceiling. The contractor identified a leaking silicone seal in flat 1-3, and a hole in the back of pipework. The issues were repaired.
35. The witness said he would speak to the Homeowner from time to time with updates on the issues, and he had attended at the Property to investigate matters.
36. Further investigations in respect of leaking concerns were carried out in September and October 2023. In October 2023, two issues within the Property were identified as contributing to the leak. These were a copper overflow pipe from the main stack and a leak at the shower tray and attached flexi waste pipe. The contractor assessed what work should be carried out by the Property Factor and this was done.
37. In January 2024, the witness was informed of further issues at the Property. In February 2024, a contractor attended and said he was satisfied with the pipe integrity, and suggested if there was an issue, it was with flat 1-4.



38. The witness said it has been challenging to find someone to carry out repairs to the flooring in the common close, but this is due to be carried out soon. The witness said it was hard to tell if this damage was to do with the leak. The flooring is around 25 years old.

### **Cross-examination of the witness**

39. The witness said he agreed with most of the information from the environmental health officer. Asked whether the environmental health officer had made a false statement in a letter to a Member of Parliament, the witness said he disagreed with some of the environmental health officer's findings, which did not accord with what the witness had found.

40. The witness said water leaking into cracks could cause damage to the flooring. The witness said he had called the Homeowner recently because of issues that had arisen in the evidence submitted to the Tribunal. He wanted to ask if there was any recent water ingress.

41. The witness was challenged as to how certain water ingress issues had affected the kitchen of the Property. The witness said it was one factor of many, and that dampness can travel upwards.

42. The witness said he agreed the likely source of water ingress was from property 1-4.

43. Responding to questions from the Tribunal, the witness said he reports issues noted on maintenance visits to asset management. The development does not have cyclical checks. Painting would usually be carried out every 5 years.

### **Re-examination of the witness**

44. The witness said he had spoken to the contractor, and clarified with Paradigm that work to communal pipe work which returns into the homeowner's Property had to be carried out before the kitchen in the Property was completed.

## **Representations for the Property Factor**

### **Paragraph 2.1**

45. Mrs Mullen adopted her written representations. Correspondence was hand delivered to all residents by the Property Factor's parent company in April or May confirming the installations of bike sheds. The sheds were installed at no cost to the owners. The location was changed due to representations from the Homeowner. If the Homeowner has an issue, he should take it up with the parent company.

46. In terms of the Written Statement of Services ("WSS"), the level of delegated authority is £1000. The Title Deed provides for a level of £2000. The Property Factor has lowered this.

47. Each query of the Homeowner regarding invoices was responded to promptly. The longest time for a response was 8 working days. The WSS allows for a response within 10 working days. The Property Factor denies breach of this paragraph.

**Paragraph 2.7**

48. The Property Factor accepts breach of this paragraph between September 2022 and January 2023 only. An apology has been offered. The witness evidence indicated that strenuous efforts have since been taken. The Property Factor is not required to agree with the environmental health officer or the Homeowner. The Property Factor's responsibility is to identify the leak.

49. Complaints made by the Homeowner regarding invoices had been dealt with within the timescales provided in the WSS.

**Paragraph 5.1. 5.4 and 5.8**

50. The Property Factor denies breach of these paragraphs. The Homeowner now accepted the Property Factor's position.

**Paragraph 5.3**

51. The Property Factor denies breach of this paragraph. Productions 6 and 7 showed insurance letters issued by the Property Factor in compliance with this paragraph. The Homeowner's concern seems to be the cost of insurance but that does not fall within this paragraph. The Property Factor is required in terms of the Title Deed to arrange a common policy. The insurance is arranged by a broker. The Property Factor is not obliged to secure the cheapest deal.

**Paragraph 6.1**

52. The Property Factor accepts breach of this paragraph, as repairs were not carried out promptly between September 2022 and January 2023. The repairs team had been down two members of staff at that time.

**Paragraph 6.3**

53. The Property Factor denies breach of this paragraph. The Property Factor has the necessary procedures in place as set out in clause 2.2 of the WSS.

**Paragraph 6.4**

54. The Property Factor accepts breach of this paragraph, however, the Property Factor maintained regular contact with the Homeowner from 23<sup>rd</sup> February to 26<sup>th</sup> May 2023 with a view to resolving the repair.

### **Paragraph 6.5**

55. The Property Factor denies breach of this paragraph. The Property Factor's procedure is set out at clauses 2.2 and 3.2 of the WSS. Homeowners are bound to permit access in terms of the Deed of Conditions. If the homeowners wished action to be taken through the court, they would have to take action and pay for that. This service is not provided through the WSS. The local authority has powers to issue statutory notices to force access.

### **Paragraph 6.6**

56. The Property Factor denies breach of this paragraph. It is not the Property Factor's responsibility to instruct works inside the Homeowner's property. It is a matter between the homeowner and the insurer. The issue in respect of invoices had not been notified to the Property Factor.

### **Paragraph 6.7**

57. The Property Factor denies breach of this paragraph. Property visits are undertaken by the Property Factor staff and a visual inspection of common parts is carried out from ground level. Production 9/1 is an example of an inspection report. It seemed sensible to put a wheelie bin and bucket in place to catch leaking water. This may have been a temporary solution, and significant efforts had been made since February 2023 to fix the issue.

### **Paragraph 7.2**

58. The Property Factor denies breach of this paragraph. The Property Factor confirmed the final decision by complying with stage 2 of the complaints procedure. The Property Factor does not have to resolve the complaint. The Code does not require the Property Factor to notify a homeowner that they can escalate matters to the First-tier Tribunal. In any event, the Homeowner was aware of this, as he indicated prior to receiving his stage 2 response that he was in the process of completing the Tribunal application. Production 8.4 shows the complaints procedure. The Homeowner had received a leaflet at the stage 1 process that mentioned the Tribunal.

### **Property Factor Duties**

59. The Property Factor provides a concierge service at cost, as outlined in production 10. The cost to the Property Factor includes all employee costs. The Property Factor is entitled to charge for this service in terms of clause 6b of the Deed of Conditions. The costs are apportioned between the blocks in the Development. The costs, as set out in production 10, show an undercharge to homeowners, rather than an overcharge. It is not clear what property factor duty has not been carried out.

60. The other alleged failures to carry out the property duties related to internal matters at the Property, which are the responsibility of the Homeowner and the

insurer. The Property Factor has no responsibility for rehousing the Homeowner.

### **Homeowner response**

61. The Homeowner said the Property Factor was ignoring parts of the Deed of Conditions, such as the clause that no dogs were allowed. There was no proof the concierge costs were necessary.
62. The Homeowner referred to the Property Factor's Spring newsletter (page 21/8) stated that there were areas around repairs that still need to be improved. The Property Factor has admitted this, so the Homeowner does not have to prove it. It is stated in the newsletter (page 21/10) that the Property Factor will take care of common parts. The Homeowner's photographs indicate that is not the case. The pathways are a disgrace. Common areas have not remained open and unbuilt upon, as the bike shed situation shows. This is a semi-permanent structure. The Property Factor has ignored the Deed of Conditions.
63. The Property Factor is issuing quarterly bills, but the issues remain the same. They state (p21/11) that they have revised key repairs and maintenance policies and procedures, but they have not communicated this to the homeowners. They state (p21/12) that they will instruct routine repairs, and provide information on planned work before it begins. They do not do this and there is no consultation with homeowners. They refer to the portal (p21/13) but it is not working and this has a constant knock-on effect. The Property Factor is not meeting the Code because of general disorder.

### **Property Factor response**

64. Mrs Mullen said the newsletter is issued by the parent company as a social housing landlord. There is a new invoicing system and homeowners will be able to click on invoices.
65. Mr McNeillie said the portal was provided as part of the new system. It has to be tested and discussion is ongoing.

### **Findings in Fact and Law**

- 66.
- (i) The Homeowner is the heritable proprietor of the Property.
  - (ii) The Property Factor is registered as a Property Factor under registration number PF000323.
  - (iii) The Property Factor provides factoring services to the development of which the Property forms part.
  - (iv) The Homeowner reported water ingress at the Property to the Property Factor on 29<sup>th</sup> August 2022.

- (v) The Property Factor delayed in arranging a plumber to attend the Property despite repeated calls from the Homeowner.
- (vi) Property Factor staff repeatedly undertook to call the Homeowner back and failed to do so.
- (vii) The Homeowner complained to the Property Factor on 21<sup>st</sup> November 2022.
- (viii) By letter dated 25<sup>th</sup> November 2022, the Property Factor acknowledged poor service from the repairs team
- (ix) The Homeowner complained to Environmental Health, who reported on 9<sup>th</sup> January 2023 of a serious health nuisance in respect of the water ingress from a common pipe, with dampness, decay, and mould growth.
- (x) By letter dated 12<sup>th</sup> January 2023, the Property Factor upheld the Homeowner's complaint in respect of poor service from the repairs team.
- (xi) Damage was caused to the Property by water ingress, which led to the Homeowner having to move out of the Property while repairs were carried out.
- (xii) Between 23<sup>rd</sup> February and 26<sup>th</sup> May 2023, the Property Factor carried out investigations to identify the source of the water ingress, which was traced to a privately tenanted property.
- (xiii) The Property Factor has failed to respond to enquiries and complaints received orally and in writing within the timescales confirmed in their WSS.
- (xiv) The Property Factor failed to make prompt repairs to the building of which the Property forms part.
- (xv) The Property Factor failed to arrange repairs in an appropriate timescale and keep the Homeowner informed of the progress of the work.
- (xvi) The Property Factor is entitled to charge the Homeowner for all costs relating to the concierge service.
- (xvii) The Property Factor confirmed their final complaint decision to the Homeowner by letter dated 12<sup>th</sup> January 2023.

### **Tribunal Decision and Reasons**

67. The Tribunal noted that paragraphs 2.7, 5.1, 5.4, 5.8, 6.1 and 6.4 were no longer the subject of disagreement between the parties.

### **Paragraph 2.1**

68. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code in respect of the bike sheds. There was an insufficiency of evidence to find, on the balance of probabilities, that communication from the Property Factor on this issue had been poor. It was not clear that the work was carried out by the Property Factor.

### **Paragraph 5.3**

69. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. Productions 6 and 7 showed insurance letters issued by the Property Factor in compliance with this paragraph. The Homeowner's issues with insurance did not appear to fall within the ambit of this paragraph of the Code.

### **Paragraph 6.3**

70. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. The Property Factor has the necessary procedures as set out in their WSS.

### **Paragraph 6.5**

71. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. The Property Factor cannot guarantee access to a property, and enforcement action to gain access must be taken by homeowners.

### **Paragraph 6.6**

72. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. The matters complained of by the Homeowner are concerned with repairs to internal areas of his Property, which are the responsibility of the Homeowner. The Tribunal made no findings in respect of invoices, as this matter had not been notified to the Property Factor as part of the application.

### **Paragraph 6.7**

73. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. The Tribunal considered there was an insufficiency of evidence to find on the balance of probabilities that the Property Factor had failed in this regard. The photographs submitted by the Homeowner were recent, and there was no indication of how long the problem had been ongoing for.

## **Paragraph 7.2**

74. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code. The final decision was confirmed in writing. The Tribunal observed it was unfortunate that the final decision did not inform the Homeowner of the route to the First-tier Tribunal, mentioning instead the Ombudsman. However, it was clear the Homeowner was already aware of his options in terms of the Tribunal, the information had previously been provided to him, and the Code does not require the Property Factor to specifically provide this information.

## **Property Factor Duties**

75. The Tribunal did not find that there had been a failure to carry out the property factor duties. The Property Factor is entitled to charge for the costs related to the concierge service. Full details of the costs have been provided to the Homeowner and the Tribunal. There did not appear to be any merit in the Homeowner's arguments that the costs included were unusual or ought not to be the responsibility of homeowners, for whom the service is provided. The Property Factor could not be expected to bear the costs of the concierge service.

76. The complaints relating to timescales for completion of work within the Property and the rehousing of the Homeowner do not come within the remit of the Property Factor.

## **The Property Factor's failures to comply with the Code**

77. The Tribunal considered the failures by the Property Factor to have been extremely serious. Although it was clear that the service has improved since Mr McCann's involvement, the lack of response and communication with the Homeowner in the period after he reported water ingress and repeatedly requested assistance, was woeful, and may have contributed to the damage to the Property, as well as causing considerable distress, frustration and inconvenience to the Homeowner.

## **Proposed Property Factor Enforcement Order (PFEO)**

78. Having determined that the Property Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.

79. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.

80. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

## 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.

Helen Forbes

---

Legal Member

23<sup>nd</sup> October 2024  
Date