

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/23/3287

1/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA ('the Property')

Matthew McCann residing at 1/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA ('the Homeowner and Applicant')

James Gibb Residential Factors ('the Factor and Respondent')

Tribunal members:

Jacqui Taylor (Chairperson) and Nick Allan (Ordinary Member).

Background

1. The Homeowner was heritable proprietor of the property **1/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA** at the time of his application to the Tribunal. ('the Property').
2. James Gibb Residential Factors were the registered factors of the Property.
3. The Homeowner submitted a C2 Application to the Tribunal dated 17th September 2023 in relation to the property 1/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA.

The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the specified sections of the Property Factor Code of Conduct 2021.

4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 4th October 2023 he intimated that he had decided to refer the application in relation to the property 1/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA (which application paperwork comprises documents received on 18th September 2023) to a Tribunal.

5. The Homeowner's complaint (as detailed in the application).

The Homeowner's complaint is that the previous factor James Gibb was aware that the flat roof of his property was protected by a 20 year guarantee from 2015 (attachment Roofing Guarantee). James Gibb were aware that this guarantee existed as they held a copy of same on their document portal (attachment JG Portal) and that despite this, they used contractors who were not approved who carried out repair work using materials which did not comply with said guarantee and as a result have voided the guarantee. Newton Property Management have replaced James Gibb as factor and then discovered this issue (attachment newton repair letter). The Homeowner had to pay £518.07 to have James Gibbs work made good. This sum has to be paid by each owner to the total of 18 flats.

The Homeowner made James Gibb aware of his official complaint via email on 28th August 2023. The Factor acknowledged the complaint on 7th September 2023 however has failed to issue the Homeowner with a unique complaints reference number or make any efforts to re contact him or attempt to resolve his complaint in any way (attachment JG complaint email).

This has affected the Homeowner as he had to pay £518.07 to have further repair work carried out which the Factor tendered, authorised and signed off on which in turn breached the conditions of the roofing guarantee and voided same. The Factor has failed to manage the building properly.

The Homeowner requests payment of £518.07 being the sum he had to pay to Newton Property Management. He also requested compensation for his time to research and complete the application and for the stress and emotional damage the Factor has caused him.

6. The Factor's Written Representations.

The Factor's contract at this development ceased on 25th October 2022.

It is the Factor's position that regular maintenance of the roof had been undertaken. The Factor provided copy invoices of works completed. According to their file there have been no unauthorised roof repairs completed and works have mainly been gutter cleaning/rodding and removal of any debris/vegetation. In 2022 they asked IKO to investigate a water ingress issue. IKO attended and according to their report "Overall Mach One and EC/UV system looks satisfactory although the coatings in places does appear to have lifted back from the mineral although this is not causing any issues". The ingress was not being caused by failure of the roofing system. On 22nd September 2023, IKO confirmed they have nothing on file that states the guarantee is null and void. The only repair completed via James Gibb after this survey was in October 2022 and consisted of clearing water outlets. They have no record of completing repairs indicated in the letter from Newton Property Management dated 15th June 2023.

Gutter cleans and maintenance completed:

May 2016 – cleaning of gutters - no invoice available

October 2016 – cleaning of gutters and outlets on roof - no invoice available

May 2017 – Cleared gutters and un-blocked all outlets and gutters on roof - no invoice available

October 2017

July 2018

April 2019
August 2019
March 2020
September 2020
December 2020
January 2021
April 2022
October 2022

They received the Homeowner's complaint on 28th August 2023. This was initially acknowledged on 7th September 2023. A formal complaint acknowledgement along with complaint reference number was sent on 19th September 2023. They wrote to the Homeowner on 19th September 2023 asking for further information in order to investigate the complaint further. To date they cannot locate any response to their request.

7. Productions lodged by the Homeowner.

7.1 Details of entries from the Factor's Portal, which show there is a IKO roof guarantee.

7.2 Letter from Newton to the Homeowner dated 15th June 2023 advising that following their appointment as factor they have arranged for IKO to survey the roof and the estimate for required roofing works was £518.07 per owner.

7.3 IKO roof guarantee dated 8th June 2015.

8 Productions lodged by the Factor.

8.1 Written statement of services.

8.2 Complaints Procedure.

8.3 IKO technical services investigation report dated 4th August 2022.

8.4 Email from IKO dated 22nd September 2023 which states that they have looked at their files and have nothing that states that the guarantee has been null and voided. But if third party works have taken place this would null and void the guarantee.

8.5 Invoice by Clark grant for gutter cleaning dated 25th October 2017.

8.6 Invoice by AGM Roofing and Construction Limited dated 2nd July 2018 for cleaning gutters, valley gutters and outlets.

8.7 Invoice by AGM Roofing and Construction Limited dated 18th April 2019 for cleaning valley gutters and outlets.

8.8 Invoice by AGM Roofing and Construction Limited dated 15th August 2019 for cleaning all outlets on flat roof and repairing section of valley gutter at outlets.

8.9 Invoice by AGM Roofing and Construction Limited dated 20th March 2020 for cleaning gutters.

8.10 Invoice dated 24th September 2020 for cleaning roof and gutters.

8.11 Invoice dated 17th December 2020 for gutter cleaning.

8.12 Invoice dated 22nd January 2021 for gutter cleaning.

8.13 Invoice dated 5th April 2022 for clearing water outlet sumps on flat roof and clearing moss and debris on flat roof.

8.14 Invoice by Drain Fix solutions dated 20th July 2022 regarding water ingress at hatch on top landing.

8.15 Letter from the Factor to the Homeowner dated 19th September 2023 acknowledging the Homeowner's complaint. Advising that he would receive a

response by 26th October 2023 and if he doesn't receive a response he could escalate the complaint to stage 2.

8.16 Email from the Factor to the Homeowner dated 19th September 2023 requesting evidence from the guarantor that they consider the roof guarantee to be void and they are unable to respond in full to the complaint without that information.

9. The First Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 6th September 2024 at 10am which was continued to 22nd January 2025. The Tribunal issued a separate Note following that Case Management Discussion.

10. Direction.

The Tribunal issued a Direction dated 6th September 2024 in the following terms:

10.1 The Homeowner is to provide the Tribunal with copies of correspondence, emails and documents he has received regarding the repair to the communal roof.

10.2 The Homeowner is to provide the Tribunal with copies of correspondence from IKO regarding the validity of the guarantee.

10.3 The Factor is to provide the Tribunal with copies of any instructions they received from owners regarding maintenance of the communal roof of the Property or redacted copies removing personal details of the senders.

10.4 The Factor is to provide the Tribunal with copies of any Minutes of the Residents Association or instructions from 2015 to 2022.

11. Additional Productions lodged by the Factor.

11.1 The Minutes of the Residents meeting dated 11th May 2016.

11.2 The Minutes of the Residents meeting dated 24th May 2017.

11.3 Letter from the Factor to the Homeowner dated 16th May 2018 advising him of the Residents meeting arranged for 30th May 2018.

11.4 Letter from the Factor to the Homeowner dated 27th June 2018 sending him a copy of the Minute of the Residents Meeting.

11.5 Letter from the Factor to the Homeowner dated 14th August 2018 providing an update.

12 Additional Productions lodged by the Homeowner.

12.1 Email from the Homeowner's solicitor dated 9th January 2024

12.2 Emails between Newton and the Homeowner's solicitor dated 9th January 2024.

12.3 Emails dated June 2023 regarding unauthorised works having been carried out to the Property.

12.4 Letter from IKO dated 23rd October 2023 advising that the roof guarantee would not be reinstated as no maintenance has been carried out to the roof since 2015 and third party works had been carried out to the roof.

12.5 Letter from Newton to the Homeowner dated 24th October 2023 advising that IKO have confirmed that the roof guarantee cannot be reinstated.

13 The Second Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 22nd January 2025 at 2 pm.

The Homeowner attended. The Factor was represented by Alasdair Wallace, Operations Manager.

14 The detail of the parties' oral representations (made at the CMD's), the parties' written representations and the Tribunal's decisions.

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 complaint.

Mr McCann explained that he submitted a formal complaint to the Factor on 28th August 2023. The complaint was acknowledged by the Factor on 7th September 2023. The Factor did not issue a complaint reference number. During the CMD Mr McCann checked his email inbox and found that the email from the Factor dated 19th September 2023 had been sent to his junk inbox. He acknowledged that the email contained details of the complaint reference number. He explained to the Tribunal that the email had gone to his junk inbox because the email had been sent from the personal email address of the sender and not the usual James Gibb email address.

The Factor's response.

Mr Wallace advised that the Homeowner's complaint was received on 28th August 2023. An acknowledgement was sent on 19th September 2023 and that acknowledgement detailed the complaint reference number. The email requested further information including evidence from the guarantor that they consider the roof guarantee to be void. The email also stated that they would be unable to respond in full to the complaint without that information.

The Tribunal's Decision.

The Tribunal noted that section 7.4 of the Factor's written statement of services stipulates that the Factor will acknowledge a complaint within ten working days of receipt. The Homeowner's complaint was sent to the Factor on 28th August 2023. The Homeowner refers to the Factor acknowledging his complaint on 7th September 2023 but no evidence of this has been provided. The Factor has provided a copy of their email to the Homeowner acknowledging the complaint dated 19th September 2023. This email ended up in the Homeowner's junk inbox. This was not due to any fault of the Factor. To comply with the Factor's written statement of services the complaint should have been acknowledged by 11th September 2023. The Tribunal find that the Factor has breached section 2.7 of the Code of Conduct as the Homeowner's complaint was not timeously acknowledged, but they accept that the Homeowner was not prejudiced by the short delay.

Section 3.2

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

- **protect homeowners' funds;**
- **provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;**
- **make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.**

The Homeowner's complaint:

Mr McCann explained that the Factor had arranged for works to be carried out to the roof in 2015 and following completion of the work a 20 year guarantee had been provided by IKO. After October 2022 repair works were required to the roof. The works were arranged by the new factors, Newton. IKO inspected the roof and stated that unauthorised works had been carried out to the roof in breach of the terms of the guarantee with the result that the repairs could not be carried out under the guarantee and the guarantee could not be reinstated. He referred the Tribunal to the letter from IKO dated 23rd October 2023 which stated that the roof guarantee was invalid as unauthorised works had been carried out to the roof and the roof had not been regularly maintained. He had paid Newton the sum of £518.03 being the estimated repair cost but this was repaid to him. When he sold his Property in January 2024 the sum of £2000 had been retained by the purchaser to meet the potential repair cost of the roof. The sum of £2000 was held until January 2025. In January 2025 the sum of £1700 was repaid to him by the purchaser and the sum of £300 had been deducted due to repairs being carried out to the roof between January 2024 and January 2025.

The Homeowner purchased his Property in 2018 and at that time he had been advised that there was a guarantee in place for the flat roof. Shortly after his purchase of the Property he had received an introductory pack from the Factor that referred to the fact that the roof guarantee was held on the Factor's portal.

The Factor's response:

Mr Wallace stated that he does not believe that the Factor has breached section 3.2 of the Code. The matters stated by the Homeowner are not breaches of section 3.2 of the Code.

He confirmed that two roof repairs had been carried out in 2018 and 2019 by AGM building contractors. He did not know if AGM were contractors authorised by IKO. However, he confirmed that the Factors did not ask IKO to approve the works that they had arranged to be carried out by AGM.

He referred the Tribunal to the survey report by IKO dated 2022. He advised that that report did not state that the roof was defective. However, he accepted that the report referred to lack of maintenance and recommended that a maintenance plan should be introduced.

He questioned why the Homeowner has not lodged a complaint with IKO. He suggested that it is not a condition of the IKO guarantee that the roof is maintained it is simply a recommendation. He clarified that the homeowners had not instructed the Factor to carry out a routine programme of roof maintenance.

The Tribunal's Decision.

The Tribunal determine that the circumstances relating to the invalid IKO roof guarantee is not a breach of the Factor's accounting procedures and they do not amount to a breach of section 3.2 of the Code of Conduct.

Section 3.5

If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, or the property factor decides to terminate the arrangement, a property factor must make the financial information that relates to their account available to the homeowners. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

The Homeowner's complaint:

Mr McCann advised that he was withdrawing his complaint under section 3.5 of the Code.

Section 3.6

Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill, following a change of property factor.

The Homeowner's complaint:

Mr McCann advised that he was withdrawing his complaint under section 3.6 of the Code.

Section 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.

The Homeowner's complaint:

Access to the flat roof is via a locked hatch and a ladder. The Factor is the only person who is able to authorise access to the roof. Unauthorised work was carried out to the roof with the result that the guarantee was invalidated. The Factor is responsible for the fact that the unauthorised work was carried out to the common roof. It is only the Factor who could have instructed the work.

The Factor's response:

Mr Wallace referred to the email he had received from IKO dated 22nd September 2023 which states that the roof guarantee is in order. He does not accept that The Factor has failed to comply with section 6.1 of the Code.

The Tribunal's Decision.

The Homeowner's complaint is that repair works were carried out to the roof by contractors that had not been authorized by IKO which resulted in the IKO roof guarantee being invalidated. The Homeowner has not provided the Tribunal with any evidence to the effect that the repairs to the roof were not of a good standard. The fact that repairs had been carried out to the roof by roofing contractors that had not been authorized by IKO is not a breach of section 6.1 of the Code of Conduct. The Tribunal determine that the Factor has not breached section 6.1 of the Code of Conduct in relation to this complaint.

Section 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.

The Homeowner's complaint:

Mr McCann referred to his earlier comments regarding the IKO guarantee and explained that in addition to the unauthorised roof repairs the Factor has breached section 6.6 of the Code as they failed to carry out a programme of maintenance to the roof. He advised that the guarantee by IKO was issued in 2015 and the Factors were factors of the development at that time. The Factors were aware of the terms of the guarantee which requires the roof to be maintained as the guarantee was accessible via the Factor's portal.

The Factor's response.

Mr Wallace referred to the invoices he has produced. He explained that when owners instructed repairs or maintenance to be carried out to the roof the Factor arranged this. There is no maintenance fund in place for the development. The Factor arranged for repairs to be carried out to the roof as required on an ad hoc basis. There was no planned maintenance other than gutter cleaning which was carried out once per annum. In terms of the guarantee by IKO he stated that the duty holders are the owners and not the Factors. Routine maintenance of the roof would need to be expressly authorised and instructed by the owners. He does not believe that the owners instructed any such maintenance to be carried out.

The Tribunal's Decision.

The Guarantee by IKO dated 8th June 2015 details terms and conditions of the Guarantee. The Guarantee explicitly states that it is subject to the terms and conditions listed which includes the stipulation that repair work may only be carried out after IKO and the insurance company has carried out the technical investigations required to determine the cause of the defect.

Mr Wallace has acknowledged that AGM Roofing and Construction Limited carried out repair works to the flat roof in 2018 and 2019 and the Factor had instructed those repairs.

No evidence has been produced to the Tribunal by the Factor to the effect that the repairs carried out by AGM Roofing were carried out after IKO and the insurance company had carried out the required technical investigations.

The Factor had placed the Guarantee on their portal. The Factor should have been aware of the terms of the Guarantee.

The email from IKO dated 22nd September 2023 was in the following terms:

'I have had a look at our files and have nothing that states the guarantees have been null and voided. But if third party works have taken place then this would null and void the guarantee.'

The Tribunal acknowledge that this email does not state that the guarantee is invalid but it does state that it would be invalid if third party works have taken place, which is what has happened.

The Factor has not demonstrated why they appointed AGM to carry out repairs to the roof when such repairs would invalidate the guarantee. Consequently, the Tribunal determine that the Factor has failed to comply with section 6.6 of the Code of Conduct in relation to this complaint.

Section 6.12

If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.

The Homeowner's complaint:

Mr McCann advised that he was withdrawing his complaint under section 6.12 of the Code.

Section 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.

The Homeowner's complaint:

Mr McCann acknowledged that he received new information on the morning of the first CMD in relation to the email from the Factor dated 19th September 2023 that was in his junk inbox. However, he advised that the Factor never chased up the information they had asked him to provide.

The Factor's response:

Mr Wallace explained that he does not believe that the Factor has breached section 7.2 of the Code. However, he accepted that the Factor could have chased Mr McCann for the details they had asked for.

The Tribunal's Decision.

The email from the Factor to the Homeowner dated 19th September 2023 asked the Homeowner to provide information to enable the Factor to investigate the Homeowner's complaint. The Homeowner never provided the requested information. Due to this fact the complaints procedure had never been exhausted. Consequently, the Tribunal find that the Factor has not breached section 7.2 of the Code of Conduct.

Section 7.6

Complaints that have arisen in connection with issues that arose during the appointment of a previous property factor should be dealt with by that property factor. Any unresolved issues that require to be addressed can be raised with the new, formally appointed property factor if the continuing failure is present after their appointment. This will be dealt with as a new complaint in accordance with their complaints handling procedure.

The Homeowner's complaint:

Mr McCann advised that his comments under section 7.2 of the Code apply to this complaint as well.

The Factor's response:

Mr Wallace restated that they were unable to progress the complaint as Mr McCann had not provided the information that he had been requested to provide. He clarified that James Gibb would not involve another Factor in a complaint.

The Tribunal's Decision.

As detailed under section 7.2 above, the email from the Factor to the Homeowner dated 19th September 2023 explained that the Factor was unable to progress the complaint until they received further information from the Homeowner. The Homeowner did not provide the Factor with the requested information. Due to this fact the complaints procedure had never been exhausted. Consequently, the Tribunal find that the Factor has not breached section 7.6 of the Code of Conduct.

15. Findings in Fact

15.1 The Homeowner purchased the Property in 2017 and sold the Property in January 2024.

15.2 The Factor was appointed factor of the development in 2015.

15.3 The Factor's contract as factor of the development was terminated on 25th October 2022.

15.4 There are eighteen flats in the development.

15.5 There are three blocks within the development. Blocks 3,3A and 5.

15.6 The flat roof is common to all of the three blocks.

15.7 The Homeowner sent the Factor a letter of complaint dated 28th August 2023.

15.8 The Factor replied to the Homeowner's letter of complaint on 19th September 2023.

15.9 The email from the Factor to the Homeowner dated 19th September 2023 asked the Homeowner to provide evidence from the guarantor that the roof guarantee is void and stated that they would be unable to respond in full to the complaint without that information.

15.10 The Homeowner did not provide the Factor with evidence from IKO that they considered the roof guarantee to be void before he sent his application to the Tribunal.

15.11 The Factor instructed AGM to carry out repairs to the roof in 2018 and 2019.

15.12 On the balance of probabilities, AGM were not contractors authorised by IKO.

16. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with sections 2.7 and 6.6 of the 2021 Code of Conduct.

17. Section 19(2) of the Property Factors (Scotland) Act 2011 requires the Tribunal to decide whether to make a Property Factor Enforcement Order.

18. The Tribunal recognise that the Homeowner was not prejudiced by the Factor's breach of section 2.7 of the Code of Conduct and they do not consider it appropriate to include the breach of this section of the Code in the Property Factor Enforcement Order.

19. The Tribunal acknowledge that the breach of section 6.6 of the Code of Conduct relates to the invalidated roof guarantee due to the roof repairs being carried out by contractors who had not been authorised by IKO. The Tribunal considered whether it was appropriate to make a Property Factor Enforcement Order in relation to the Factor's breach of section 6.6 of the Code of Conduct.

20. The Tribunal also acknowledge that Mr Wallace's position is that the email from IKO dated 22nd September 2023 means that the guarantee was valid. The Tribunal do not accept this. As detailed above, the email was in the following terms:

'I have had a look at our files and have nothing that states the guarantees have been null and voided. But if third party works have taken place then this would null and void the guarantee.'

That email states that if unauthorised works were carried out the guarantee would be invalid. Repairs to the roof had been carried out by AGM Roofing & Construction Ltd and this fact partly caused the roof guarantee to be invalidated.

21. The Homeowner's application refers to the fact that he paid the sum of £518.07 to have roof repairs carried out to enable the roof guarantee to be reinstated. However, at the CMD's the Homeowner had advised that the proposed roof work did not proceed as the contractor could not confirm that the roof guarantee would be reinstated if the works were carried out and the sum of £518.07 had been repaid to him.

22. The Tribunal do not consider that the Factor was solely responsible for the fact that the roof guarantee is invalid.

23. In connection with the requirement that roof repairs should have been carried out by contractors authorised by IKO, the Tribunal recognises that homeowners must have reported the required repairs to the Factor. Paragraph 1.4 of the Factor's Written Statement of services states that it is vitally important that homeowners understand that the Factors do not own the properties they manage and that homeowners have a responsibility to communicate with the Factor any items of concern that they may have in relation to repairs required and maintenance of the development. Whilst the Factor is responsible for instructing AGM Roofing & Construction Ltd, who are non IKO authorised contractors, the homeowners bear some responsibility for not drawing to the attention of the Factor the requirement of the guarantee that IKO approved contractors should carry out the roof repairs.

23. The letter from IKO dated 23rd October 2023 states that the roof guarantee was invalid as the required maintenance to the roof had not been carried out and also third party works had been carried out to the roof.

24. In connection with the lack of maintenance to the roof, as required by the IKO guarantee, the Tribunal accept the evidence of Mr Wallace to the effect that homeowners did not instruct the Factor to arrange for periodic maintenance. The Tribunal find that the Factor cannot be held responsible for the lack of maintenance.

25. Accordingly, the Tribunal find that the Factor and the Homeowner are jointly responsible for the invalidated IKO guarantee. The Tribunal acknowledge that the proposed roof works to reinstate the guarantee did not proceed and therefore the Homeowner did not incur the cost of £518.07. The Tribunal also acknowledge that

the Homeowner effectively paid the sum of £300 to the purchaser of the Property as this sum was retained by the purchaser from the £2000 retention. However, the Tribunal are not satisfied that this sum of £300 is directly due to the invalid roof guarantee for two reasons. First, the Homeowner was unable to confirm to the Tribunal if the roof repair works in the sum of £300 were works carried out to the flat roof. Second, the email from the Homeowner's solicitor to the Homeowner dated 9th January 2024 refers to the retention of £2000 being in place for one year to cover repairs to the roof, water ingress and the cost of the Japanese Knotweed treatment plan.

26. The Homeowner has not evidenced the losses he directly suffered as a result of the IKO roof guarantee being invalid.

27. However, the Tribunal accept that the Homeowner suffered stress and inconvenience due to the invalidated roof guarantee.

28. In all of the circumstances, the Tribunal determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'The Factor must pay the homeowner £250 for the stress and inconvenience he had suffered and for their contribution to causing the IKO guarantee to be invalidated, from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'.

29. Appeals

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.

Jacqui Taylor

SignedDate 27th January 2025 Chairperson

