

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/24/2426 and FTS/HPC/PF/24/2428**

**16 Barony Court, Cambusbarron, Stirling, FK7 9NG ('the Property')**

**Melanie Fridlington residing at 16 Barony Court, Cambusbarron, Stirling, FK7 9NG ('the Homeowner and Applicant')**

**Ross and Liddell Limited, 6 Clifton Terrace, Edinburgh, EH12 5DR ('the Factor and Respondent')**

**Tribunal members:**

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

### **Background**

1. The Homeowner is heritable proprietor of the property 16 Barony Court, Cambusbarron, Stirling, FK7 9NG ('the Property').
2. Ross and Liddell are factors of the Property and are registered property factors.
3. The Homeowner submitted two applications to the Tribunal. A C1 Application in respect of an alleged act or omission of the Factor before 16<sup>th</sup> August 2021 and a C2 Application in respect of an alleged act or omission of the Factor on or after 16<sup>th</sup> August 2021.

The applications sought determinations that the Factor had failed to comply with the Property Factor's duties and specified sections of the Property Factor Code of Conduct 2012 and the Property Factor Code of Conduct 2021.

4. By Notice of Acceptance by James Bauld, Convener of the Tribunal, dated 12<sup>th</sup> June 2024 he intimated that he had decided to refer the applications (which application paperwork comprises documents received on 29<sup>th</sup> May 2024) to a Tribunal.

## **5. The Factor's Written Representations**

The Factor lodged written representations on 4<sup>th</sup> October 2024. In summary, the Factor does not believe that the complaints should be upheld.

## **6. The First Case Management Discussion.**

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 14<sup>th</sup> October 2024 at 10am at STEP, Stirling Business Centre, Stirling.

The Homeowner attended along with her supporter, Janice Common.

The Factor was represented by David Doig, solicitor. Jennifer Johnstone, the Factor's Associate Director of Resolution also attended.

6.1 Both parties confirmed the following facts:

6.1.1 The Homeowner purchased the Property approximately 25 years ago.

6.1.2 The Factor has acted as property factor for the Property for approximately 20 years.

6.1.3 The Property is a second and top floor flat. There are fifteen flats in the development which comprises two blocks of flats.

6.1.4 There is an internal crack in the walls of the bedroom and bathroom of the Property.

6.1.5 There is an external crack to the outside wall between the two blocks.

6.1.6 The repair works have not been completed.

6.1.7 A majority of the owners (11 out of 15) voted in favour of the works proceeding.

6.1.8 The Factor received £8230.64 of the required £20,076.69, which was subsequently returned to the owners.

6.2 Mr Doig confirmed that he was satisfied that the Homeowner's complaints had been notified to the Factor.

## **7. Direction.**

The Tribunal issued a Direction dated 24<sup>th</sup> October 2024 which directed the parties to provide the Tribunal with the following:

7.1 The Homeowner will provide:

(i) A copy of her title deeds.

7.2 The Factor will provide:

- (i) Copies of letters dated 12<sup>th</sup> May 2021 and 21<sup>st</sup> May 2021.
- (ii) A copy of the letter sent to the owners regarding the meeting on 16<sup>th</sup> March 2023.
- (iii) A copy of emails and letters the Factor sent to the owners between May and August 2021 regarding the insurance claim.
- (iv) The Factor's service level agreement that was in place before February 2022.
- (v) The survey by Curtins Consultancy Ltd dated 4<sup>th</sup> August 2021.
- (vi) Confirmation of the date the tell tales were installed.
- (vii) A copy of the common buildings insurance policy.
- (viii) A copy of the Minute of the Residents meeting with the contractor on 26<sup>th</sup> February 2024.
- (ix) A copy of the Minute of the Resident's meeting with the structural engineers/contractor.
- (ix) A copy of the Minute of the Residents meeting in November 2023.

## **8. Productions lodged by the Homeowner.**

8.1 A copy of the Deed of Conditions by Avonside Homes Limited dated 10<sup>th</sup> May 1994.

8.2 A copy of the Zurich Property Owners Policy Document.

8.3 A copy of the phonecall transcription from a resident of flat 14 to other resident flat owners, including the Homeowner dated 26<sup>th</sup> March 2024.

## **9. Productions lodged by the Factor.**

### **The Factor lodged Five Inventories of Productions:**

#### **9.1 The First Inventory of Productions.**

9.1.1 Copies of correspondence between 10<sup>th</sup> February 2020 and 26<sup>th</sup> August 2024 (150 pages).

9.1.2 The Service Level Agreement.

#### **9.2 The Second Inventory of Productions.**

9.2.1 Copy Insurance Document

9.2.2 Email from the Factor to Grant Dolan dated 4<sup>th</sup> March 2020.

9.2.3 Email from Grant Dolan to the Homeowner dated 6<sup>th</sup> March 2020.

9.2.4 Email exchange between Mr Togneri (one of the Factor's property managers) and Grant Dolan (the Factor's insurance adviser) dated 4<sup>th</sup> to 6<sup>th</sup> March 2020.

9.2.5 Voice Minutes of the meeting between the Factor, the Homeowner and Thomas and Adamson (the copy states that the recording failed to upload).

### **9.3 The Third Inventory of Productions.**

9.3.1 Copy letter from the Factor to the Homeowner dated 23<sup>rd</sup> October 2024.

### **9.4 The Fourth Inventory of Productions.**

9.4.1 Copy letter from the Factor to the owners dated 19<sup>th</sup> February 2025 which referred to the tender documents from Thomas and Adamson and, in summary, requested confirmation that the owners were happy to proceed with the works.

### **9.5 The Fifth Inventory of Productions.**

9.5.1 Email exchange between the Homeowner and the Factor dated 17<sup>th</sup> April 2025 and 29<sup>th</sup> April 2025. The emails confirmed that the major works had been instructed with the Factor meeting a shortfall of payments.

## **10. The Second Case Management Discussion.**

An inperson Case Management Discussion (The Second CMD) took place in respect of the application at Wallace House, Stirling on 12<sup>th</sup> May 2025 at 10.30am.

The Homeowner attended.

The Factor was represented by David Doig, solicitor. Jennifer Johnstone, the Factor's Associate Director of Resolution also attended.

At the start of the Second CMD Mr Doig advised that the Factor had recently obtained the support of the owners to instruct the required works. The Factor had carried out a tender for the works and had not charged the owners the cost of the tendering exercise. The Factor has also funded the missing share which amounts to just over one share. The scheme of works has been agreed and the contractors have been instructed.

The Homeowner advised that the recent letter she had received from the Factor stated that the works would be completed within six weeks of the start date. The delay in having the works carried out has resulted in the cost of the works increasing by £276.43 per owner.

**11. The detail of the parties' oral representations (made at the two CMD's), the parties' representations and the Tribunal's decisions are as follows:**

**Section 2.5 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021): You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).**

**The Homeowner's complaint:**

Ms Fridlington explained that she had first advised the Factor there was a crack at the Property by email dated 10<sup>th</sup> February 2020 but she did not receive a detailed response until May 2021. She constantly tried to arrange for a representative of the Factor to inspect the crack but was advised that as the crack was inside her property she would have to contact the insurance company. She referred the Tribunal to the table of actions that formed part of her application. She felt that she had not been kept advised as to what was happening regarding the repair for a period of five years.

**The Factor's response:**

Ms Johnstone advised that there had been dialogue between the Factor and Ms Fridlington regarding the crack.

The timeline provided by Ms Fridlington shows that there were meetings, site visits and correspondence exchanged. Whilst it is accepted that the majority of owners (11 out of 15) voted in favour of the works being carried out the lack of funding (£12,046.05 out of £20,076.69) prevented the works proceeding. She explained that unfortunately not all emails regarding this matter had been saved. Mr Doig referred the Tribunal to the documents lodged in the Factor's First Inventory of Productions, being email correspondence between the parties regarding the crack.

**The Tribunal's Decision:**

The Homeowner's complaint is that she first advised the Factor of the crack on 10<sup>th</sup> February 2020 and did not receive a detailed response until May 2021.

The email from the Homeowner to the Factor dated 10<sup>th</sup> February 2020 states '*Here are some pictures of the bedroom wall.*'

The responses from the Factor are as follows:

Email from Jonathan Togneri to the Homeowner dated 13<sup>th</sup> February 2020, which states: '*I confirm receipt and will be looking into this matter. I will endeavour to return to you regarding these photos.*'

Email from Jonathan Togneri to the Homeowner dated 19<sup>th</sup> February 2020, which states: '*I confirm that I have forwarded these to a building surveyor to comment and I will endeavour to respond to you when they have returned.*'

Email from Jonathan Togneri to the Homeowner dated 6<sup>th</sup> March 2020, which states:

*I am writing to say that our Insurance Department will contact you separately regarding the cracking within your property....'*

From the correspondence produced there is a gap in the correspondence from March 2020 to December 2020. The email correspondence restarts briefly in December 2020 and then there is a higher volume of email correspondence in April 2021 resulting in the Factor writing to the owners regarding the cracking on 12<sup>th</sup> May 2021 and advising that they will be obtaining quotations from surveyors.

Section 2.5 of the 2012 Code of Conduct requires the Factor to respond to enquiries and complaints within prompt timescales. Section 10ii of the Factor's Service Level Agreement states that the Factor will respond to written queries within 7 working days of receipt and in the event that a full response cannot be provided within that period they will confirm that in writing and intimate to the owners their intended actions and the timescale for returning with a full response.

The Factor did reply to the Homeowner's email dated 10<sup>th</sup> February 2020 in terms of their emails dated 13<sup>th</sup> and 19<sup>th</sup> February 2020 and 6<sup>th</sup> March 2020. At that point the matter rested with the Insurance company.

The Tribunal determine that the Factor has not breached section 2.5 of the 2012 Code of Conduct in relation to the Homeowner's complaint.

**Section 3.4 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021): You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on sale of the property).**

**The Homeowner's complaint:**

Ms Fridlington explained that an owners meeting was arranged in November 2023. Thirteen owners attended. The Factor asked the owners to pay £1300 each for the cost of the repair. A majority of the owners (11 out of 15) agreed to the repair going ahead. 13 of the owners advised that they were willing to pay for the cost of the repair. However, the Property Factor has insisted that they receive 100% of the cost of the repair before they instruct the works. She does not understand the Factor's position. The Factor has now returned the funds to the owners who had paid.

**The Factor's response:**

Mr Doig explained that the Factor has procedures in place for dealing with payments made in advance by homeowners. This element of the application seems irrelevant having regard to the intended purpose of the section and the timing of the payments in relation to the intended works (post August 2021). The Homeowner's issues are predicated on the Factor's refusal to carry out repairs until full funding was paid by

the owners, as is their right under paragraph 3 of the Service Level Agreement. The Factor's are not a lending institution with the resources available to fund major works for owners. In this case the shortfall was £8030.64.

#### **The Tribunal's Decision:**

The Homeowner's complaint is that in 2023 the Factor was insisting that they received the owner's shares of the cost of the works in full before instructing the works. The Factor's Service Level Agreement at paragraph 2iii states that they will normally seek advance funding for the whole cost prior to instructing major repair works. The Factor was entitled to insist on payment of 100% of the costs.

However, the Homeowner's complaint is not a breach of section 3.4 of the Code of Conduct which requires the Factor to have procedures in place to deal with payments made in advance.

The Tribunal determine that the Factor has not breached section 3.4 of the 2012 Code of Conduct in relation to the Homeowner's complaint.

**Section 5.5 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021): You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.**

#### **The Homeowner's complaint:**

Ms Fridlington advised that she had asked the Factor for a copy of the insurance claim and emails submitted to the Insurance Company in relation to the claim in April 2021. She was looking for confirmation that the insurance claim had been made. She was not kept advised.

#### **The Factor's response:**

Mr Doig explained that the Factors made enquiries with the insurance company and established that individual owners would have to pursue their own insurance claim. The Factors relayed this information to the Homeowner. The discussions the Factor had with the insurance company led to the insurers making a payment to enable a survey to be carried out. However, it was determined that the crack was not an insurable risk. The insurance claim was made in April 2021. The Factor is satisfied that they have met their obligations.

#### **The Tribunal's Decision:**

The Homeowner's time line produced with her application states that she asked the Factor for building insurance details on 15<sup>th</sup> April 2021. The Factor has produced a copy of that email. In that email the Homeowner asked the Factor to provide her with details about her building insurers as she says that she would like to speak to them directly and get some advice. The Factor has also produced a copy of the email from the Homeowner to the Factor dated 21<sup>st</sup> April 2021. That email states that she has

been in-touch with the Insurance company and is putting in a claim. That email evidences the fact that the Factor must have provided the Homeowner with details of the insurance policy as she would have needed this information to submit a claim.

The Tribunal determine that the Factor has not breached section 5.5 of the 2012 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.1 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**“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.”**

**The Homeowner's complaint:**

Ms Fridlington explained that she does not feel she was kept in the loop. She has been waiting for four and a half years for the crack to be repaired.

**The Factor's response:**

Mr Doig advised that the Factor recognises that the repair has been outstanding for some considerable time. The Factor is satisfied that they have procedures in place that meet the requirements of the Code. The Factor cannot give an estimate of the timescale for completion of the repair as they have not been put in funds by the owners to allow the repairs to be instructed, even although the repair was approved by the majority. Whilst eleven owners approved the repair only nine paid their share of the repair costs to the Factor.

**The Tribunal's Decision:**

The Homeowner's complaint is that the repairs have been outstanding for four and a half years.

Section 6.1 of the Code of Conduct requires the Factor to have procedures in place to allow homeowners to notify them of required repairs. The fact that the Homeowner notified the Factor of the required repairs by email is evidence that the required procedures are in place. The Tribunal accept that as the owners had not provided the Factor with payment of the repair costs the Factor was unable to instruct the repair and provide the owners with an estimated timescale for completion.

The Homeowner's complaint that the repairs have been outstanding for four and a half years 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 2012 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.2 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021):**

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

**The Homeowner's complaint:**

Ms Fridlington explained that she considers the crack to be an emergency repair. However, she accepts that the Factor's Service level Agreement details their emergency arrangements.

**The Factor's response:**

Mr Doig advised that the Factors are satisfied that that they have procedures in place for dealing with emergencies, including receiving instructions and giving contractors access. This complaint is irrelevant.

**The Tribunal's Decision:**

The Factor's Service Level Agreement details their procedures for dealing with emergencies at paragraph 2(i). The Tribunal determine that the Factor has not breached section 6.2 of the 2012 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.6 of the 2012 Code of Conduct Application C1 (complaint up to 16<sup>th</sup> August 2021): If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.**

**The Homeowner's complaint:**

Ms Fridlington advised that she wished to withdraw this complaint.

**Section 7 of the 2012 Code of Conduct Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**The Homeowner's complaint:**

Ms Fridlington accepted that her complaints regarding the Factor's complaints procedure relate to the period after August 2021.

**The Factor's response:**

Mr Doig advised that the Homeowner has not specified which paragraphs of section 7 are included within her complaint. In any event the Factor is satisfied that they have complied with the provisions of section 7.

**The Tribunal's Decision:**

The Tribunal determine that the Factor has not breached section 7 of the 2012 Code of Conduct in relation to the Homeowner's complaint.

**Property Factor duties (up to 16<sup>th</sup> August 2021):****The Homeowner's complaint:**

Ms Fridlington explained that she believes the Factor has delayed in having the crack repaired. She received little communication from the Factor after reporting the crack in May 2020. The Factor is under a duty to manage properties properly. The Factor has not done this as the crack has not yet been repaired.

**The Factor's response:**

Mr Doig explained that the Factor was investigating the matter of the crack after it was reported in May 2020. Enquiries were being made which led to tell tales being installed in June/ August 2021 and a CCTV drainage survey being carried out in December 2021.

**The Tribunal's Decision:**

The Homeowner's complaint is that the Factor failed to progress the repair between May 2020 and 16<sup>th</sup> August 2021.

The parties have produced copies of the emails between them from 2020 to 2021 which evidence the fact that Homeowner and the Factor were in correspondence regarding the repair and in April 2021 the Homeowner advised that she was submitting an insurance claim and a surveyor was required to inspect the external cracks. The Factor sent a letter to the Homeowner dated 12<sup>th</sup> May 2021 with details of the quotation for the survey and advising that they would obtain other quotes. The Factor sent a letter to the owners dated 21<sup>st</sup> May 2021 asking the owners to provide signed mandated authorising the survey. The Factor sent the Homeowner a letter dated 1<sup>st</sup> June 2021 advising that 8 out of 15 owners were in favour of proceeding with Thomas and Adamson's quote. The Factor sent the Homeowner a letter dated 11<sup>th</sup> June 2021 advising that they had sufficient advance funding to instruct the survey. The survey was carried out on 29<sup>th</sup> June 2021. The Factor sent the Homeowner an email dated 21<sup>st</sup> July 2021 advising that they had received the

survey report and it would be uploaded to the Portal. The report recommended the installation of tell tales and a CCTV survey. They confirmed that they would obtain quotes. The Factor sent the Homeowner a letter dated 13<sup>th</sup> August 2021 which confirmed that they had received one estimate and further estimates would be obtained.

The Tribunal acknowledge that the Factor and the Homeowner had to ascertain if the building insurance policy would meet the repair costs and once the position was clarified they had to obtain a reasonably priced survey due to the fact that a structural repair was required. The Tribunal find that the Factor was not unreasonably slow in progressing matters between May 2020 and 16<sup>th</sup> August 2021.

The Tribunal determine that the Factor has not failed to comply with Property Factor duties detailed in the application during the period May 2020 and 16<sup>th</sup> August 2021.

**OSP1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must conduct your business in a way that complies with all relevant legislation.**

**The Homeowner's complaint:**

Ms Fridlington advised that she wished to withdraw this complaint.

**OSP2 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must be honest, open, transparent and fair in your dealings with homeowners**

**The Homeowner's complaint:**

Ms Fridlington advised that the Factor had not been open and honest regarding the repair. The Factor had told a neighbour that they would underwrite the cost of the repair and they have backtracked on this. She has a recording of the conversation.

**The Factor's response:**

Mr Doig advised that he refutes the suggestion that the Factor has not been open and honest. He also questioned the admissibility of a recorded telephone conversation. He referred to clause 3 of the Factor's Written Statement of Services which states that the Factor will ask for payment before instructing repairs.

**The Tribunal's Decision:**

The Homeowner's complaint is that the Factor has not been open and honest and this complaint is based on the transcription of a phone call dated 26<sup>th</sup> March 2024 made by the owner of flat 14 that she produced.

The Tribunal are unable to make a finding on the basis of the transcription as it does not detail who the owner of flat 14 had spoken to. The details are insufficient.

Consequently, the Tribunal are unable to make a determination in relation to the complaint that the Factor has breached OSP2 of the 2021 Code of Conduct.

**OSP3 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must provide information in a clear and easily accessible way.**

**The Homeowner's complaint:**

Ms Fridlington explained that the residents in the block receive correspondence from the Factor at different times. They are told to access information on the Portal but some owners do not use the Portal. She has asked the Factor to provide her with written correspondence instead of receiving intimation via the Portal.

**The Factor's response:**

Mr Doig explained that the Factor is satisfied that information has been provided in a clear and easily accessible way. The Factor communicates with owners in the manner the owners' request. The Homeowner has not made a complaint to the Factor regarding information not being provided in a clear and easily accessible way. The Factors have been inhibited in having the works carried out through the failure of the full group of the owners to put them in funds.

**The Tribunal's Decision:**

The Tribunal are unable to make a determination in relation to this complaint as the Homeowner has not complained to the Factor that they have not provided specific information to her in a clear and accessible way. If other residents consider that the Factor has not provided information to them in a clear and accessible way they would have to make their own application to the Tribunal.

**OSP6 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.**

**The Homeowner's complaint:**

Ms Fridlington explained that the cracks have not been repaired in a timely manner. When the crack was first reported it was a minor crack. The crack has developed and is now a larger and a more extensive repair is required.

A residents meeting was held in November 2023 and a representative of the Factor was supposed to attend but the day before the meeting they were advised that the representative was no longer able to attend and someone else would attend on their behalf. However, the person who did attend the meeting did not know the details of the problem and was unable to comment on the situation.

**The Factor's response:**

Mr Doig advised that the Factor is satisfied that the services provided to the Homeowner have been provided using reasonable care and skill in a timely way. The Factor has been inhibited in instructing the repair through the failure of the full group to place them in funds.

The fact that a particular individual was not available to attend a residents meeting is not a breach of OSP 6.

**The Tribunal's Decision:**

The Tribunal determine that the Homeowner's complaint that a particular individual was not available to attend a resident's meeting is not a breach of OSP 6.

In connection with the Homeowner's complaint that the repairs were not carried out in a timely manner the timeline of events (post August 2021) from the parties productions and representations is as follows:

29<sup>th</sup> September 2021: Letter from the Factor to the Homeowner referring to the structural survey report and the recommended remedial action and advising that advance payment required.

20<sup>th</sup> October 2021: Letter from the Factor to the Homeowner advising that a majority are in agreement but they require advance funding.

17<sup>th</sup> November 2021: Email from the Factor to the Homeowner advising that they have not received full funding. Thomas and Adamson were instructed to install tell tales. The Factors funded the shortfall of £800.

6<sup>th</sup> December 2021: Tell tales were installed and CCTV survey was to be undertaken ( per Curtins Report).

17<sup>th</sup> and 18<sup>th</sup> January 2022: CCTV survey was undertaken.

25<sup>th</sup> January 2022: CCTV drainage report was sent to owners.

8<sup>th</sup> February 2022, 12<sup>th</sup> April 2022 and 21<sup>st</sup> June 2022: Thomas and Adamson attended to monitor the tell tales.

4<sup>th</sup> August 2022: The date of the tell tale survey report by Curtins.

23<sup>rd</sup> September 2022: tell tale monitoring survey received and it had been sent to the insurers.

25<sup>th</sup> January 2023: Email from Questgates loss adjusters to the Homeowner advising that the required repairs is not an insured risk.

The Factor had secured funding from the Insurance company Risk Management Fund agree to pay sum of £5334 to cover the tender costs.

16<sup>th</sup> March 2023: letter from the Factor to the owners confirming the findings of the reports and to take matters forward a tendering process would have to be completed. Thomas and Adamson instructed to progress tender.

30<sup>th</sup> June 2023: Tender documents issued (return date 14<sup>th</sup> July 2023).

August 2023 the Factor received the tender report.( report dated 11<sup>th</sup> August 2023).

15<sup>th</sup> September 2023:Email from the Factor to the Homeowner providing update. All tenders received and with repairs team to issue funding request.

3<sup>rd</sup> October 2023: Email from the Factor to the Homeowner apologising for the fact that the repairs team had not provided an update. She confirmed that she had instructed the team to issue as a priority and the funding request had been issued to owners that day.

Email dated 3<sup>rd</sup> October 2023 from the Factor to the Homeowner sending the tender report for roof void remedial works and requesting payment.

Letters dated 15<sup>th</sup> November 2023 and 6<sup>th</sup> December 2023 from the Factor to a resident chasing up the signed mandate and payment of the share of the costs.

15<sup>th</sup> January 2024 residents meeting.

28<sup>th</sup> February 2024 residents meeting.

5<sup>th</sup> March 2024: Redacted Letter from the Factor advising that agreement received from 11 out of 15 owners in favour of the works but only payment from five owners. If payment not received by 5<sup>th</sup> April 2024 they will close the works down and refund the owners.

23<sup>rd</sup> October 2024: Letter from the Factor to the Homeowner referring to the fact that the previous attempt to progress the works had been unsuccessful due to a shortfall and requesting votes to see if they are able to secure further support from owners.

30<sup>th</sup> April 2025: Email from the Factor to their solicitor confirming that the major works have been instructed.

The Tribunal acknowledge that some delays in the progress of the repairs detailed in the timeline were caused by a failure of the owners to pay the share of costs requested by the Factor. These include the delay from 29<sup>th</sup> September 2021 to 17<sup>th</sup> November 2021 and the delay from 3<sup>rd</sup> October 2023 to 30<sup>th</sup> April 2025.

However, the delay between the Factor receiving the tender documents (August 2023) and sending the owners the report and requesting payment (3<sup>rd</sup> October 2023) was not caused by the failure of the owners to pay the share of costs requested by the Factor.

The Factor's letter to the Homeowner dated 13<sup>th</sup> December 2023 states that the delay was due to the fact that the tender report did not include the fee structure for the surveyor oversight and certification. The Tribunal do not accept this explanation as the letter from the Factor to the Homeowner dated 3<sup>rd</sup> October 2023 refers to the T and A costs (per fee quote dated 5<sup>th</sup> May 2023). The Tribunal find that the Factor took approximately six weeks to send the owners the tender report and request payment. The Tribunal determine that this delay was unreasonable and the services provided were not provided in a timely way. Consequently, the Tribunal determine that the Factor has breached OSP6 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**OSP10 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.**

**The Homeowner's complaint:**

Ms Fridlington explained that she had spoken to Craig (one of the members of staff employed by the Factor) who had told her what another resident had said to him. This matter should have been confidential. She could not remember if the conversation took place over the phone or if it was raised in an email.

**The Factor's response:**

Mr Doig advised that the Factor is unaware of any alleged transgressions and the Homeowner's complaint is insufficiently specific.

**The Tribunal's Decision:**

The Tribunal are unable to make a determination in relation to this complaint as the Homeowner has not specified a breach of OSP10 of the Code of Conduct.

**Section 1 (B4) of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): The Written Statement of Services should specify the core services that the property factor will provide to homeowners. This must**

include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);

**The Homeowner's complaint:**

Ms Fridlington withdrew this complaint.

**Section 2.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

**The Homeowner's complaint:**

Ms Fridlington explained that her complaint is that she first reported the crack to the Factor four and a half years ago and the repair has still not been carried out. She referred the Tribunal to the timeline that has been produced.

**The Factor's response:**

Mr Doig referred the Tribunal to his written representations which state that the Factor considers that they have attempted to engage in good communication with the owners at Barony Court, including the Homeowner. The Factors endeavour to cultivate a positive relationship with the owners. The owners are consulted in decision making on material matters and in relation to large scale repairs. The Factor does not consider that they have failed in their duties under section 2.1 of the Code.

**The Tribunal's Decision:**

The Homeowner's complaint is that the Factor took over four and a half years to have the repair carried out. The Homeowner has not specified a specific breach of section 2.1 of the Code of Conduct.

The Tribunal determine that the Factor has not breached section 2.1 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 2.3 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web



**portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.**

**The Homeowner's complaint:**

Ms Fridlington advised that she did not receive details of the online meeting that had been arranged with the surveyors. It was arranged in December 2023 or January 2024. She did not receive the letter from the Factor that contained the details of the meeting until two or three days after the meeting. She had only been able to attend the meeting as another resident had told her about it.

**The Factor's response:**

Mr Doig referred the Tribunal to his written representations. The Factor is not aware of any request having been received from the Homeowner concerning mode of delivery which they have not accommodated. He does not accept that there has been a breach of section 2.3 of the Code. The Factor cannot be held responsible for mail entrusted to the postal system being delayed in delivery.

**The Tribunal's Decision:**

The Homeowner's complaint does not relate to the Factor having failed to provide the Homeowner with a paper copy of documentation that she has asked for. The Tribunal determines that the Factor has not breached section 2.3 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 2.7 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 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:**

Ms Fridlington withdrew this complaint.

**Section 2.9 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): Where another property factor is due to take over the management of property and land owned by homeowners; the outgoing property factor must co-operate (within the limits of their authority to act and data protection legislation) with the new, formally appointed, property factor (and vice versa), to supply each other with information about the land and properties to be factored and contact details for homeowners. This could be achieved via a letter of authority from the majority of homeowners to confirm**

**their instructions to the outgoing property factor and list the information they wish to be shared.**

**The Homeowner's complaint:**

Ms Fridlington withdrew this complaint.

**Section 4.5 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies.**

**The Homeowner's complaint:**

Ms Fridlington explained that her complaint is that the Factor does not provide assistance to owners who cannot pay for repairs. She believes that as 11 of the owners had consented to the works the Factor should have instructed the works and recover the missing shares from the owners who do not pay.

**The Factor's response:**

Mr Doig advised that section 4.5 relates to debt recovery and not the upfront payment of repairs.

**The Tribunal's Decision:**

The Homeowner's complaints are that the Factor did not fund the missing shares to enable the repair to proceed. This complaint is not a breach of section 4.5 of the Code of Conduct. Section 4.5 of the Code of Conduct requires the Factor to deal fairly with customers whose accounts are in arrears. The Tribunal determine that the Factor has not breached section 4.5 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 4.10 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).**

**The Homeowner's complaint:**

Ms Fridlington explained that at the Residents' meeting she asked how the Factor could assist the owners that could not pay their share of the repair costs and what has the Factor done to ask for the shares to be paid. She was told that if the Factor continued to ask for payment the Factor could be accused of harassment. Since Charles Leak took over the management of the repair matters have progressed. Two months ago he secured sufficient contributions from owners to enable matters to progress, even although 100% of payments had not been received.

**The Factor's response:**

Mr Doig explained that the Factor is obtaining updated costings. If the owners made up the missing share the repair could be instructed. There has been no attempt by the Factor to charge other homeowners outstanding share of costs due by non payment owners. It is discretionary whether the Factor should provide owners with options for accessing finance for works to be undertaken, just as owners could pay additional shares themselves to ensure that works can be adequately funded.

**The Tribunal's Decision:**

The Homeowner's complaints are similar to her complaints under section 4.5 of the Code of Conduct. The Factor only recently agreed to fund the missing share to enable the repair to be instructed. This complaint is not a breach of section 4.10 of the Code of Conduct. Section 4.10 relates to recharging residents in a situation where resident do not pay the share of costs that they are due. The Tribunal determine that the Factor has not breached section 4.10 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 5.2 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** Property factors may wish to make homeowners aware of their statutory duty to insure against prescribed risks, such as fire or flood (see section 18 of the Tenements (Scotland) Act 2004, and the Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)).

**The Homeowner's complaint:**

Ms Fridlington withdrew this complaint.

**Section 5.6 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information must be made available if requested by a homeowner. If homeowners are responsible for submitting claims on their own behalf (for

**example, for work that is not on common parts), a property factor must take reasonable steps to supply 21 to homeowners all information that they reasonably require in order for homeowners to be able to do so.**

**The Homeowner's complaint:**

Ms Fridlington advised that she asked the Factor to provide details of the insurance claim but the details and correspondence was not provided. The request was made by email dated 18<sup>th</sup> March 2023 (page 146 of the papers).

**The Factor's response:**

Mr Doig confirmed that the information can be produced.

**The Tribunal's Decision:**

The Factor has not provided evidence that they have provided the Homeowner with copies of all correspondence from the Factor to the insurers regarding the insurance claim for the cracking in the building, including the insurers responses. The Tribunal determine that the Factor has breached section 5.6 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 5.7 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): A property factor must take reasonable steps to keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves if required.**

**The Homeowner's complaint:**

Ms Fridlington explained that she was not kept informed. At the start she was advised that the crack had been caused by thermal movement and later it was caused by missing struts in the roof space. The owners are concerned that the structural engineer's report stated that the proposed remedial action might solve the problem. They are not guaranteeing that it will solve the problem.

**The Factor's response:**

Mr Doig explained that the Factor does not believe that they have breached section 5.7 of the Code.

### **The Tribunal's Decision:**

Section 5 of the Code of Conduct relates to Insurance. The Homeowner's complaint relates to the Factor not keeping the Homeowner advised as to the progress being made to have the cracks repaired. The complaint does not relate to a failure to keep the Homeowner advised of the progress of an insurance claim. The Tribunal determine that the Factor has not breached section 5.7 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 5.8 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 5.8 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.**

### **The Homeowner's complaint:**

Ms Fridlington withdrew this complaint.

**Section 6.2 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstruction.**

### **The Homeowner's complaint:**

Ms Fridlington withdrew this complaint.

**Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

**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.**

**The Homeowner's complaint:**

Ms Fridlington explained, as already stated, that her complaint is that she first reported the crack four and a half years ago and the repair has still not been instructed. In the meantime the condition of her property is deteriorating.

**The Factor's response:**

Mr Doig referred the Tribunal to his written representations. The Factor does not consider that they have breached section 6.4 of the Code. Inspections are arranged routinely. Regular repairs have been investigated and where appropriate carried out within a reasonable time. It is accepted that the main works referred to in the application have not been undertaken as agreed by a majority of owners. The Factors could not instruct the works given the considerable lack of funding even from owners who had approved the works. The Factors have tried to obtain funding from insurers and from the council but have not been able to secure that. In the circumstances the ingathered funds have been returned to the paying owners and the works have been cancelled. The works were reinstructed in April 2025 after the Factor agreed to pay the missing share.

**The Tribunal's Decision:**

Section 6.4 of the Code of Conduct requires repairs to be carried out within an appropriate timescale and homeowners informed of the progress.

The delay detailed at section OSP 6 of this decision, namely the delay between the Factor receiving the tender documents (August 2023) and sending the owners the report and requesting payment (3<sup>rd</sup> October 2023), result in the repairs not being progressed in appropriate timescales as required by section 6.4 of the Code of Conduct.

Consequently, the Tribunal determine that the Factor has breached section 6.4 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.6 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 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:**

Ms Fridlington explained that she asked for a meeting with the structural engineers/ contractor as she wanted details of the proposed works and she wanted to understand what they were going to be paying for. The person sent to the meeting was unable to answer her questions as they were not a structural engineer. However, they were charged for that meeting. The fee is mentioned at page 152 of the papers and is a fee to Thomas and Adamson International Ltd.

**The Factor's response:**

Ms Johnstone confirmed that a minute of the meeting could be provided. Mr Doig advised that the Factor cannot be held responsible if someone attending a residents' meeting was unable to answer questions. The Factor does not accept that they have breached section 6.6 of the Code. There is inadequate specification of the alleged breach.

**The Tribunal's Decision:**

The Homeowner's complaint is that the Factor arranged a residents' meeting with the structural engineers/ contractor and the person who attended that meeting was not able to answer the resident's questions. This complaint does not fall within the terms of section 6.6 of the Code of Conduct which requires the Factor to 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 Tribunal determine that the Factor has not breached section 6.6 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.10 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the contract.**

**The Homeowner's complaint:**

Ms Fridlington withdrew this complaint. She acknowledged that the commission details are set out in the Written Statement of Service.

**Property Factor Duties**

**The Homeowner's complaint:**

Ms Fridlington explained that the Factor should manage the Property properly. She does not believe it has been managed well due to the length of time it is taking to instruct the repair.

**The Factor's response:**

Mr Doig acknowledged that Ms Fridlington had identified the problem with the whole situation. How do they get the owners to pay for the repair. The Factors do not accept that it is their responsibility. The Factor has agreed to reassess the costing.

**The Tribunal's Decision:**

The Homeowner's complaint is that the Factor has breached their Property Factor duties by taking too long to instruct the repairs. The Homeowner does not specify the source of this duty. The Factor's Written Statement of Services at section 2 iii states that they normally seek full advance funding for the whole cost before instructing the repair work. The Factor was not obliged to instruct the repairs before the full funding had been received. The Tribunal acknowledges that the Homeowner first notified the Factor of the crack in February 2020 and the repairs were only instructed in April 2025 when the Factor paid the missing share. The Factor was not required to pay the missing share. The Tribunal determine that the Factor has not breached their Property Factor duties by not instructing the repair prior to April 2025 as they had not received full payment of the cost of the repairs from the owners.



12. At the second CMD the Homeowner advised that she considered that the Factor was liable for the cost of repairs to her bathroom. She wants her bathroom to be reinstated to the condition it was in before the cracks appeared. She also explained that the delay in having the works carried out resulted in her share of the repair costing her an additional sum of £270. She has also suffered stress, and inconvenience due to the delays.

### **13. 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 OSP 6 and sections 5.6 and 6.4 of the 2021 Code of Conduct.

The Tribunal acknowledged the detail of the Homeowner's claim for compensation. However, the Tribunal recognises that the Factor mitigated the losses suffered by the Homeowner by providing the advance funding of the missing share in April 2025. Had the Factor not funded the missing share the repair would not have been instructed until all of the owners had paid their share of the repair costs. In the circumstances it is not reasonable to require the Factor to pay compensation to the Homeowner.

However, the Tribunal acknowledges that the Homeowner has suffered stress and inconvenience as a result of the Factor's breaches of OSP 6, section 5.6 and 6.4 of the 2021 Code of Conduct.

The Tribunal therefore 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:

*'(One) The Factor must pay the homeowner £150 for the inconvenience she had suffered 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*

*(Two) The Factor must send the Homeowner and the Tribunal copies of all correspondence they sent to the insurers regarding the insurance claim in respect of*

*the crack together with the insurers' responses. within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'*

#### 14. 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.**

Signed .....Date 20<sup>th</sup> May 2025

Chairperson