



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number:

FTS/HPC/PF/23/1193 and FTS/HPC/PF/23/1875 together referred to as "the Applications".

Re: Flat 0/2, 453, Tantallon Road, Glasgow, G41 3BX (“the Property”)

The Parties:

Mr. Kashif Naeem, residing at 223, Auldhouse Road, Glasgow G43 1DF (“the Homeowner”)

and

Walker Sandford Property Management, having a place of business at St. George Buildings, St Vincent Place, Glasgow G1 2DH (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) and Elizabeth Dickson (Ordinary Member)

Decision

- (i) With regard to Application FTS/HPC/PF/23/1193 , the First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the Property Factor failed to comply with the Section 14 duty of the Act in respect of compliance with the Property Factor Code of Conduct 2012 section 6.4 of the 2012 Code and failed to comply with the Property Factor’s Duties and
- (ii) With regard to Application FTS/HPC/PF/23/1875, the First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the Property Factor failed to comply with the Property Factor’s Duties, only.

The First-tier Tribunal proposed to make a Property Factor Enforcement Order.

Background

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determinations that the Property Factor had failed to comply with the 2012 Code of Conduct for Property Factors (“the “2012 Code”) and the 2021 Code of Conduct for Property Factors (“the “2021

Code”). The Applications also complained of failures to comply with property factor duties.

2. Application FTS/HPC/PF/23/1193 dated 14 March 2023 and lodged on 17 April 2023 comprises the following documents: - (i) First-tier Tribunal standard application form, Form “C1” (ii) copy statutory intimation letter to the Property Factor in respect of the 2012 Code and property factor duties dated 23 February 2023 and (iii) a copy of the Property Factor’s Written Statement of Services.
3. This Application complains of the following breaches of the 2012 Code:- Written Statement of Services at Sections 1.1a (B)(c) (d) , C (i) (k) and D(1); Section 2, Communications and Consultation at Sections 2.4 and 2.5 ; Section 3 Financial Obligations at Section 3, Section 4 Debt Recovery at Sections 4.3 and 4.7; Section 6 Carrying out repairs and maintenance at Sections 6.1, 6.4 and 6.9 and Section 7 Complaints Resolution at Sections 7.1 and 7.2. This Application also complains of a breach of property factor duties in respect of the way in which the Property Factor acted.
4. Application FTS/HPC/PF/23/1875 dated 24 May 2023 and lodged on the same day comprises the following documents: - (i) First-tier Tribunal standard application form, Form “C2” and (ii) copy statutory intimation letters to the Property Factor in respect of the 2021 Code and property factor duties also dated 24 May 2023.
5. This Application complains of the following breaches of the 2021 Code:- OSP at OSP 1,2,3,4,5,6, and 11, Written Statement of Services (although not ticked at the Section heading) at Sections B (4),(5) D(13), (14), (15) and E(17); Section 2, Communications and Consultation at Section 2.7; Section 3 Financial Obligations at Section 3.1; Section 4 Debt Recovery at Sections 4.3 ; Section 6 Carrying out repairs and maintenance at Sections 6.4 and 6.7 and Section 7 Complaints Resolution at Sections 7.1, 7.2 and 7.3. This Application also complains of a breach of property factor duties in respect of the way in which the Property Factor acted.
6. A legal member of the Chamber with delegated powers of the Chamber President accepted the Applications and a Case Management Discussion (CMD) was fixed 11 September 2023 at 10.00 by telephone conference call.
7. Prior to the CMD, the Property Factor lodged detailed written submissions.

CMD

8. The CMD took place on 11 September 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was not represented. He was accompanied by Mr. Amir Ilyas, co-owner of the

Property as a supporter in terms of Rule 11 of the Rules. The Property Factor was represented by Mr. P. McGonagle.

9. At the CMD, the Tribunal explained to the Parties that the purpose of the CMD and the way in which the Act and the Rules applied in the tribunal proceedings.
10. The Homeowner outlined the basis of the complaints which focussed on the Property Factor having no authority to act, failing to carry out routine property inspections, failing to reply to correspondence and failing to follow their procedures.
11. For the Property Factor, Mr. McGonagle stated that the Homeowner had a lengthy history of non-payment of Property Factor accounts. He stated that the Property Factor's firm opinion is that the Homeowner and his co-owner are acting in a vexatious manner without having any real grounds for complaint.
12. The CMD was adjourned to a Hearing to be held by Webex and a Direction was issued to the Parties. The Tribunal set out the relevant sections of the Act in respect of the statutory process and definitions in its CMD Note to assist the Parties.

Hearing 18 December 2023

13. A Hearing by Webex was fixed for 18 December 2023 at 10.00 and intimated to the Parties. The Hearing could not take place due to legal issues of jurisdiction as the Homeowner was situated abroad and the necessary permission for him to give evidence had not been obtained.
14. The Tribunal, at its own discretion, adjourned the Hearing and issued a further Direction to focus the matters complained of in the Applications with which the Parties, again, complied to a great extent. No evidence was heard.

Hearing 16 April 2024

15. The adjourned Hearing took place on 16 April 2024 at 10.00 at Glasgow Tribunal Centre. The Homeowner, Mr. Naeem, was present not represented. He was accompanied by his wife, Dr. Arshad, as a supporter in terms of Rule 11 of the Rules. The Property Factor was represented by Mr. McGonagle and Mr. Brown.
16. The Property Factor's representatives pointed out that the Homeowner appeared to have introduced new complaints not notified to the Property Factor.

17. The Hearing was adjourned due to lack of time.
18. The Tribunal issued a further Direction to clarify if new complaints had been introduced and for the Homeowner to review Application FTS/HPC/PF/23/1875 and the 2021 Code breaches to identify if any could be dealt with under property factor duties.

Hearing 3 October 2024

19. The adjourned Hearing took place on 3 October 2024 at 10.00 at Glasgow Tribunal Centre. The Homeowner, Mr. Naeem, was present not represented. He was accompanied by his wife, Dr. Arshad, as a supporter in terms of Rule 11 of the Rules. The Property Factor was represented by Mr. Brown.

Preliminary points

Homeowner's Preliminary Point

20. At the Hearing on 16 April 2024, the Homeowner questioned the validity of the Property Factor's appointment and status as a property factor with reference to various cases on contract law and negligence, none of which had been lodged or cited in a way which allowed the Tribunal and the Property Factor to have cognisance of them.
21. The Homeowner restated his position at the Hearing on 3 October 2024 that the Property Factor does not have authority to act as they cannot evidence their appointment. He stated that the Property Factor's inability to having the documents at hand to show their appointment is evidence of their lack of competence.
22. He stated that the purpose of his preliminary point is that, as the Property Factor has not been appointed, they cannot issue invoices and charge a management fee.
23. The Tribunal advised that it would hear the Applications under reservation of the legal points in respect of the Property Factor's authority to act and allow the Homeowner an opportunity to revisit these with fuller versions of the supporting authorities. The Homeowner did not submit further versions of the supporting authorities.
24. The Tribunal referred the Homeowner to the statutory definition of "property factor" at Section 2 of the Act.

Property Factor's Preliminary Point

25. The Property Factor's preliminary point was that the Homeowner appeared to have introduced new complaints not notified to the Property Factor. The

Property Factor clarified the extent of these new complaints in their response to the Direction.

26. The Tribunal advised that it would hear the Applications subject to reservation in respect of preliminary points.

Oral Evidence at Hearings

Homeowner's Evidence

27. The Tribunal dealt firstly with Application FTS/HPC/PF/23/1193 and heard the Homeowner's evidence in respect of the matters complained with regard to the specific sections of the 2012 Code.
28. The Homeowner's evidence was as set out at the CMD: that the Property Factor had no authority to carry out works and had not acted properly or within the terms of the 2012 Code in instructing repairs. He explained that the Property Factor repeatedly failed to answer his questions on why a specific repair costing £4,000.00 was needed and how the work was tendered. In particular, the Homeowner stated that he had queried why so much roof work was required if routine inspections had been carried out. His position is that roof repairs and potential repairs would be identified at an early stage and so the cost would be less. The Homeowner stated that it then came to light that the inspections had not been carried out. The Homeowner stated that, if the inspections had been carried out, the repair costing £4,000.00 would not have been needed.
29. The Homeowner stressed that the Property Factor's failure to respond to his correspondence was a breach of the 2012 Code.
30. With regard to the specific 2012 Code breaches, the Homeowner agreed fairly that his complaints did not fully relate to Code breaches but fell under the heading of property factor duties. In particular, the complaints of breaches of Written Statement of Services, Communications and Consultation at Sections at 2.5, Section 3 Financial Obligations at Section 3.1, Section 4 Debt Recovery Sections 4.3 and 4.7; Section 6 Carrying out repairs and maintenance at Section 6.9 and Section 7 Complaints Resolution at Sections 7.1 and 7.2 all could be dealt with under property factor duties.
31. The Homeowner stated that the Property Factor has a core duty of routine inspection which they have not complied with and they have failed to revise the Written Statement of Services to reflect this. He stated that the Property Factor continues to levy a penalty charge continues of £40.00 in disregard of the 2021 Code.
32. The Homeowner explained that he had asked the Property Factor for copies of the inspection reports and an explanation of the roof repair, however, the

Property Factor refused to provide the reports as the common charges account was in arrears.

33. The Homeowner stated that he had paid his bills until 2022 when the repairs started to accumulate and the repairs were all for the same roof issues. He advised that at this point, he started asking questions and advised the Property Factor that he would not pay the management fee. In his opinion a bill of £4,000.00 is not a small job.
34. The Homeowner maintained that the lack of information led him to complain further without reply from the Property Factor. He stated there had been a leak in the flat above the Property which resulted in an £8,000.00 repair to the Property involving reinstating the joists and replacing both the kitchen and bathroom. He stressed that his point is that, if Property Factor have carried out inspections they would have noticed that the plaster had come off the common close walls, would have taken action by contacting the owners and there would have been less damage to the Property.
35. He stressed that the Property Factor's lack of a proactive approach was the real issue. The Homeowner stated that he would have arranged his own repairs had the Property Factor made it clear that they only reacted to repairs notified by owners and did not have a pro-active maintenance plan.
36. The Homeowner pointed out that he had had a Home Report survey carried out which highlighted common repairs all of which he notified to the Property Factor who did not take action.
37. With reference to the unpaid common charge accounts, The Homeowner stated that he stopped paying because the accounts "shot up" due to the lack of inspections and that the accounts have increased monthly by a penalty charge of £40.00. The Homeowner stated that as has disputed the accounts, the penalty charge should not be applied and no debt recovery action should be taken by the Property Factor. He maintained that he refuses to pay the management fee because the Property Factor has not replied to him.
38. The Homeowner stated that he paid £500.00 to the Property Factor in the previous week. He stated that he calculated this as a reasonable sum due by him based on the cleaning fees and part of the management fee but excluding the £40.00 penalty charges. He stated that he did not explain this calculation to the Property Factor as "they do not explain anything to me".
39. With regard to the Property Factor's debt recovery procedures, the Homeowner stated that he only received monthly invoices and did not recall receiving any legal letters or prior warning of court action or prior warning of the placing of a Notice of Potential Liability on the title to the Property.

40. With regard to the Property Factor's complaints procedures, the Homeowner's position is that the procedure is in two stages and does not comply with the 2021 Code. He explained that when he formally complains, the Property Factor refuses to deal with him as he has not paid his factoring accounts. The Homeowner maintained that this is "redundant" and "a violation of the Codes" as the Property Factor has a policy to deal with owners in different ways. He explained that owners who have not paid their accounts do not have complaints dealt with.
41. The Homeowner accepted that he had detailed correspondence with the Property Factor, the purpose of which was to find out information. He defined this correspondence as "a query". He stated that when he established in February 2023 that "something was wrong", he made a formal complaint being his letter of 23 February 2023 which he had lodged as one of his productions. The Property Factor did not deal with this complaint. The Homeowner's position is that the 2021 Code does not allow the Property Factor to take a conditional approach and so they did not follow their process. He stressed that there must be a robust process at all times.
42. With regard to the Property Factor's written submissions and their responses to the Directions, the Homeowner's position was that, if the Property Factor had provided this information in 2021, he and they could have "agreed a way forward". He stated that the Property Factor's information showed that they only carry out emergency works and so are a reactive repair company, contrary to their Written Statement of Services, and, shows that they only care about their business and not the Codes or customers.
43. The Homeowner agreed that the Property Factor used Glasgow City Council's Missing Share service to ensure that the roof repair was carried out. He stated that the reason that he resisted paying is that he had not been provided with quotes or details of the work and could not be sure that the Property Factor had "a way of dealing with matters of integrity to a 100 year old building".
44. He added that he was happy that the Property Factor was robust in chasing the completion of the works, but that he needed the background information to what work was needed and what work was being carried out, and, that the Property Factor failed to carry out that duty.
45. The Homeowner stated that he was not refusing to pay, but wanted to know what he was paying for. He stated that he made an offer to pay to the Property Factor but an amount could not be reached.
46. With regard to the annual gutter cleaning and roof survey, the Homeowner accepted that these are carried out but maintained that a more objective

report on the roof, the chimney, the flashing and the cope and skew should be carried out due to the age of the building.

Property Factor's Evidence.

47. The Property Factor's position, with reference to minutes of a meeting and a mandate by one of the owners lodged as part of their productions, is that the Property Factor was appointed at a meeting of the proprietors on 30 July 2007 and had acted as property factor since that time.
48. The Property Factor's representatives pointed out that the title deeds require that a majority of votes at meeting of owners to appoint a factor and that mandates are not needed. They stated that their appointment is with all of the owners of the common property as a group and not with individual owners.
49. With regard to the routine inspections, the Property Factor's representatives explained, that up until the Covid lockdown prevented certain works being carried out, routine annual inspections had taken place. The inspections had been a visual walk-round to assess the overall condition of the tenement block and were not surveys or inspections by technical personnel. They accepted that the inspections had not re-started. However, they confirmed that routine annual gutter cleaning has always been carried out.
50. The Property Factor's representatives explained that the Property Factor relied on repairs being reported by owners. With regard to the roof repair at the heart of the Applications, and with reference to their written submissions, the representatives stated that this was fully communicated to the homeowners in accordance with the title deeds and the Property Factor's Written Statement of Services. They explained that the work had been fully authorised and funded in advance by the owners, with the exception of the Homeowner, and that in order to have the work carried out, the Property Factor had had to make an application to Glasgow City Council for "missing share" funding. They explained again that the repair was a straightforward roof and gutter repair and had been completed.
51. With regard to failing to correspond with the Homeowner and failing to follow their complaints process, the Property Factor's representatives explained that the Homeowner had been in arrears of in excess of £600.00 when he began challenging the Property Factor. They explained that, when the correspondence began, the Property Factor had answered to the best of their ability but each response generated another set of questions from the Homeowner. The extent of the queries raised by the Homeowner got to the stage where the Property Factor's staff "were spending an hour or two a day" dealing with his enquiries "and it got to point where we just couldn't spend this time" as "for every question we answered, two came back". They said at this point they took the view that the Property Factor had exhausted its dealings

with the Homeowner and advised that he should escalate matters to the tribunal.

52. The Property Factor's representatives explained that the Homeowner was not raising complaints but was asking questions and not accepting the answers or was asking for reports which they did not hold. It seemed that he expected the Property Factor to hold more detailed information than they actually held and that they should be more thorough in the inspections.
53. The Property Factor's representatives stated that the inspections had been a general walk round which would only really throw up issues with decoration and cleanliness and were not done by specialists carrying out a survey. They confirmed that the annual gutter maintenance and roof check had always been carried out and that a photo record of the roof survey was now made.
54. With regard to complying with the 2021 Code, the Written Statement of Services and their debt recovery policy, the Property Factor's representatives stated that if accounts are disputed debt action is suspended until the matter is resolved or the dispute is rejected. They explained that, in the Homeowner's case, it was difficult to identify which parts of the accounts were in dispute.
55. Mr. Brown of the Property Factor, explained that the £40.00 penalty is applied where the homeowner is a landlord and in terms of the Late Payment of Commercial Debts (Interest) Act 1998 and that the penalty covered the cost of pursuing the outstanding accounts.

Further evidence available to the Tribunal.

56. In addition to the evidence at the Hearing, the Tribunal had the benefit of the Application, the further documents lodged by the Homeowner on 3 December 2023, 8 and 10 April 2024 and 19 September 2024 and the Property Factor's written submission and responses dated 22 August 2023, 12 December 2023 and 26 September 2024.
57. The Tribunal and the Parties also viewed a short video of the tenement of which the Property forms part.

Homeowner's written submissions.

58. The Homeowner's written submissions lodged on 3 December 2023 comprise a set of indexed statements in respect of the complaints set out in both Applications and the following documents:
- i) Copy of the Property Factor's Written Statement of Services;
 - ii) Copy Home Survey Report dated 11 May 2023 by Harvey Donaldson and Gibson;
 - iii) Copy Report by Advanced Preservation Specialists dated 3 May 2022;

- iv) Copy correspondence between the Parties and other third parties;
- v) Reference to videos of the Property;
- vi) Copy title to the Property;
- vii) Copy photographs of the building of which the Property forms part.

59. With regard to Application FTS/HPC/PF/23/1193, the written submissions followed the oral submissions at the Hearing: the Property Factor has no authority to act, the Property Factor failed to carry out annual inspections since 2016 and failed to follow their procedures by failing to respond to the Homeowner and failing to deal with his complaints.

60. With regard to Application FTS/HPC/PF/23/1875, again, the written submissions followed the oral submissions at the Hearing: the Property Factor has no authority to act, the Property Factor failed to carry out annual inspections, the Property Factor provides a reactive repairs service and the lack of inspections has caused deterioration of the building and has incurred additional work and expense to owners.

61. The written submissions of 3 December 2023 do not expand on the property factor duties part of the complaint.

62. The Homeowner's written submissions lodged on 8 and 9 April 2024 are in response to the Tribunal's Direction that the Parties correlate their submissions to the productions lodged and to the specific complaints. Therefore, understandably, the Homeowner's written submissions lodged on 8 and 9 April 2024 largely repeat those submitted on 3 December 2023 but with clearer indexing and numbering in respect of the productions.

63. The Homeowner's written submissions lodged on 19 September 2024 are in response to the Tribunal's Direction of 8 August 2024 and following the part – heard Hearing. The Homeowner had been directed to review Application FTS/HPC/PF/23/1875 in light of the evidence and discussion in respect of Application FTS/HPC/PF/23/1193. The Homeowner did so but included additional complaints in respect of the 2021 Code.

Property Factor's written submissions.

64. The Property Factor's written submissions lodged on 22 August 2023 are in response to notification of the Applications and an indexed list of the following documents:

- i) Extract of the Property Factor's Written Statement of Services;
- ii) Copy correspondence chains between the Parties and other third parties;
- iii) Copy invoice 448365 issued on 15 April 2015.

65. The Property Factor's written submissions lodged on 12 December 2023 are an expansion of their initial response to the notification of the Applications.
66. The Property Factor's written submissions lodged on 26 September 2024 are an expansion of their initial response to the notification of the Applications set out the matters which the Property Factor considers to be new matters.
67. The Property Factor's written submissions followed the oral submissions at the Hearing: the Property Factor has a clear authority to act, the Property Factor accepts a failure to carry out annual inspections. The Property Factor sets out their belief that the Homeowner does not want to pay for the factoring service and that this the purpose of the Applications.

Documents before the Tribunal.

68. The documents lodged by the Parties and to which the Tribunal had specific regard in reaching its Decision are:
- a) The Property Factor's Written Statement of Services;
 - b) The title to the Property;
 - c) A letter dated 30 July 2007 containing Minutes of an owners' meeting with the Property Factor.
 - d) Acceptance of factoring terms and conditions by Mr. H. McGinily dated 14 August 2007;
 - e) Mandate signed by the Homeowner's co-owner dated 18 March 2020;
 - f) Correspondence between the Parties.

- a) The Property Factor's Written Statement of Services.

The Tribunal noted that the Written Statement of Services is bespoke to the Homeowner and his co-owner and to the Property. It sets out the Property Factor's authority to act with reference to the titled deeds. The relevant parts are:

The Written Statement of Services sets out the scope and standards of the service provided.

Chapter Two

At Section A, the Property Factor undertakes to provide as much information as possible.

At Section A, e, f), it reserves the right to refuse to deal with unreasonable requests.

At Section B, the Property Factor sets out the scope of maintenance as works to maintain or achieve an acceptable standard. They undertake to carry out an annual walk round inspection of common areas at no cost and more detailed inspection every two years if so instructed by the owners. Scheduled maintenance requires to be instructed by the owners.

Section C sets out the debt recovery procedure and provides for a process to investigate disputed accounts. It provides for interest at 1.5% per month and a late payment charge under the Late Payment of Commercial Debts (Interest) Act 1998;

At Section E, the Property Factor undertakes an annual performance review with input from owners.

Section F sets out a definition of a “complaint” and a two stage process

Chapter Three

Section A sets out authority to act in terms of the title deeds.

Section B sets out the core services as fortnightly close cleaning, seasonal gardening, annual gutter cleaning and roof check and annual walk round inspection.

b) The title to the Property.

The Homeowner’s and his co-owner’s title to the Property is GLA47303. Deed of Conditions by the Trustees of Iain Donald Mackay and others recorded in the General Register of Sasines (Glasgow) on 14 September 1967 affects the Property and the tenement block of which it forms part. Burden (Sixth) of that Deed of Conditions states that a meeting of the proprietors of the tenement block of which the Property forms part are entitled to appoint a property factor at the meeting.

c) Acceptance of factoring terms and conditions by Mr. H. McGinily dated 14 August 2007.

This document speaks for itself and shows that the Property Factor was appointed after an owner’s meeting in July 2007.

d) Mandate signed by the Homeowner’s co-owner dated 18 March 2020.

This document speaks for itself and shows that the Property Factor carried out their maintenance duties in accordance with their Written Statement of Services.

e) Correspondence between the Parties.

The Tribunal had regard to several strands of correspondence between the Homeowner and the Property Factor wherein the Homeowner and his co-owner ask detailed questions of the Property Factor in respect of roof works and the Property Factor gives equally detailed responses as far as they are able. The correspondence in its entirety shows that the Homeowner does not accept the Property Factor’s explanations and does not accept the Property Factor’s charging policy as set out in their Written Statement of Services.

Homeowner’s Preliminary Point

69. The Homeowner’s preliminary point is that the Property Factor has not been appointed as they have been unable to produce “mandates” from all of the owners at the meeting of 30 July 2007. The Homeowner has not explained or evidenced why mandates from all owners are required and has completely disregarded the Property Factor’s explanation of their appointment without providing any evidence to the contrary. He appears to take the view that the Property Factor ought to have a separate contract and appointment with each owner without explaining or evidencing why this is the case.

70. The Homeowner has paid no regard to the statutory definition of Property Factor. Perversely, the Homeowner has raised the Applications against the Property Factor as property factor and does not seem to appreciate that, as pointed out to him by the Tribunal, if the Property Factor is not the property factor for the Property, the Tribunal has no jurisdiction.

71. The Homeowner has not explained why, if the Property Factor has no authority to act and no authority to levy charges, he has made payments to the Property Factor for their services, his co-owner mandated the Property Factor to carry out works and why he made the payment of £500.00 in September/October this year.

72. It seems to the Tribunal that the Homeowner makes this preliminary point in the hope that the Tribunal will find that the Property Factor has no authority to levy charges against him and his co-owner.

73. Accordingly, the Tribunal finds that this preliminary point has no merit.

Property Factor's Preliminary Point

74. The Property Factor's preliminary point was that the Homeowner appeared to have introduced new complaints not notified to the Property Factor. The Property Factor clarified these new complaints to some extent in their response to the Directions. The Tribunal deals with this matter later in this Decision in its consideration of Section 17 of the Act.

75. The Property Factor noted a new argument of breach of contract put forward by the Homeowner at the Hearing in December. The Homeowner did not follow up with any evidence on this point and, as no evidence was heard in December, the Tribunal has not given consideration to this.

Findings in Fact.

76. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Property Factor's business is that of property factor;
- iii) The Property Factor's Written Statement of Services relates specifically to the tenement block of which the Property forms part;
- iv) The Property Factor manages the common property of the tenement block of which the Property forms part;
- v) The Property Factor makes a charge for managing the common property;
- vi) The Property Factor's Written Statement of Services at Chapter 3, Section A states that the Property Factor was appointed to act on 30

- July 2007 at a properly constituted meeting;
- vii) Deed of Conditions by the Trustees of Iain Donald Mackay and others recorded in the General Register of Sasines (Glasgow) on 14 September 1967 affects the Property and the tenement block of which it forms part;
 - viii) Burden (Sixth) of that Deed of Conditions states that a meeting of the proprietors of the tenement block of which the Property forms part are entitled to appoint a property factor at the meeting;
 - ix) The Property Factor was appointed at such a meeting of the proprietors of the tenement block on 30 July 2007;
 - x) The Property Factor is the property factor for the purposes of the Act;
 - xi) The Written Statement of Services at Chapter 2, Section A, sets out service standards for communications and at paragraph 6 d), e) and f) sets out the policy for “unreasonable requests”;
 - xii) The nature and volume of the correspondence from the Homeowner to the Property Factor from June 2021 to February 2023 are repetitively questioning and do not accept reasonable explanations given by the Property Factor;
 - xiii) The Property Factor are entitled to treat the Homeowner’s correspondence as falling into the category of “unreasonable requests”;
 - xiv) The Property Factor are entitled to charge the Homeowner for dealing with correspondence falling into the category of “unreasonable requests”;
 - xv) The Written Statement of Services at Chapter 2, Section B at paragraph 4 sets out service standards for property inspections;
 - xvi) The service standard is an annual walk round inspection of the common areas from ground level and the stairwell;
 - xvii) The service standard does not extend to technical reports or surveys;
 - xviii) The service standard does not extend to proactive repair work and does not extend to obligations in respect of property values;
 - xix) A report of recommendations arising from the inspections will be issued to owners;
 - xx) The Property Factor has not carried out any inspections since March 2020;
 - xxi) The Property Factor has carried out annual gutter cleaning and roof checks since before 2020;
 - xxii) The Written Statement of Services at Chapter 2, Section B at paragraph 2 sets out the procedure for reactive repairs;
 - xxiii) A reactive repair for water ingress was reported in June 2021;
 - xxiv) The Property Factor followed their repairs procedure, obtained quotes and obtained mandated authority for the repair from all of the

- owners with the exception of the Homeowner;
- xxv) The Homeowner's failure to agree to the repair resulted in the Property Factor accessing the Missing Shares service provided by Glasgow City Council to ensure that the repair was carried out;
 - xxvi) The Property suffered water ingress from an upstairs flat;
 - xxvii) The water ingress was not the result of disrepair or damage to a common part;
 - xxviii) The Property Factor has no remit or responsibility to deal with the water ingress;
 - xxix) The Homeowner is due and owing to the Property Factor in respect of unpaid common charges and management charges;
 - xxx) The Homeowner is a registered landlord of the Property and as such has a commercial relationship with the Property Factor;
 - xxxi) The Property Factor is entitled to invoke the provisions of Late Payment of Commercial Debts (Interest) Act 1998;
 - xxxii) The Written Statement of Services at Chapter 2, Section C at paragraph f) states that a penalty charge of £40.00 will be levied for late payment by commercial landlords;
 - xxxiii) The Homeowner made a payment of £500.00 to the Property Factor in or around September/October 2024;
 - xxxiv) The tenement of which the Property forms part is over 100 years old;
 - xxxv) The roof was replaced in or around 1970s/1980s and is not the original slate roof.

Issues for the Tribunal.

77. The issues for the Tribunal were a) are the Applications competent in respect of the procedures set out in Section 17 of the Act and b) did the Property Factor breach the Codes and fail to comply with the property factor duties all as set out in the Applications?

Section 17 of the Act

78. The Tribunal, firstly, had regard to Section 17 of the Act which states: Section 17(1): "A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed (a) to carry out the property factor's duties, (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty"). (2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty. (3) No such application may be made unless (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and (b) the property factor has refused to resolve, or unreasonably delayed in

attempting to resolve, the homeowner's concern.(4)References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard. (5)In this Act, "property factor's duties" means, in relation to a homeowner (a)duties in relation to the management of the common parts of land owned by the homeowner, or (b)duties in relation to the management or maintenance of land (i)adjoining or neighbouring residential property owned by the homeowner, and (ii)available for use by the homeowner."

Section 17 (2) : *"An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty."*

79. The Tribunal then had regard to each Application.

Application FTS/HPC/PF/23/1193

80. The Tribunal noted that Application FTS/HPC/PF/23/1193 complains of the following breaches of the 2012 Code:-

Written Statement of Services at Sections 1.1a (B)(c) (d), C (i) (k) and D(1);

Section 2, Communications and Consultation at Sections 2.4 and 2.5 ;

Section 3 Financial Obligations at Section 3;

Section 4 Debt Recovery at Sections 4.3 and 4.7;

Section 6 Carrying out repairs and maintenance at Sections 6.1, 6.4 and 6.9 and

Section 7 Complaints Resolution at Sections 7.1 and 7.2.

This Application also complains of a breach of property factor duties in respect of the way in which the Property Factor acted.

81. The Tribunal was satisfied that Application FTS/HPC/PF/23/1193 complies with Section 17(2) of the Act.

82. At the Hearing on 16 April 2024, the Homeowner withdrew complaints in respect of:-

Section 2, Communications and Consultation at Section 2.5;

Section 6 Carrying out repairs and maintenance at Section 6.9 and

Section 7 Complaints Resolution at Sections 7.1 and 7.2 as these could be dealt with as property factor duties complaints.

Thus leaving complaints in respect of:-

Written Statement of Services at Sections 1.1a (B)(c) (d) , C (i) (k) and D(1);

Section 2, Communications and Consultation at Section 2.4;

Section 6 Carrying out repairs and maintenance at Sections 6.1 and 6.4 and a failure to carry out property factor duties.

83. In respect of prior notification of these complaints to the Property Factor as required by Section 17 (3) of the Act, by letters dated 23 February and 6 April

2023, the Homeowner notified the Property Factor of the following complaints of the 2012 Code:-

Written Statement of Services at Sections 1.1a (B)(c)(d) and C(i)(k);

2. Communications and Consultation at Sections 2.4;

6. Carrying out repairs and maintenance at Sections 6.1 and 6.4 and a failure to carry out property factor duties.

84. Taking the content of the letters of 23 February 2023 and 6 April at their highest, the Tribunal held that Application FTS/HPC/PF/23/1193 in respect of the 2012 Code complied with Section 17 (3) of the Act in respect of the breaches and failures set out in the foregoing paragraph.

Application FTS/HPC/PF/23/1875

85. Application FTS/HPC/PF/23/1875 which is dated 24 May 2023 and was lodged with the tribunal chamber on 8 June 2023 complains of the following breaches of the 2021 Code:-

OSP at OSP 1, 2, 3, 4, 5, 6, and 11,

Written Statement of Services (although not ticked at the Section heading) at Sections B (4), (5) D(13), (14), (15) and E(17) 1.1a (B)(c) (d) , C (i) (k) and D(1);
Section 2, Communications and Consultation at Section 2.7;

Section 3 Financial Obligations at Section 3.1;

Section 4 Debt Recovery at Sections 4.3;

Section 6 Carrying out repairs and maintenance at Sections 6.4 and 6.7 and

Section 7 Complaints Resolution at Sections 7.1, 7.2 and 7.3.

This Application also complains of a breach of property factor duties in respect of the way in which the Property Factor acted.

86. The Tribunal was satisfied that Application FTS/HPC/PF/23/1193 complies with Section 17(2) of the Act.

87. In his response to the Tribunal's Direction of 8 August 2024 and in his submissions of 19 September 2024, the Homeowner withdrew complaints in respect of OSP 11, Written Statement of Services, Section 4 Debt Recovery at 4.3, Carrying out repairs and maintenance at Section 6.7 and Section 7 Complaints Resolution at Section 7.3.

88. In that response to the Tribunal's Direction of 8 August 2024, the Homeowner included new complaints in respect of OSP 9, Written Statement of Services at Section 1.5A and 1.2 and Section 2, Communications and Consultation at Section 2.1. These complaints do not form part of the Application and had not been notified to the Property Factor, and so, were not considered by the Tribunal.

89. In respect of prior notification to the Property Factor as required by Section 17 (3) of the Act, by letter dated 25 May 2023, the Homeowner notified the

Property Factor of the following complaints of the 2021 Code and appended his letter of 23 February 2023:-

Overarching Standards of Practice at OSP1, OSP2, OSP3, OSP4, OSP5, OSP6 and OSP 11;

2. Communications and Consultation 2.7;

3. Financial Obligations at Section 3.1

4. Debt Recovery at Section 4.3

6. Carrying out repairs and maintenance at Sections 6.4 and 6.7

7. Complaints resolution at Sections 7.1, 7.2 and 7.3.

90. Taking the content of the letters of 23 February 2023 and 6 April at their highest, the Tribunal held that Application FTS/HPC/PF/23/1875 in respect of the 2021 Code complied with Section 17 (3) of the Act in respect of the breaches and failures set out in the foregoing paragraph.

Decision of the Tribunal and Reasons for the Decision.

Application FTS/HPC/PF/23/1193 breaches of the 2012 Code

91. The Homeowners first complaint in this Application is a breach of various paragraphs of Section 1.1a, which Section relates to situations where the property factor is managing common land and common buildings or property.

This Section does not apply to the Property and so the Tribunal finds that the Property Factor is not in breach.

92. Section 2, Communications and Consultation at Section 2.4

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. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

No evidence was led that the Property Factor does not have this procedure. To the contrary, evidence was led that the Property Factor not only has a procedure but followed that procedure in respect of the gutter and roof repair at the heart of the Application. In 2020, the Homeowner's co-owner signed a mandate instructing works following the implementation of this procedure. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2012 Code.

93. Section 6 Carrying out repairs and maintenance at Sections 6.1 and 6.4.

6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners

of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

No evidence was led that the Property Factor does not have these procedures. To the contrary, evidence was led that the Property Factor not only has a procedure but followed that procedure in respect of the gutter and roof repair at the heart of the Application. The fact that the Homeowner expects progress reports which are more detailed does not put the Property Factor into breach of this part of the 2012 Code. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2012 Code.

6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

No evidence was led that the Property Factor does not have an agreed core service procedure for a programme of works and no evidence was led of a breach. The Written Statement of Services states that an annual inspection will be carried out. There is no dispute that annual inspections have not been carried out since 2020. Accordingly, the Tribunal finds that the Property Factor is in breach of this part of the 2012 Code to this extent.

Application FTS/HPC/PF/23/1875 breaches of the 2021 Code

94. OSP 1 You must conduct your business in a way that complies with all relevant legislation.

No evidence was led that the Property Factor does not comply with relevant legislation. The Property Factor is entitled to apply the Late Payment of Commercial Debts (Interest) Act 1998 in this case. The Property Factor has indicated in their Written Statement of Services that they intended to do so and so the Homeowner had fair notice. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

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

No specific evidence was led that the Property Factor was in breach of this part of the 2021 Code. The Homeowner's position is that the Property Factor does not provide as detailed information as he would like to receive and that the Property Factor is not appointed to act. These points, which the Tribunal does not accept, are not relevant or sufficient to place the Property Factor in breach of this part of the 2021 Code. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

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

No specific evidence was led that the Property Factor was in breach of this part of the 2021 Code. The Homeowner's position is that the Property Factor does not provide as detailed information as he would like to receive. This point, which the Tribunal does not accept, is not relevant or sufficient to place the Property Factor in breach of this part of the 2021 Code. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

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

No specific evidence was led that the Property Factor was in breach of this part of the 2021 Code. The Homeowner's position is that the Property Factor is falsely stating that it has been appointed to act. This point, which the Tribunal does not accept, is not relevant or sufficient to place the Property Factor in breach of this part of the 2021 Code. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

98. OSP5. You must apply your policies consistently and reasonably.

No specific evidence was led that the Property Factor does not apply procedures. To the contrary, evidence was led that the Property Factor does follow procedures in respect of the gutter and roof repair at the heart of the Applications. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

99. 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.

No specific evidence was led that the Property Factor does not use care and skill and does not have staff training in place. The Homeowner's position is that the Property Factor should have taken more care given the age of the tenement building. However, the roof of the building is relatively new and so the age of the building is irrelevant. The fact that the Homeowner expects a greater standard of care does not put the Property Factor into breach of this part of the 2021 Code. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

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

The Homeowner's position is that the Property Factor ought to have treated his letter of 23 February 2024 as the first letter of complaint and should have followed its complaints policy. The Property Factor had already made it clear to the Homeowner that the lengthy correspondence which predates this letter was treated as "unreasonable requests" in terms of the Written Statement of Services. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

101. Section 2, Communications and Consultation at Section 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.

The Homeowner's position is that the Property Factor ought to have continued to respond to his correspondence, ought to have treated his letter of 23 February 2024 as the first letter of complaint and so should have followed its complaints policy. The Property Factor had already made it clear to the Homeowner that the lengthy correspondence which predates the letter of 23 February 2024 was treated as "unreasonable requests" in terms of the Written Statement of Services. The Property Factor also made it clear that their view of the Homeowner's correspondence was nuisance-making and time wasting to avoid paying the Property Factor's invoices. The Tribunal agrees with the Property Factor. The Homeowner's correspondence appears to be designed to have the Property Factor jump through hoops to satisfy unreasonable requests and to allow the Homeowner to delay or avoid paying the costs properly due by him. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

102. Section 3 Financial Obligations at Section 3.1;
While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

No specific evidence was led that the Property Factor did not comply with this part of the 2021 Code. The Tribunal's view is much in line with comments set out in the above paragraph, that the Homeowner's correspondence was designed to have the Property Factor jump through hoops to satisfy unreasonable requests and to allow the Homeowner to delay or avoid paying the costs properly due by him. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

103. Section 4 Debt Recovery at Sections 4.3;
Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.

As set out in its Findings in Fact, the Property Factor is entitled to apply the Late Payment of Commercial Debts (Interest) Act 1998 in this case. The Property Factor has indicated in their Written Statement of Services that they intended to do so and so the Homeowner had fair notice. Accordingly, the Tribunal finds that the Property Factor is not in breach of this part of the 2021 Code.

81. Section 6 Carrying out repairs and maintenance at Sections 6.4 and 6.7
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.

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.

The Homeowner's complaint in respect of these two parts of the 2021 Code are that the Property Factor failed to carry out annual inspections since 2020 resulting in damage or deterioration to the tenement building. The Property Factor accepts that annual inspections were halted during Covid in 2020 and have not resumed. No evidence was led that the failure to carry out the inspections resulted in damage or deterioration to the tenement building. Accordingly, the Tribunal finds that the Property Factor is not in breach of 6.4 or 6.7 this part of the 2021 Code.

82. Section 7 Complaints Resolution at Sections 7.1, 7.2 and 7.3.
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.

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.

7.3 A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles.

The Homeowner's position is that the Property Factor ought to have treated his letter of 23 February 2024 as the first letter of complaint and should have followed its complaints policy. The Tribunal accepts the Property Factor's position that the lengthy correspondence which predates this letter was treated as "unreasonable requests" in terms of the Written Statement of Services and that the Property Factor was not obliged to carry out a fruitless complaints process.

No evidence was led that the Property Factor charged for carrying out their complaints process. Any charges made were made in connection with dealing with "unreasonable requests" in terms of the Written Statement of Services. Accordingly, the Tribunal finds that the Property Factor is not in breach of these parts of the 2021 Code.

Property Factor's Duties.

83. The Homeowner's complaints in respect of failure to carry out property factor duties are failures to comply with Codes as narrated above and failure to comply with general duties of a proactive property manager.
84. The Homeowner's letter of 23 February 2023 sets out a list of general failures on the part of the Property Factor. The Homeowner's later letters expand on these failures and place specific duties on the Property Factor which duties all appear to be based on survey reports obtained by the Homeowner and amplified by the Homeowner's personal expectation of the Property Factor.
85. The Homeowner has not evidenced why the Property Factor should be held to higher standards than those set out in the title deeds and the Written Statement of Services, and, other than the Property Factor's accepted failing to carry out annual walk round inspections since 2020, has not established any other duty failures. Accordingly, by failing to carry out annual inspections the Tribunal finds that the Property Factor did not carry out its duties.

Property Factor Enforcement Order (PFEO)

86. Having made a decision in terms of Section 19(1) (a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states “(1) *The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.*”

87. The Tribunal’s view is that the Property Factor fell foul of the Code and the Property Factor Duties, the incident itself was singular. The Tribunal had regard to the fact that the Property Factor was aware that the annual inspections had not recommenced and did not take steps to reinstate the procedure.

88. The Tribunal took the view that the Property Factor should cancel their management fee from March 2020 until the annual inspections are reinstated.

89. Section 19(2) (a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2) (a) of the Act, the Tribunal issues separate Notice to the Parties.

90. This decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Signed

