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/24/2616 and FTS/HPC/PF/24/2618

88 South Victoria Dock Road, Dundee, DD1 3BQ ('the Property')

Andrew Brews ('the Homeowner and Applicant')

Ross and Liddell Limited ('the Factor and Respondent')

Tribunal members:

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

Background

1. The Homeowner is heritable proprietor of the property 88 South Victoria Dock Road, Dundee, DD1 3BQ ('the Property').

2. Ross and Liddell were factors of the Property until 14th June 2022 and are registered property factors.

3. The Homeowner submitted two applications to the Tribunal. A C1 Application in respect of alleged acts or omissions of the Factor before 16th August 2021 and a C2 Application in respect of alleged acts or omissions of the Factor on or after 16th August 2021.

The applications sought determinations that the Factor had failed to comply with the Property Factor's duties prior to 16th August 2021 and specified sections of the Property Factor Code of Conduct 2012 and the Property Factor Code of Conduct 2021.

4. By Notices of Acceptance by Martin McAllister, Convener of the Tribunal, dated 13th August 2024 he intimated that he had decided to refer the applications (which application paperwork comprises documents received between 10th June 2024 and 9th August 2024) to a Tribunal.

5. The Factor's Written Representations

The Factor lodged written representations dated 4th November 2024 and 8th September 2025. In summary, the Factor does not believe that the complaints should be upheld as they lack specification and they refer to correspondence that predates the Homeowner's ownership of the Property.

6. The Homeowner lodged the following Productions:

6.1 The Factor's inspection report dated 30th December 2021.

6.2 The Factor's inspection report dated 27th January 2022.

6.3 The Factor's inspection report dated 29th March 2022.

7. The First Hearing.

A Hearing took place in respect of the application on 9th January 2025. The legal member was Andrew McLaughlin.

The Homeowner attended.

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

The Applicant was directed to provide further written representations in the form of succinct typed document that sets out in numbered paragraphs the specific acts and omissions founded upon in a way that can be understood by all without reference to background knowledge or other secondary materials. The applications were cojoined to a further Case Management Discussion by teleconference.

8. Direction.

The Tribunal (Andrew McLaughlin) issued a Direction dated 9th January 2025 which directed the Applicant to provide further written representations specifying his complaints.

9. The Homeowner's Written Representations submitted 5th March 2025.

'Background

The AWG Phase of City Quay Dundee was the first Phase of the development constructed over 20 years ago. As given in the Deed of Conditions, registered 18 September 2002, by Morrison City Quay Dundee Limited section 13.1, Ross and

Liddell was appointed by the Developer as the first Property Manager, a position they held until 14th June 2022 when their tenure was terminated by an owners vote that overwhelmingly opted to have them removed as factors.

The driver for the removal was the poor performance of Ross and Liddell over the many years they were the Property Manager. Residents had reported a history of problems mainly concerning varying degrees of water ingress to the buildings. When action was taken the repairs in general were not effective. On the removal of Ross and Liddell the new factor, Estates Property Management, were requested by the Owners Association to investigate the water ingress problems reported by owners. EPM instructed local contractors to investigate the problems. However, the reports submitted by these contractors of the first building inspected reported that the building fabric was in an extremely poor state. EPM then engaged a survey firm, Malcolm Associates, to undertake a survey of the common areas of the first building. The report submitted was quite disturbing and Malcolm Associates was then instructed to conduct a survey of all the buildings in the Phase. The survey highlighted many issues across the common areas and included an estimate of the costs of the repairs needed to restore the buildings to the condition they should be in. The estimate was around £3,000,000. Owners were informed of this and that they are likely to be billed around £21,000 each. Clearly the building condition had seriously deteriorated and such deterioration does not happen overnight; it takes years to reach the state found. Owners rightly had the expectation that the Factor would be making sure that the buildings were properly inspected and maintained as they should expect from a professional company.

My case is that the common areas were neglected by Ross and Liddell and had Ross and Liddell undertaken their duties as Factor, and the correct action been taken when the deterioration had commenced, the costs borne by owners would have been much lower than the current estimate of £3,000,000, and the life span of the building fabric would have been significantly extended.

The increased cost to owners is due to Ross and Liddell's lack of appropriate action.

2. Deed of Condition

Ross and Liddell have continually informed owners that, to them, the Deeds are paramount and that they ensure everything they do is in full accord with the Deeds. For this reason, it is important for clarity that the relevant sections of the deeds are given here.

a. The Property Manager and Powers

i. 13.1 The Proprietors shall at any such meeting have power to appoint a Property Manager who shall take charge of all such matters in relation to the management of the Blocks as may competently be dealt with at any meeting convened and held as herein provided and to delegate to the Property Manager such rights or powers as may be exercisable by a majority of the Proprietors present or represented at such meeting with responsibility for instructing and administering repairs to and maintenance of the Common Parts of the Blocks, the Common Amenity Ground, and the Common Services and to fix the remuneration payable to the Property Manager for his services (which shall be payable by the Proprietors to the Property Manager in the proportions specified in Clause 3.1 hereof) and the duration of his appointment

and also to terminate the appointment of the Property Manager provided that another is immediately appointed in his place declaring that so long as the Developers remain the owner of any part of the Blocks the powers contained in this Sub-Clause 13.1 shall be exercisable by the Developers alone and declaring that Ross & Liddell, 4B Atholl Place, Edinburgh shall be the first Property Manager which appointment shall run for three years from the sale by us of the last Flat in the Blocks and shall be renewed annually thereafter unless terminated by a vote of the meeting as hereinbefore provided

ii. 13.2 17/06/2019 ScotLIS - Title Information - ANG23481 13 of 32 The Property Manager shall, unless otherwise determined at a meeting at which he is appointed or at any subsequent meeting of the Proprietors of Flats in the Blocks, duly convened and held as aforesaid, be entitled, during the continuance of his appointment, to exercise the whole rights and powers which may competently be exercised at or by any such meeting subject to any limit of expenditure which may be fixed by the said Proprietors at any such meeting but excepting any matters relating to the appointment of the Property Manager, the duration of his appointment and his remuneration

iii. In the event of any Proprietor considering it necessary or desirable that any repairs or other works should be executed to any of the Common Services, Access Route or Common Amenity Ground and in the event of a majority of the Proprietors present in person or represented at a meeting convened and held in accordance with Clause 12 hereof refusing to sanction such repairs, renewals or other works or in the event of any such Proprietor considering that any repairs, renewals or other works upon the Common Services, Access Route or Common Amenity Ground ordered or sanctioned at any such meeting are unnecessary or undesirable he shall be entitled to refer the question to the Property Manager appointed in terms of Clause 13 hereof and in the event of the Property Manager deciding that all or any of such repairs, renewals, decoration or other works are necessary or desirable the Property Manager shall have power to order the same to be executed forthwith and the expense thereof shall be borne by all of the Proprietors in equal shares. Any Proprietor shall be bound to intimate in writing his intention so to refer the question to the Property Manager within fourteen days of the date…

Of importance in these sections are: • The first Property Manager is appointed for a period of 3 years from the sale of the last flat in the Blocks and then is renewable annually by a vote at a meeting to be held. • ….to delegate to the Property Manager such rights or powers as may be exercisable by a majority of the Proprietors present or represented at such meeting with responsibility for instructing and administering repairs to and maintenance of the Common Parts of the Blocks, the Common Amenity Ground, and the Common Services…. • The Property Manager …" during the continuance of his appointment, to exercise the whole rights and powers which may competently be exercised at or by any such meeting"…. • ….in the event of the Property Manager deciding that all or any of such repairs, renewals, decoration or other works are necessary or desirable the Property Manager shall have power to order the same to be executed forthwith and the expense thereof shall be borne by all of the Proprietors in equal shares….

b. Definition of the Common Parts

1.3 "the Common Parts of the Block" means (i) the solum on which the Blocks are erected, the foundations, the outside walls and all attachments to the outside walls (including window railings if any), the gables, the roof (to include protection layer, single ply roofing membrane, 80mm insulation, vapour control layer and 150-200mm concrete deck), (under exception of the Roof Gardens), roof trusses, all structural loadbearing walls, the hatchway or hatchways so far as situated above the common landings leading to the roof and the roof window and loft-attic space so far as situated above the common stairs. There are a number of Deed of Conditions for the Phase that cover differences in the buildings but the main Conditions are common.

Of importance is the definition of the Common Parts of the Block contained in section (i) of section 1.3 above.

3. Ross and Liddell Service Level Agreement

Inspections

Properties under our management are inspected a minimum of twice per calendar year, although the frequency of visits is likely to be greater in most cases. The inspections or site visits will usually be carried out by a Property Inspector and will be a visual inspection only, from ground level. This is unless specified otherwise by written agreement, subject to payment of costs by owners where Title conditions apply, or where standing arrangements exist between us and co- proprietors. We will review the fabric of buildings, internal stairwells, bin stores and landscaped areas, as appropriate. Any defect issues will be noted and action taken following inspection. Our property Inspectors are not carrying out a formal building survey or risk assessment, but these can be arranged separately as required, on behalf of owners. If these additional services are requested, a fee proposal will be submitted for approval. If considered necessary, following an inspection, we will provide Owners with a Programme of Works, detailing matters of maintenance or repair, arising directly from our inspection. A Programme of Works will only be issued if the required works are out with the scope of Emergency Works, or Routine Repairs and Maintenance, which would normally be instructed on behalf of homeowners, under the terms of this Service Level Agreement

4. Supporting Documents –

a. Water Ingress Thorter Row 15 to 37 and Marine Parade 1 to 18

i. Evidence sheet A May 2009 C.O.C 6 carrying out repairs and maintenance. This letter from Ross and Liddell to AWG dated 22nd May 2009, highlights the problems with a number of common area defects in 1 to 18 Marine Parade and 15 to 39 Thorter Row. It also points out some new issues concerning drip trays and damp proof courses. There appears to be no follow up to this letter concerning 1 to 18 Marine Parade, unless Ross and Liddell can prove otherwise. Consequently, there are now serious problems with those common areas that were affected by water ingress, lack of damp proofing and lack of drip trays. Ignoring these serious problems was negligent and has now as Ross and Liddell stated back in 2009 affected the structure of the block.

ii. Evidence Sheet B C.O.C 2. Communication and consultation. C.O.C 6. A letter from R&L to the owners of 15 to 39 Thorter Row noting that several owners in the

block have experienced water ingress over the years. It informs owners that the developer AWG have agreed to fund 50% of the fees of the work to the roof areas and any internals that require repair/replacement with owners funding the remaining 50% . It asks owners to, as soon as possible, if they are willing to accept the measures. It notifies owners of a meeting to be held on 28th October 2009 in R&L's Dundee office to discuss the situation.

iii. Evidence sheet C. Oct 2009 C.O.C 2. Communication and consultation. C.O.C 6. This letter from R&L to the owners of apartments 15 to 37 Thorter Row, refers to the meeting of the owners held on 28th October 2009 concerning water ingress problems that were occurring from the beginning of occupation. Mr Fitzpatrick R&L's Senior Property Manager in Dundee provided some background that was promised at the meeting. It informs owners that during the defect liability period R&L dealt with Page 6 of 15 AWG/Morrison who had sent contractors to investigate and rectify the problems. However, R&L were unable to obtain records of the work and before action could be taken the defect liability period expired. Due to increasing water ingress problems R&L finally instructed DCG

Property Management Consultants to report on the matter and informed owners that: "This report highlighted a number of issues which it claimed were as a result of poor quality workmanship in either the installation or the subsequent repairs carried out. These issues were in the opinion of the report not normal maintenance issues rather they were defects". Further at the meeting R&L requested owners to sign a mandate authorising the repairs

iv. Evidence sheet D Dec 2009. C.O.C 2. Communication and consultation. C.O.C 6. This is a further letter from R&L to the owners of Thorter Row 15 to 37 referring to the meeting of 28 October 2009. The letter informs the owners that R&L had not received close to 50% of the mandates requested at the meeting. It further states that as stated previously, this matter is of the utmost urgency, and to that end another meeting had been arranged on 7th December to settle the matter. The letter, from R&L's Senior Property Manager Mr Simon Fitzpatrick, and finishes with the statement: "This issue will affect the structure of the block at some stage".

These letters raise several issues as to R&L's inability to resolve the problem before the expiration of the defect liability period for the benefit of the owners. The Developer appears to have undertaken a repair but R&L have no records of the repair. It would be expected that the Property Manager/Factor would have been part of the investigations and in close contact with the Developer. Knowing that the defect liability period was coming to an end R&L could/should have taken appropriate action. Given the powers the Deed of Condition give the Property Manager, as noted in section 2a, of the Submission, R&L could easily have instructed AWG/Morrison to continue with the repairs and charged the necessary 50% of the cost direct to the owners. On this basis it would have not only saved the owners money, but would have fixed the water ingress problem. Putting this to a mandate was not required, was a waste of time and achieved nothing. In my opinion this was done to simply avoid the factor taking control of the situation. Also, despite the damming report of DCG along with the statement by Mr Fitzpatrick that the issue will affect the structure of the block at some stage, it appears that no further action was taken by R&L. The Question is why. For a company such as Ross and Liddell selling professional

property management services to customers the company surely has a Duty of Care to its customers to look after the buildings and keep them in good repair.

v. Evidence E C.O.C. 6 carrying out repairs and maintenance The owner of flat 124 South Victoria Dock Road experienced problems with water ingress for over a year. Unfortunately, Ross and Liddell's Dundee Team appeared unable to coordinate the parties involved and it took until July 2014 to effect a repair. The owner has provided a summary of the problems from the records kept as follows:

Summary of issue:

There had been reports of water ingress at the flat below mine (number 118) dating back to the beginning of 2013. I was not made aware of this until the beginning of 2014. It was several more months before the cause of the leak was identified and fixed, by which time there was significant damage (£15,000 for my flat alone). I believe the 118 owner had wanted to make contact with me sooner; however R+L would not release my contact info and did not inform me themselves until Jan 2014. Unfortunately, I don't have all of the events recorded in writing, but I can remember discussions I had at the time with the owner of 118 and Gavin Baird, senior property manager at R+L. Gavin's initial impression had been that the water ingress was due to a loose roof tile (which made no sense to me considering there were no reports of ingress from my property or the two floors above me). Gavin then focussed on my balcony being the culprit, although there was evidence of water ingress from above affecting the 118 main door (the opposite side of the flat from the

balcony). There were multiple delays due to challenging communication with R+L. The whole thing was extremely frustrating. I was working as a junior doctor and had a post in Fort William so had rented the flat out to two medical students. Due to my shift pattern, my Mum acted as my advocate at times. My mum and I arranged to meet Gavin in person at one stage to try and get a better understanding of what was happening; however, this didn't help, and I ended up dealing with the owner of 118 directly. It was only after this that we started making tangible progress. Ultimately, the issue was with a waste pipe that had not been properly connected. The contractor explained that it was likely it had not been connected properly at the time of the build, and had been leaking over the prior decade. Had we found this sooner, my understanding is the building would have been under warranty and the building company would have been liable. The contractor also described a concrete ledge between each floor of the building, which had allowed the water to collect on a shelf that caused a lot of damage to the joists under my floor (they all had to be replaced). I don't know much about buildings, but I got the impression this was unusual, and wonder if this adds to the questions relating to the adequacy of the build in the first place. I have a number of emails that both confirm this timeline, and also demonstrate some of the communication challenges and frustrations I experienced when dealing with R+L. Again this would appear to be a case of poor management failing to make repairs before the defect liability period had come to an end. Also the time period from the first reports of water ingress to the flat below the owner and Ross and Liddell informing the owner above was extraordinary, early 2013 to January 2014. Normal with water ingress is to check out the flat above, why was this not done. Even then it was another 6 months to discover that the water was getting in via a waste pipe that had most likely never been connected. This is not what Owners should expect from a firm such as Ross and Liddell An insurance claim of

the size paid to the owner would of led to an increase in premiums which of course would be billed to owners. Yet it was clearly Ross and Liddells poor problem solving, poor management and lack of action that led to owners increased costs. Of course an increase in costs to owners due to R and Ls poor handling does not impact on them The owners summary clearly points out that the troubleshooting by a senior property manager was absolutely hopeless in that he could not even see the obvious.

vi. Evidence sheet F. C.O.C 6 carrying out repairs and maintenance This is an extract from Ross and Liddell's Service Level Agreement 2017. Section 1 states that inspections are carried out at least twice a year, these inspections cover the fabric of the buildings. It clearly states that if considered necessary, following an inspection, we will provide Owners with a Programme of Works, detailing matters of maintenance or repair, arising directly from the inspection. Given the historical problems with water ingress and the other issues picked up, as seen in sheet C, how were these ongoing defects managed. Why was it not considered necessary, following inspections, to provide owners with a programme of works to rectify serious faults. This evidence sheet clearly shows what should have been done. Defect issues were known but not acted on. This is contrary to the SLA. vii. Evidence sheet G. C.O.C 6 Carrying out repairs and maintenance This evidence comes from the property deeds and clearly outlines the power delegated to the property manager in the event of that person being dissatisfied with the maintenance, repair or renewal of remedial work carried out. Ross and Liddell have said they had no repair records (from AWG), no feedback, did not inspect and were also advised of further issues that would cause damage to the buildings fabric but chose to ignore. The above ticks all the boxes for the property manager to use the delegated powers and have the repair works carried out. Why didn't they? Given the damage to the building fabric now, this must be answered.

viii. Evidence sheet H. Nov 2017 C.O.C 6 Carrying out repairs and maintenance. This is taken from a letter written to me by Ross and Liddell dated 23 November 2017 providing information on their schedule of management. Under the section Authority to Act As Your Property Manager, the second

item states "In most cases a level of delegated authority is granted to us as your Property Manager per your Deed of Conditions/Title Deeds which allows us to carry out repair/maintenance works". Further Under Services Provided, the first item stated is to arrange the maintenance of the common grounds, the fabric of the building and the contractual obligations that arise. In my opinion, the evidence provided clearly demonstrates that Ross & Liddell did understand that they have powers under the Deeds to allow them to undertake repairs and maintenance work but apparently, they chose not to do so. Ross and Liddell should have pursued the developer, AWG, to have repairs made before the expiry of the defect liability period, and have the full paperwork confirming this handed over. That was a clear contractual obligation of theirs. Actions are required but all they provide is endless meetings as a substitute. Despite informing Owners that the Property Manager has delegated powers they apparently do not want to use them.

ix. Evidence sheet I Jan 2020. C.O.C 2. Communication and consultation. This is taken from an update of the notes of a walkabout on 16 January 2020 with members of the owners' association and AWG property manager Scott Quinn. I draw attention

to the cladding comments. Much of the cladding has now got to be replaced due to rot. In 2020 concerns were put to R and L who came back and stated they were advised not to carry out any maintenance to the timber cladding because this may create additional expenditure going forward. As can be seen from the update R and L did not communicate this with the owners. Preferring to simply do nothing, this decision has again hit owners financially

x. Evidence sheet J May 2021. C.O.C 2. Communication and consultation. This is a complaint sent to Ross and Liddell by email dated 11 May 2021. The email highlights problems with the window cills, poor inspections and that the development is going downhill so quickly. It mentions that no follow up had been received from earlier communications regarding the cills and the dangerous condition they were in. It clearly states that action is required to some cills. No action had been taken on other issues which, as can be seen from email, was causing the owner anxiety. Can Scott Quinn perhaps explain if anything was done after this email was received. It is my belief nothing was done, which is in breach of sub sections 2.2 and 2.7

xi. Evidence sheets K and L Feb 2022. C.O.C 2. Communication and consultation. These are copies of emails sent to Ross and Liddell's Property Manager Scott Quinn from the same owner who requested the actions in Evidence Sheet I. They clearly show concerns with Ross and Liddell's continued lack of action on required repairs and the fact they were not communicating with the owner. It is interesting to note the question regarding window cills on sheet K, this was 9 months after a previous request for information regarding what was to be done to rectify window cills as shown on evidence sheet I. The only conclusion that can be drawn from this is that no communication means nothing has been done and that for 9 months Ross and Lidell sat idle on these issues. Such delays are urgent and to take no action is unacceptable. Perhaps Scott Quinn the property manager for AWG at that time could answer at the tribunal hearing.

xii. Evidence sheet M. May 2024 During 2024, given the repairs required by the buildings, the owners' association chairman exchanged correspondence with Ross and Liddell to inform them of the surveys that had been carried out and request the inspection reports of the building fabric that Ross and Liddell had carried out. The association chairman has shown me the correspondence. Sheet L is a summary of main points from the correspondence. As you will note in a letter dated 2nd May 2024 Ross and Liddell's management were informed of the quote for the repairs and were offered discussions and, to supply details of the surveyor's report on the buildings if this would be helpful. No request was made by Ross and Liddell until months later. Given the seriousness of the situation most companies would have requested details as a start point. In response to a request for building fabric inspection reports, Ross and Liddell's Property Manager Scott Quin's answer was that "during our period of management owners did not request that Ross and Liddell instruct a Building Survey at the development to the areas of the Buildings Fabric which you have highlighted, or in the context of preparing implementing a PPMP." This is quite a statement when the period of management was from 18th September 2002 to 14th June 2022, some 20 years. The areas of the Building Fabric highlighted by the Chairman of the Association to Ross and Liddell were, flat roof replacement, pitched roof tile replacement, coping replacement, window cill replacement, window frame replacement etc. The Chairman then asked Mr Quinn if he was stating that a property manager has no responsibility as regards the building fabric. Mr Quinn's

response was that the Factor is not responsible for maintaining the building fabric, that is the owners' obligation under the Title and as outlined in the Deed of Conditions. I find this difficult to understand given the following statements in the Deeds of Condition. As given in Section 2a of the submission, Section 13,1 of the Deed of Condition states the following in relation to the responsibility of the Property Manager: "with responsibility for instructing and administering repairs to and maintenance of the Common Parts of the Blocks, the Common Amenity Ground, and the Common Services"

Further, as given on section 2b of the submission, the Deeds of Condition section 1.3 (i) defines the Common Parts:

"the Common Parts of the Block" means (i) the solum on which the Blocks are erected, the foundations, the outside walls and all attachments to the outside walls (including window railings if any), the gables, the roof (to include protection layer, single ply roofing membrane, 80mm insulation, vapour control layer and 150-200mm concrete deck), (under exception of the Roof Gardens), roof trusses, all structural load-bearing walls, the hatchway or hatchways so far Page 13 of 15 as situated above the common landings leading to the roof and the roof window and loft-attic space so far as situated above the common stairs. This definition of the common parts includes all of the "building fabric" items highlighted to Ross and Liddell by the Association Chairman. Ross and Liddell in the SLA give the following: At the end of the contents list is a un numbered paragraph with the heading Services which states - We will arrange routine maintenance repair work to common parts…. The SLA Section 1, Services, Repairs, and Response Times commences with We offer a full management, or grounds maintenance only service dependent on owner/title requirements. Ross and Liddell should confirm that they provide the services in accordance with the Deeds, and that this includes the Common Parts also in accordance the definition given in the Deeds. If this is not the case then they should confirm exactly what services they provide and, if they differ from that given in the Deeds of Condition, why.

xiii. Evidence

Inspection records. Maintenance records from R and L, I requested examples of what inspections were carried out by R and L and received a number of inspection sheets from Scott Quinn. I understand that Ross and Liddell supplied more inspection reports to the Owners Association. It is interesting to note that they include areas at height including the roof (which has no man safe system) but their SLA informs us that all inspections are done from ground level. Given the issues with roofs leaking, window cills failing (due to water ingress) upper-level cladding on all corners damaged due to water ingress, cracked render, leaking common area windows, loose copes and other issues, how can these areas be marked as ok when they cannot be seen from ground level and where there is also evidence to the contrary. I do not understand why Ross and Liddell did not get man safe systems installed on the buildings during their 20-year tenure as without them it is not possible to undertake proper surveys and repairs to the roof without measures to ensure the safety of the contractors staff. It is worth noting that in accordance with the copies of inspection reports I

have seen all the buildings were "from what could be seen from ground level" in very good condition.

5. Summary

As I have tried to explain in my submission the situation I find myself in now has, in my opinion, developed over a long time due to poor management of the buildings allied to a misunderstanding of the scope of what had to be maintained, a lack of urgency to make any repairs, even though the Deeds gave the Property Manager the powers to undertake repairs if required, and the constant confrontational attitude that owners faced when querying problems with their properties and its maintenance plus the lack of communication over the past 20 years has not allowed owners to make provision for the situation they now find themselves in. The I note I make concerning the attitude faced by owners is because when you talk to owners, they all say that Ross and Liddell are difficult to talk to but do not have written evidence. Much of this is due to Ross and Liddell's office being 5 minutes' walk from the site so many owners visited the office to meet face to face and do not have paper back up. Also, the standard Ross and Liddell default reply was no one else has complained you are the only one. Owners did not query this until they got together for the Association when they were surprised to discover they were one of many who had complained. The lack of full inspections has allowed buildings, that are in what has been classified as a severe marine environment, to degrade to the point where major repairs/replacements are necessary. The damage to the buildings by the time Ross and Liddell were removed as factors had become extreme. I find it hard to understand why, apparently, the building insurers did not request building condition surveys being aware of the environment in which the buildings are situated and their age. It is interesting to note that owners tend to relax when they have a Property Manager appointed as they feel safe in the fact that they are professional people and will look after the buildings. If there is anything wrong the Property Manager will let them know and take appropriate action. Owners understand that they are responsible for the costs of repairs but most do not expect, or consider, that they are the people who have to get out on the roof and inspect the building fabric, write a report and submit it to the Property Manager and, to give him/her instructions as to what to do. Why else appoint and pay for a Property Manager, especially when the relevant parts of the "building fabric" are Page 15 of 15 included in the definition of the common parts. Surely this is part of the Property Manager's Duty of Care to its customers? Had the buildings been properly inspected and maintained they could have been repaired at much less cost than owners are now having to find. Ross and Liddell were the first Property Manager but did not appear to take any action to get repairs made before the defect liability period had expired. There also appear to be problems due to poor workmanship during the building construction including missing items. This has been noted and when urgent repairs were carried out in 2024 these issues became evident. It is anticipated that as the repairs are implemented over the next 2 years many more missing items and poor workmanship will be found. For all these reasons, which I have considered at great length, I feel that it is not unreasonable to expect Ross and Liddell to reimburse me the differences in the costs I now have to bear for the building repairs.'

10. The Factor's Written Representations submitted 8th September 2025

The Factor's Written Representations in summary stated that the complaints predate the Homeowner's purchase of the Property are not competent, the complaints that relate to other owners and their properties are not competent and the Homeowner's written representations lack specification.

11. The Factor lodged an Inventory of Productions:

11.1 Copy of Title Sheet ANG28709.

11.2 Copy title plans relevant to title ANG28709.

11.3 Copy service level agreement dated January 2021.

11.4 Copy service level agreement date February 2022.

12. The Hearing.

A telephone conference call Hearing took place in respect of the application on 15th September 2025 at 10.00am.

The Homeowner attended.

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

12.1 The parties agreed the following facts:

12.1.1 The Homeowner purchased the Property on 16th November 2017.

12.1.2 The Property 88 South Victoria Dock Road, Dundee is a flat within a block of six flats. The Property forms part of a development of 143 properties within four blocks.

12.1.3 Ross and Liddell were the first Factors of the development and factored the development until 14th June 2022.

12.1.4 The development is approximately 20 years old.

13 The detail of the parties' oral representations (made at the Hearing), the parties' representations and the Tribunal's decisions are as follows:

Section 2.1 of the 2012 Code of Conduct (Application C1 (complaint up to 16th August 2021): You must not provide information which is misleading or false.

The Homeowner's complaint:

Mr Brews complaint relates to the fact that repairs are required to the development. The total cost of the repairs is approximately £3,300,000. His share of the cost is approximately £28,000. The Property is only 20 years old. The Factor identified that repairs were required but never arranged for the repairs to be carried out. The Factor never pressed the developer to carry out the repairs.

At the hearing he referred to production A which is a letter dated 22nd May 2009 to John McEwan of AWG Property Ltd in relation to 1-18 Marine Parade and 15-39 Thorter Row, Dundee. It clarifies that the site inspection confirmed the drip tray in the cavity wall at 1-18 Marine Parade is missing and there is no damp proof course under certain sections of the cope on the parapet wall at 1-18 Marine Parade. The letter also states that this confirms Ross and Liddell's report and previous correspondence to AWG. He explained that this demonstrates that the Factor knew that repairs were required to the development.

He believes that as the Deed of Conditions at page D7 of the Tile Sheet ANG28709 states that the Factor may carry out necessary maintenance, repairs and renewals and recover the cost equally from each proprietor of each flat that provision places a duty on the Factor to arrange repairs when they are aware that repairs are necessary and the Factor failed to arrange the necessary repairs.

The Factor's response:

Mr Brews has not specified any information that the Factor has provided to him that is misleading or false.

Mr Brews' complaint that the Factor did not act on homeowners' concerns is not a matter within section 2.1 of the Code.

At the hearing Mr Doig explained that the Factor would not have instructed major repairs to be carried out to the development without a mandate and funding. The Factor's Service Level Agreement at paragraph 2(iii) states that all owners have an obligation to maintain their property and legislation/title deeds, deeds of conditions

permit work to be instructed on a majority basis but they normally seek advance funding for the whole cost prior to instructing repair work.

The reference to the 2009 correspondence with another owner predates Mr Brews' purchase of the Property in November 2017.

The Tribunal's Decision:

The Tribunal are unable to make a finding in relation to section 2.1 of the 2012 Code of Conduct as Mr Brews has not specified any information provided by the Factor to the Homeowner that was misleading or false.

Mr Brews' general complaint that the Factor knew that repairs were required to the Development and they did not progress the repairs does fall within section 2.1 of the 2012 Code of Conduct.

Section 6.1 of the 2012 Code of Conduct (Application C1 (complaint up to 16th 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:

The Factor knew that repairs were required to the development but they did not instruct them.

At the hearing Mr Brews referred again to Production A and explained that this was evidence that the Factor knew that repairs were required. He also referred to production C which is a letter dated May 2009 from the Factor to Mr McEwan of AWG that refers to repairs required to properties at Thorter Row.

The Factor's response:

The Factor does have procedures in place to allow the homeowners to report repairs. There were no works instructed where the Factor failed to keep Mr Brews advised of the progress of the repair.

At the hearing Mr Doig explained that productions A and C these relate to separate properties and the letters predate Mr Brews' ownership of his Property and as such they are irrelevant.

The Tribunal's Decision:

The Tribunal are unable to make a finding in relation to section 6.1 of the 2012 Code of Conduct as Mr Brews has not specified any repair instructed by the Factor where the Factor failed to inform him of the progress of the works and estimated timescales for completion.

The productions labelled A and C referred to by Mr Brews do not relate to his Property and predate his ownership of his Property.

Section 6.9 of the 2012 Code of Conduct Application C1 (complaint up to 16th August 2021): You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

The Homeowner's complaint:

The Factor knew that repairs required to drip trays and there were missing damp proof courses but the Factor did not instruct the required repairs.

The Factor's response:

The Factor has not breached section 6.9 of the Code of Conduct as the Factor did not instruct any works during Mr Brews' period of ownership that was defective or inadequate.

The Tribunal's Decision:

The Tribunal are unable to make a finding in relation to section 6.9 of the 2012 Code of Conduct as Mr Brews has not specified any repairs instructed by the Factor that involved defective or inadequate works or service.

Property Factor duties (up to 16th August 2021):

The Homeowner's complaint:

The Factor has failed to comply with their property factor duties by not instructing repairs to be carried out to the Property when they were aware that there were defects that needed to be repaired. The Deed of Conditions specifically authorises the Factor to instruct the required repairs and in his view the title provisions take precedence over the Factor's Service Level Agreement.

The Factor carried out routine inspections but the reinspection reports failed to identify the defects. He has provided copies of three reinspection reports prepared

by the Factor dated 30th December 2021, 27th January 2022 and 29th March 2022. He stated that the Factor knew that the roof was leaking at the time the reinspection reports were prepared but the reports do not refer to the required repairs.

Mr Brews explained that the repairs have still to be instructed. The present factors are applying to the Local Authority for grants to fund the missing shares.

The Factor's response:

The Factor has not breached their property factor duties. The issues identified point to concerns that are not routinely inspected by the Factor. Paragraph One of the Factor's Service Level Agreement clarifies that the Factor's inspections will be a visual inspection only from ground level unless otherwise by written agreement. The Factor's property managers are not carrying out a formal building survey or risk assessment which could be arranged separately, as required.

The Tribunal's Decision:

The Tribunal do not accept Mr Brews' position that the Factor should have instructed the required repairs as they are required to do so in terms of the Deed of Conditions. Clause 3.1 of the Deed of Conditions by Morrison City Quay Dundee Limited registered 20th June 2003 (ANG28709) states that the Property Manager **may** carry out the necessary repair work and recover the cost thereof equally from each proprietor of each flat. This provision does not require the Factor to instruct such works. The Factor's contract with Mr Brews is detailed in their Service Level Agreement. Paragraph 2 of that agreement states that for major repairs advance funding for the whole cost will normally be required prior to instructing major repair works.

The Tribunal find that the Factor has not failed in their duty to instruct major repairs as the owners of the development had not authorised or funded the required repairs. Indeed, the works have still to be instructed.

The Tribunal are unable to make a finding in relation in connection with the Factor's reinspection reports dated 30th December 2021, 27th January 2022 and 29th March 2022 as these post date 16th August 2021.

The Tribunal find that the Factor has not failed to comply with their Property Factor duties in relation to the Homeowner's application during the period from 16th November 2017 to 16th August 2021.

Section 2.1 of the 2021 Code of Conduct Application C2 (complaint after 16th 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:

The Factor knew there were repairs required to the development but they did not instruct the repairs.

The Factor's response:

The Factor has not breached section 2.1 of the 2021 Code of Conduct.

The Tribunal's Decision:

The Tribunal are unable to make a finding in relation to section 2.1 of the 2021 Code of Conduct as Mr Brews has not specified any specific breach of this section.

Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): 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:

The Factor knew there were repairs required to the development but they did not instruct the repairs. He referred the Tribunal to his production M which is headed 'Points of Interest Owners Association Committee Correspondence with R & L. The correspondence he referred to was dated 2024.

The Factor's response:

The Factor has not breached section 6.1 of the 2021 Code of Conduct. The matters referred to by Mr Brews in 2024 are after the date of termination of the Factor's appointment.

The Tribunal's Decision:

The Tribunal are unable to make a finding in relation to the 2024 correspondence referred to in production M as these post date 14th June 2022, the date of termination of the Factor's appointment.

As already stated in connection with the 2012 Property Factor duties complaint the Factor's contract with Mr Brews is detailed in the Factor's Service Level Agreement. The Tribunal have determined that the Factor could not be expected to instruct major repairs to the Property without the owners mandate or funding. The Tribunal find that the Factor has not failed to comply with section 6.1 of the 2021 Code of Conduct in relation to the Homeowner's complaints.

14. Decision.

14.1 Mr Brews had been advised in a letter from the Tribunal dated 22nd July 2024 of the fact that the notification of his complaints to the Factor had to be specific and he had to detail why he believed the Factor had failed to comply with each specific paragraph of the Code of Conducts detailed in his application. The Direction from the Tribunal to Mr Brews dated 9th January 2025 also detailed the specification required. The Tribunal gave Mr Brews a reasonable opportunity to provide detailed specification of his complaints but he failed to do so.

14.2 In all of the circumstances narrated above, the Tribunal finds that the Factor has not failed in its duty under section 17(1)(b) of the 2011 Act to comply with sections 2.1, 6.1 and 6.9 of the 2012 Code of Conduct, property factor duties during the period 16th November 2017 to 16th August 2021 and sections 2.1 and 6.1 of the 2021 Code of Conduct.

14.3. The decision of the Tribunal was unanimous.

15. 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 Jacqui Taylor Date 16th September 2025