

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/23/2929 and FTS/HPC/PF/23/3040

0/2, 3A Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA and 0/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA ('the Properties')

Mrs Michelle George residing at 17 Kirkview Crescent, Newton Mearns, Glasgow, G77 5DB ('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 is heritable proprietor of the properties **0/2, 3A Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA and 0/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA** ('the Properties').

2. James Gibb Residential Factors are factors of the Properties and were registered as a property factor on 7th December 2012.

3. The Homeowner had submitted two applications to the Tribunal:

C2 Application dated 25th August 2023 in relation to the property 0/2, 3A Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA.

C2 Application dated 2nd September 2023 in relation to the property 0/1, 5 Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA.

The applications were in identical terms. 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 Josephine Bonnar, Convener of the Tribunal, dated 20th September 2023 she intimated that she had decided to refer the application in relation to the property 0/1, 5 Sherbrooke Drive, Pollokshields,

Glasgow, G41 5AA (which application paperwork comprises documents received on 4th September 2023) to a Tribunal.

5. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 19th September 2023 he intimated that he had decided to refer the application in relation to the property 0/2, 3A Sherbrooke Drive, Pollokshields, Glasgow, G41 5AA (which application paperwork comprises documents received on 28th August 2023) to a Tribunal.

6. Written Representations

6.1 Written Representations by the Homeowner:

The Homeowner's principal written representations:

'There are several sections to my complaint. In general, over the years since James Gibb has been our factor, owners have witnessed a lack of upkeep and a deterioration to our building. Failure to inspect properly and have any interest in the upkeep and improvement, generally overcharging for minor maintenance repairs, severe lack of communication and unprofessional conduct where owners are disregarded and are spoken to in an unmannerly impolite fashion. They do unnecessary jobs such as replace locks on communal cupboards which do not need to be replaced and then charge £200 per Yale Lock per Entrance – A Total of £600. This is just one example of their overcharging. A Yale lock replacement does not cost £200. In 2022, because of an ongoing, unacceptable poor and shoddy service I managed to get agreement from owners to change factor to Newton Property Management. During this changeover James Gibb were far from compliant in handing over necessary information to the new factor such as owner contact details, contractor details, etc. The new factor found them extremely difficult to deal with. The new factor was also not happy with the standard of workmanship that they witnessed on building inspection. For instance, a roof hatch which had been requiring repaired for many years, James Gibb decided to carry out and charge owners when they knew that the changeover of factors was taking place. On inspection, it was impossible for the new factors to gain access to the roof because of the shoddy workmanship done on the hatch, the opening of which was hanging by a nail. James Gibb charged us £450 for this shoddy work. We had to pay again for a re-repair in order that the roof could be inspected by the new factor. I cannot understand why James Gibb are continued to be allowed to operate as a Property Factor and I believe they should be struck off. Specific Complaints:

Complaint 1

In 2015 my husband, Mr Graham George, managed to secure a grant from Glasgow City Council for Roof Replacement and the Insulation and Roughcasting of the whole building. This work was carried out by "Keepmoat". There was instated a 20-year Roof Guarantee which is provided by "IKO". This roof guarantee should have been in place until 2035. During the time that James Gibb was our factor, they employed roof contractors to carry out roof repairs who used non-compliant materials. These contractors were not on the approved "IKO" list of contractors. James Gibb never contacted IKO for an Approved Contractor List. This negligence on the part of James Gibb has meant that our 20-year Roof Guarantee has been nullified. When the new factor took over on 26 October 2022 the roof was inspected by IKO who confirmed

that the guarantee had been nullified by wrong materials and unapproved contractors. In order to have the roof guarantee reinstated, work needed to be done involving removal of rogue materials and work carried out to standard. This work is quoted at £518.07 per flat. A Total Cost of £9325.26 for the whole building. This situation is entirely the responsibility of James Gibb and I would like them to be made liable for this payment of £9325.26 plus substantial costs for resulting further damage to roof because repairs cannot progress until the roof guarantee is reinstated and from then on approved contractors employed to carry out any work. The roof continues to deteriorate because of the negligent behaviour of James Gibb which had had a knock-on effect. I own two ground floor flats in the building and I have already paid my share. I do know that there are owners in the building who find it very hard to make ends meet and it is unfair that James Gibb should put anyone under this further financial pressure when it is so clearly James Gibb who have caused this situation. The whole building suffers from the effects of water ingress due to roof repair requirements but top floor flats are especially badly affected but nothing can be done until the work is carried out to reinstate the roof guarantee. I know this is causing certain top floor flat owners with children severe anxiety as they watch their homes being affected by water ingress and winter approaching.

Complaint 2

Despite Outstanding Debt relating to three Owners around the time of the transfer from James Gibb Residential Factor to Newton Property Management on 26th October 2022 having now been fully paid off, a Final Invoice has not been issued by James Gibb and the float amount and any outstanding moneys have not been refunded to any owner. I would like to see this situation resolved immediately with a FINAL INVOICE being issued and a full return of float and funds held by James Gibb to all 18 owners.

Complaint 3.

James Gibb consistently fail to respond to any communication either verbally or in writing. They fail to acknowledge official complaints and they fail to issue a Unique Complaints Reference Number. It becomes therefore impossible to move any complaints /issues forward. They completely fail to acknowledge correspondence within any timeframe and this behaviour is extremely unprofessional. A company such as this should not be permitted to operate as they are not providing service as outlined in the Property Factors Code of conduct. They treat their clients as if they do not exist.'

6.2 Written Representations by the Property Factor:

'Our contract at this development ceased on 25th October 2022. In relation to the specific points raised we respond in turn:

Complaint 1

We noted and acknowledged that the complaint received 14th July 2023 was incorrectly handled internally. The complaint was formally acknowledged on 25th August 2023, and we apologised for the error. The complaint remains open as we required further information from the applicant to investigate the complaint. This information has since been provided and a response will be issued. We do acknowledge there have been delays in the process, which will be addressed in our complaint response.

Complaint 2

At the point where our services ceased three owners had debt amounting to £8720.10. This debt was distributed to the other owners. We issued the initial final invoice in February 2023 as advised in our letter dated 9th August 2022. The debts were eventually re-paid by the debtors and a final revised invoice to owners was produced. This invoice was finalised in May 2023 which resulted in a credit owed to the applicant. This credit was refunded on 20th September 2023.

Complaint 3

We believe regular maintenance of the roof has been undertaken. We enclose copy invoices of works completed. According to our 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 we 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 works completed via James Gibb after this survey was in October 2022 and consisted of clearing water outlets. We have no record of completing a large liquid coating repair as described by IKO and we have not received any photos or evidence of this. The information recently provided to the applicant by IKO seems to contradict their position in August 2022. 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.'

7. First Case Management Discussion.

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

8. Second Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 22nd April 2024 at 2pm which was continued to 11th September 2024. The Tribunal issued a separate Note following that Case Management Discussion.

9. Third Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 11th September 2024. The Tribunal issued a separate Note following that Case Management Discussion.

10. Direction.

The Tribunal issued a Direction dated 11th September 2024, which directed the Factor to provide the Tribunal with:

- (1) Copies of contactors invoices in connection with the roof repairs referred to in the invoices dated 27th December 2019 and 22nd November 2018.
- (2) A copy of the Factor's Income Recovery Guide.
- (3) Copies of the Minutes of the residents meetings.
- (4) Copies of correspondence by the Factor evidencing debt recovery steps that have been taken by them.

11. Additional Productions.

The Factor provided additional productions, as follows:

11.1 Copies of contractor invoices dated 27th December 2019 and 22nd November 2018.

11.2 A copy of James Gibb's Income Recovery Guide.

11.3 Copies of minutes and communications regarding owner's meetings dated 11th May 2016, 7th February 2017, 24th May 2017, 31st May 2018 and 14th August 2018.

12. Amendment to the Application.

The Homeowner amended her application to include breaches of Property Factor duties. She alleged that the Factor had failed to comply with the following sections of their written statement of services:

Section 1.2 – We act on your behalf, to organise and administer the maintenance and repair of the common areas of your development.

Section 2.3 – Our authority to act includes: Routine maintenance contracts.

Section 2.7 – James Gibb will only use approved and authorised contractors for any repair work and will always strive to obtain the best possible value for its customers.

13. Fourth Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 17th January 2025.

The Homeowner attended on her own behalf.

The Factor was represented by Alasdair Wallace, Associate Director.

The parties advised that they had nothing to add to the Code of Conduct section of the complaint. However, they wished to make representations in relation to the

breaches of the Property Factor duties detailed in the amended application. The representations are detailed below.

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

Section 1.1

A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code.

The Homeowner's complaint:

Mrs George explained that her complaint is that the Factor has not complied with sections 1.2, 2.3 and 2.7 of their Written Statement of Services.

The Factor's Response:

The Factor's Written Statement of Services has been produced.

The Tribunal's Decision:

The Tribunal find that the Factor has not failed to comply with section 1.1 of the Code of Conduct as the Factor has provided the Homeowner with their Written Statement of Services.

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:

Mrs George advised that her initial formal complaint was made on 14th July 2023 and she was not provided with a complaint number until 42 days after she had lodged the complaint. Even though the complaint had been received after the date the Factor ceased to be employed as factor of the Properties matters still had to be attended to. Float monies had to be reimbursed. She expected the same level of service from the Factor until the outstanding matters had been concluded. The owners had not been advised of the level of debt when they changed factors.

The Factor's response:

Mr Wallace advised that the complaint was received after the Factors were employed as factors of the Properties. It was received on 14th July 2023 and it was acknowledged on 25th August 2023. He apologised for the delay.

Mrs Lawrie explained that when invoices are sent out to owners they make it clear that floats will be off set after debts have been resolved. She referred to the letter from the Factor dated 9th August 2023.

The Tribunal's Decision:

Clause 7.4 of the Factor's written statement of services provides that the Factor will acknowledge complaints within ten working days of receipt.

The Tribunal find that the Factor has breached section 2.7 of the Code of Conduct as they failed to reply to the Homeowner's formal letter of complaint dated 14th July 2023 until 25th August 2023.

The Tribunal acknowledge that the Factor's letter dated 25th August 2023 apologised for the delay and explained that the delay had been caused by the complaint being misdirected internally.

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:

Mrs George explained that the Factor had not provided any information on the level of unpaid factoring accounts for five years. The information was only made available when the factor for the Property changed from James Gibb to Newton. The debt was over £8000. She confirmed that she had access to the Factor's portal but had no reason to access it. She did not ask the Factor's income recovery team for information on the debt position.

The Factor's response:

Mrs Stead advised that the level of factoring debt can be viewed on the Factor's portal. The Factor sends quarterly newsletters to owners which regularly signpost owners to the portal. The Factor's did not conceal the level of debt as the details are

available on the portal. She acknowledged that no copies of the quarterly newsletters have been provided.

She confirmed that paragraph 5.11.6 of the Factor's written statement of services refers to the debt position and states that current information on debt levels and the stages of any individual debts are available on the Factor's portal. It also states that if owners are unable to access the online portal information on the debt position can be obtained from the Factor's income recovery team.

The Tribunal's Decision:

The Tribunal accepted the evidence of Mrs Stead that the level of the factoring debt can be viewed on the Portal. The Tribunal acknowledge that paragraph 6.1.4 of the Factor's Written Statement of Services states that development debt can be viewed on the portal. Mrs George confirmed that she had access to the Portal. The Tribunal determine that as the Factor provides detail of the development debt on their Portal the Factor has not breached section 3.2 of the Code of Conduct in relation to this complaint.

Section 4.4

A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.

And

Section 4.6

A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe.

The Homeowner's complaint:

The Homeowner's complaint is the same as the complaint detailed under section 3.2 of the Code of Conduct, above.

The Factor's response:

The Factor's Debt Recovery Guide has been produced.

The Tribunal's Decision:

The Tribunal acknowledges that the Factor has a debt recovery guide, a copy of which has been produced. The Tribunal determine that the Factor has not breached sections 4.4 and 4.6 of the Code of Conduct in relation to these complaints.

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:

Mrs George advised that substandard roof repairs had been authorised by the Factor. The roof had been repaired by inappropriate contractors in response to a water ingress problem in one of the upper floor flats. She explained that there had been no communication between the Factor and IKO (the company who issued the guarantee) between 2015 and 2022. The communication only started when an inspection was carried out due to water ingress to one of the upper flats. IKO advised her that it was a condition of the IKO guarantee that annual maintenance and inspections of the roof should be logged with IKO but this had not been done. She does not accept that no repairs had been carried out to the roof. She referred the Tribunal to the Factor's quarterly invoices dated 2nd July 2018, 22nd November 2018, 15th August 2019 and 27th December 2019 which she has produced. She also referred to the email dated 28th March 2019 that she had received from Lisa Pieper, the Factor's senior property manager responsible for managing this property, which states that she had been unaware that there was a guarantee for the roof.

The Factor's response:

Mr Wallace clarified that it is his position that whilst the Factor had instructed works to be carried out to the roof referred to in the invoices produced no inappropriate materials were used. He referred to the fact that the invoices refer to unblocking of outlets, down pipe cleaning etc. No roof repairs had been carried out. He referred to the roof survey carried out by IKO in October 2022. The Observations detailed in the report state that there was a blocked outlet above the upper floor flat owned by Monika and that internal drainage is not flowing clearly and causing water ingress inside the building. The Report concludes that the internal drainage is an issue and is causing water to back up around the spigot and find its way into the building by way of a pipework joint.

He explained that the water ingress is not due to a failure of the roof installed by IKO but due to internal drainage and lack of roof maintenance. Mr Wallace also advised that he had not been aware that it was a condition of the 5 year guarantee that roof inspections had to be carried out every five years.

At the third Case Management Discussion he referred to the quarterly invoices referred to by the Homeowner and explained that he had not had an opportunity to consider them fully as they had only recently been lodged. However, he advised that the correct position regarding the description of roof repairs is detailed on the invoices from the particular contractors that have been produced. He advised that these invoices do not refer to repair works having been carried out to the roof.

The Tribunal's Decision:

The Tribunal acknowledged that the Factor had produced copies of invoices dated 22nd November 2018 and 27th December 2019 by AGM Roofing and Construction Limited in response to the Direction issued by the Tribunal. In contradiction to the Factor's position that no roof repairs had been carried out, those invoices confirmed that repairs had been carried out to the flat roof at the valley gutter by AGM Roofing and Construction Limited. Section 6.1 of the Code of Conduct requires the Factor to make prompt repairs to a good standard. The Homeowner's complaint is that AGM Roofing and Construction Limited are not contractors that were authorised by IKO. The Homeowner has not provided any evidence to the effect that the repairs carried out by AGM Roofing and Construction Limited were not of a good standard. The fact that AGM Roofing and Construction completed repairs to the roof of the Property 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:

The Factor had appointed roofing contractors to work on the roof without consulting IKO. The IKO roof guarantee states that roof contractors should be selected from the list of IKO recommended contractors. Mrs George confirmed that she had not asked the Factor how and why they appointed the roof contractors. She referred to the letter from Katrina Weller of IKO dated 23rd October 2023 which states a decision has been made not to reinstate the roof guarantee.

The Factor's response:

Mr Wallace clarified that they did not act as factors for the development after 2022. He doesn't know what has happened to the roof after that date. He referred to the email from IKO dated 22nd September 2023. It does not state that the guarantee is invalid. He has no knowledge of unapproved materials being used to repair the roof. The Guarantee was available to view of the Factor's portal.

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.

As detailed above, the invoices dated 22nd November 2018 and 27th December 2019 by AGM Roofing and Construction Limited confirmed that repairs had been carried out to the flat roof at the valley gutter by AGM Roofing and Construction Limited. The Factor produced these invoices to the Tribunal after the third CMD. The invoices were addressed to the Factor which implies that that the Factor had instructed the works.

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 Roofing and Construction Limited 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:

The Factor should have been aware of the 20 year roof guarantee. Regardless of what materials were used on the roof the Factor did not arrange a maintenance programme of the roof to ensure it was maintained as required by the roof guarantee. Mrs George confirmed that she had not asked the Factor to repair a defect in the roof. The water ingress was to the upper floor flat.

The Factor's response:

Mr Wallace advised that he is not sure how the Homeowner's complaint about the roof is a breach of section 6.12 of the Code of Conduct. There was no maintenance fund for this Property and the owners did not instruct regular maintenance of the roof to be carried out. The issue only arose when Newton took over as factor.

The Tribunal's Decision:

The Homeowner accepted that she had not notified the Factor of a defect in the roof. Section 6.12 of the Code of Conduct requires the Factor to liaise with third parties to have them remedy defects that have been intimated to them. The Tribunal determine that the Factor has not breached section 6.12 of the Code of Conduct as the section does not apply where a homeowner has not notified the Factor of a defect.

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:

Mrs George advised that she never received a final response from the Factor to her complaint. The last email she had received from the Factor in relation to her complaint was an email dated 12th October 2023 which states that the complaint had been referred to senior management.

The Factor's response:

Mr Wallace accepted that the complaint had not been handled as it should have been.

The Tribunal's Decision:

The Tribunal determine that the Factor has failed to comply with section 7.2 of the Code of Conduct as the Homeowner did not receive details of the Factor's final decision in response to the Homeowner's complaint.

Property Factor Duties

The Homeowner's complaint:

The Homeowner believes that the Factor had breached the following provisions in their written statement of services:

Section 1.2 – We act on your behalf, to organise and administer the maintenance and repair of the common areas of your development.

Section 2.3 – Our authority to act includes: Routine maintenance contracts.

Section 2.7 – James Gibb will only use approved and authorised contractors for any repair work and will always strive to obtain the best possible value for its customers.

This failure has had the following effect:

- A. The administration of the 20-year Roof Guarantee being ignored, mismanaged and voided.
- B. Unapproved Contractors carrying out repairs and maintenance using unapproved materials contributing to the cancellation of the Roof Guarantee.
- C. No Maintenance Programme being routinely put in place and logged with IKO as a condition of the Guarantee.
- D. No 5 Year Inspection being carried out or logged with IKO as a condition of the guarantee. 5/ Senior Property Manager, Lisa Pieper, expressing that she had no knowledge of the Roof Guarantee.
- E. The 20 Year Roof Guarantee being permanently voided and cancelled with absolutely no chance of reinstatement. This decision was made not only based upon appointment of unapproved contractors using unapproved materials, but the complete lack of any required logged maintenance programme and inspections by James Gibb.

The Factor did not employ contactors authorised by IKO and consequently they did not act in the best interests of the owners. The Factor has failed to look after the

roof and they have failed to follow the requirements of the roof guarantee. The owners expect the Factor to deal with these matters. Mrs George confirmed that she had not lodged a formal complaint with IKO.

Mrs George clarified that her husband had secured a grant from the Council for the replacement roof and the work had been carried out in conjunction with the Factor.

Mrs George also clarified that IKO had quoted approximately £9000 to carry out works to the roof but as the company were unable to confirm that the guarantee would be reinstated if the works were completed the works never went ahead.

The Factor's response:

Mr Wallace advised that Section 2.3 of the Factor's written statement of services simply explains how the Factor was appointed and the basis on which they act for homeowners. Section 2.7 means that they only use contractors that they have vetted and that they meet the Factor's health and safety requirements and risk assessments. The expression 'approved and authorised' does not refer to approved and authorized IKO contractors.

Mr Wallace confirmed that the Factor had sent the owners correspondence in July 2014 asking the owners to contribute to the cost of the replacement roof. He confirmed that the guarantee was available to view on the Factor's portal. He explained that he considered the responsibility for meeting the requirements of the guarantee to be a joint responsibility of the owners and the Factor. The owners had never instructed the Factor to carry out the roof maintenance stipulated in the roof guarantee. He has found no record of the Factor having instructed a large plastic coating repair to the roof.

The Tribunal's Decision:

Sections 1.2 and 2.3 of the Factor's Written Statement of Services.

Section 1.2 states that the Factor acts on behalf of the owners in relation to the matters stated. Section 2.3 clarifies that the Factor can enter into routine maintenance contracts. The Tribunal do not accept that the situation regarding the repairs carried out to the roof by AGM Roofing & Construction Limited and the lack of routine maintenance to the roof results in the Factor failing to comply with sections 1.2 and 2.3 of their Written Statement of Services.

Section 2.7 of the Factor's Written Statement of Services.

There are two obligations on the Factor detailed in section 2.7 of their written statement of services.

First, the Factor will only use approved and authorised contractors. The Factor instructed AGM Roofing & Construction Limited to carry out repairs to the roof in 2018 and 2019, as is evidenced by the invoices dated 22nd November 2018 and 27th

December 2019, already referred to. AGM Roofing & Construction Limited were not contractors authorised by IKO. The Tribunal do not accept Mr Wallace's suggestion that Section 2.7 does not include the requirement for the Factor to use contractors authorised in terms of the roof guarantee. The Tribunal find that the Factor should have been aware of the requirements of the guarantee. It was available to view on the Factor's portal. The Tribunal determine that the Factor has breached the requirement within section 2.7 of their written statement of services that they would only use approved and authorised contractors for any repair work as AGM Roofing & Construction Limited were not authorised contractors in terms of the IKO guarantee.

Second, the Factor will always strive to obtain the best possible value for its customers.

The Tribunal find that the roof repairs carried out by AGM Roofing & Construction Limited could not be deemed to be the best possible value for its customers as these works contributed the roof guarantee being invalidated. The Tribunal determine that the Factor has breached the requirement within section 2.7 of their written statement of services that they would always strive to obtain the best possible value for its customers.

15. Findings in Fact.

15.1 The Factor was involved in the works to replace the communal roof in 2014/2015.

15.2 IKO issued a roof guarantee dated 8th June 2015.

15.3 The IKO roof guarantee was available to view on the Factor's portal.

15.4 It was a condition of the Factor's guarantee 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 and that the roof is periodically inspected to determine its condition and identify work or maintenance required.

15.5 IKO stated that the roof guarantee was not being reinstated in their letter dated 23rd October 2023 due to no maintenance being carried out to the roof since March 2015 and third party works having been carried out to the roof.

15.6 The Factor did not arrange a programme of maintenance to the roof of 3/5 Sherbrooke Drive.

15.7 Undefined homeowners of Sherbrooke Drive Glasgow advised the Factor that repairs were required to the Roof in 2018 and 2019.

15.8 The Factor instructed AGM Roofing & Construction Limited to carry out the works detailed in the invoices dated 22nd November 2018 and 27th December 2019.

15.9 AGM Roofing and Construction completed repairs to the roof of the Property in 2018 and 2019.

15.10 AGM Roofing and Construction Limited are not contractors authorised by IKO.

15.11 The Homeowner sent the Factor a Formal complaint dated 14th July 2023.

15.12 The Factor replied to the Formal Complaint on 25th August 2023.

15.12 The Factor did not issue a final response to the Homeowner's formal complaint.

15.13 The Factor includes details of factoring debt on their Portal.

15.14 The Factor acts on behalf of the owners to organise and administer the maintenance and repair of the common areas of the Property, as detailed in paragraph 1.2 of the Factor's written Statement of Services. The common areas include the common roof.

10. 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 of 2.7, 6.6 and 7.2 the 2021 Code of Conduct and the Property Factor duties.

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

11.1 At section 7 (4) of the Homeowner's application forms the Applicant explains that the Factor should compensate her for the time that she has spent trying to get an acknowledgement/ response from the Factor and the time taken by her to make the application to the Tribunal. In addition, the Factor should pay £9325.26 to the new factor Newton so that the necessary work can proceed to ensure that the guarantee for the roof is reinstated. Her share is 2 x £518.07 (£1036.14). Also, the Factor should be held responsible for future repairs due to the fact that there is no longer a roof guarantee.

11.2 During the hearing the Homeowner advised that the roof work in the sum of £9325.26 did not proceed as the contractor could not confirm that the roof guarantee would be reinstated if the works were carried out.

11.3 The Tribunal acknowledge that the breaches of section 6.6 of the Code of Conduct and the Property Factor Duties relate to the invalidated roof guarantee. The letter from IKO dated 23rd October 2023 states that the roof guarantee was not reinstated as the required maintenance to the roof had not been carried out and also third party works had been carried out to the roof.

11.4 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.

11.5 However, the Tribunal do not consider that the Factor was solely responsible for the fact that the roof guarantee is invalid.

11.6 In connection with the requirement that roof repairs should have been carried out by contractors authorized 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 authorized 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.

11.7 In connection with the lack of maintenance to the roof, as required by the IKO guarantee, the homeowners did not instruct the Factor to arrange for periodic maintenance and therefore the Factor cannot be held responsible for the lack of maintenance.

11.8 Accordingly, the Tribunal find that the Factor and the Homeowner are jointly responsible for the invalidated IKO guarantee. The Tribunal acknowledge that the roof works in the sum of £9325.26 did not proceed. The Homeowner has not provided any other vouching in connection with the effect of the invalid guarantee.

11.9 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 two times £250 (a total of £500) for the stress and inconvenience she 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'.

12. 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 Taylore

SignedDate 23rd January 2025

Chairperson