



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/25/1800 and FTS/HPC/PF/25/1801

Re: Property at Flat 1/1, 36 Budhill Avenue, Glasgow G32 0PN (“the Property”)

Parties:

Mr Scott Miller, Flat 1/1, 36 Budhill Avenue, Glasgow G32 0PN (“the homeowner”)

James Gibb Residential Factors, a trading name of James Gibb Property Management Limited, incorporated in Scotland (SC299465) and having their registered office at 3rd Floor, Red Tree Magenta, 270 Glasgow Road, Rutherglen, Glasgow G73 1UZ (“the property factors”)

Tribunal Members:

George Clark (Legal Member) and Nick Allan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the property factors have failed to comply with OSP11 of the Code of Conduct for Property Factors effective from 16 August 2021 and have failed to comply with the property factor’s duties. The Tribunal proposes to make a Property Factor Enforcement Order.

Background

1. By applications, dated 9 April 2025, the homeowner complained under Section 17(1) of the Property Factors (Scotland) Act 2011 that the property factors had failed to comply with the Code of Conduct for Property Factors effective from 1 October 2012 (“the 2012 Code”) and the Code of Conduct for Property Factors effective from 16 August 2021 (“the 2021 Code”) and had failed to comply with the Property Factor’s duties. The applications were later refined and resubmitted on 12 August 2024.
2. The complaints were made under Sections 2.5, 3.5A (plus the Section 3 Overall Objective), 4.5, 5.1, 6.1 and 6.9 of the 2012 Code and OSP2 OSP4,

OSP 6, OSP11 and Sections 2.5, 3.5A (plus the Section 3 Overall Objective), 4.5, 5.1, 6.1 and 6.9 of the 2021 Code. The homeowner also alleged failure to comply with the property factor's duties.

3. The homeowner's complaint in relation to the 2012 Code was that the property factors had failed to respond to queries within a timely manner, sometimes taking months. They had failed to maintain the building, even with subsidence and roof issues. The insurance provided by them seemed to be below expectations given by the policy information and the property factors' Written Statement of Services ("WSS"), as any repairs never seemed to be covered by the buildings insurance and owners were required to pay large sums of money for repairs that were not then done. The property factors did not appear to have looked at other means of having the building repaired, such as seeking assistance from Glasgow City Council or looking at alternative solutions regarding owners who struggled to pay in full.
4. The homeowner used identical wording in the general description of his complaint in relation to the 2021 Code. In addition to the issues of subsidence (2014) and roof repairs (2020), the property factors had failed to provide emergency repairs in relation to a collapsing common staircase in 2022.
5. The homeowner provided the Tribunal with copies of the property factors' Stage 1 response, dated 1 June 2024 and Stage 2 response, dated 19 July 2024, to his complaints, and copies of his formal intimations to the property factors, dated 26 November 2024, required by the Tribunal. These complaints are summarised in the following paragraphs 6-11.
6. In relation to the 2012 Code, the homeowner stated that the building was facing many structural issues. The property factors were supposed to manage these for the owners, but they had let the building fall into disrepair on several occasions with at least three pieces of major structural work needing to be done over the years left undone. This was endangering the owners' safety, and included building subsidence, roofing and a common staircase issue, which at best could condemn the building as unsafe. They did not provide emergency repairs to the building as specified in Section 4.3.1 of their WSS. In June 2014, work was required in relation to subsidence issues. In November 2020 roof repairs were required and in February 2022 there was an issue of the collapsing staircase in the common area. Insurance provided by Section 8 of the WSS appears to have been unusable for these repairs, despite Section 8.3 saying it must be comprehensive. A failure to comply with Section 7 of the WSS, the property factors' failure to communicate in timely manner had contributed to the building issues being further compounded, as the homeowner believed the three examples of building problems to be related, as well as causing stress, anxiety and frustration regarding the state of the building. The communication issues constituted a failure to comply with Section 2.5 of the Code. One of the overriding objectives of Section 3 is protection of homeowner's funds, but they were paying for insurance that never seemed to cover the peril of any urgent repair work. This led to a situation where repairs were required in June 2014 that would cost each owner £5,607.17. The homeowner and his brother

(co-owner at the time) raised a loan which required them to pay interest, which amounted to £1,064.93. When it became clear that the work would never be done, in May 2018, they asked for the money back. In the meantime, the property factors would have gained interest on the money they held. The homeowner and his brother would never have taken out the loan if the repairs were not being carried out.

7. The homeowner contended a failure to comply with the Section 5.1 of the Code requirement for property factors to have and maintain adequate professional indemnity insurance. The evidence he provided in support related, however, to the buildings' insurance, so the Tribunal did not consider further the complaint under Section 5.1 of either the 2012 Code or the 2021 Code.
8. The homeowner's complaint under Section 6.1 of the 2011 Code was that the property factors did not notify owners of any steps of any repairs, or of issues that might be holding up repairs, unless the owners requested updates, to which, in any event, they did not receive responses in a timely manner.
9. In relation to the 2021 Code, the homeowner referred again to failure to respond to queries within a timely manner and failure to maintain the building. He regarded it as unacceptable that, in their Stage 2 response, the property factors had stated that they did not believe the maintenance of the building was their responsibility when it was what they were contracted to do in terms of their WSS and the Code. He did not believe that the property factors were carrying out the services they were supposed to provide to the owners (OSP6). They had not responded to his complaints within reasonable timescales and in line with their complaints handling procedure (OSP11). Their WSS advised that they should answer all queries within 5 business days, but it taken weeks, months, and in one instance a year and a half to respond to his queries (Section 2 of the 2021 Code).
10. The owners were not being advised on what was going on in relation to the staircase damage and only being given partial bills of planned work, which the homeowner believed should be covered by buildings insurance. He did not know what he was paying the property factors to do if they did not believe that the building problems were their responsibility (Section 3 of the 2021 Code).
11. In relation to insurance, the WSS stated that in all cases where the Deed of Conditions specified an insured peril, the property factors would provide a comprehensive policy. The buildings insurance documentation stated that it covered all perils, the only exclusions being full terrorism cover and damage to property resulting from application of heat, but every time building maintenance was needed, the owners were advised that it was not covered. The homeowner regarded this as a failure to comply with Sections 3.2 and 5.1 of the 2021 Code, but the Tribunal did not consider it under Section 5.1 of either Code, as that Section relates to professional indemnity insurance, not buildings insurance. Further complaints were referred to under Sections 5.3 and 5.7 of the 2021 Code, but these were not considered by the Tribunal

as they were not included in the application. The same applied to issues raised in the complaint form of 26 November 2024 under Sections 6.4, 6.7, 6.12 and 7 of the 2021 Code, which were not included in the application to the Tribunal. There is no Section 3.5A in the 2021 Code.

12. The property factors' Stage 1 response to the homeowner's complaints was dated 1 June 2024 and their Stage 2 response was dated 19 July 2024. These are summarised insofar as they relate to the Sections of the 2012 and 2021 Codes that are included in the applications, in the following paragraphs 13-21.
13. The property factors responded first to the complaint regarding the communal stairwell. They said that in December 2021, they were contacted by an owner concerned about its condition. The property factors obtained costs to conduct an inspection, which was completed on 1 February 2022. They contacted Glasgow City Council on the following day, and the Council implemented a temporary repair to make safe. The property factors notified the insurers with a copy of the report, but the loss adjusters appointed by the insurers did not confirm the cause of the damage and a more extensive structural survey and further investigations were required, as the insurers would not commit to providing cover until an insurable peril was established. The further report, submitted on 13 July 2022, was circulated to the owners. The report did not find the actual source of the damage and the property factors instructed Belfor UK to access all the properties in an attempt to identify the causes and determine whether it was an insured peril. Belfor UK were unable to access all the properties and those that were accessed had no signs of an insured peril. Some owners had not engaged with the property factors in the matter, and they cannot force access to properties. As they have been unable to establish whether the cause is an insured peril, the buildings' insurer cannot commit to any level of cover.
14. The property factors highlighted that there had been historical proposals for maintenance and repairs, including some large-scale repairs that had been proposed to the owners. Most of these works could not progress due to lack of agreement or funding from the owners.
15. In June 2014, the property factors only received two responses from homeowners regarding proposed works to the fabric of the building costing £44,849.34, and one of those respondents was not in favour, the other being the homeowner, who made payment of his share (£5,606.17) of the requested funds. These works were cancelled due to lack of funds. In relation to the replacement of a defective section of lead common waste pipe in July 2019, the property factors received payments from three owners, but, as they related to a defective communal water pipe, this being a health and safety issue, and the cost was under £1,000, they took the view that they would instruct the works. In November 2020, roof repairs costing £2,340 were proposed, but only three owners made payment of their shares, so the work could not progress and was cancelled due to lack of funds. Structural works were required in January 2024. The property factors produced a Description

of Works and tender documentation to Tender Report Stage. The cost to that point was £3,213 but none of the owners had, to date, paid, so the tendering process could not be progressed.

16. The property factors said that they were unable to comment on the reason that it had taken so long to refund the payment of £5,606.17 made by the homeowner, but stated that all client funds are deposited in a client account and not a trading account of the property factors, who did not, therefore, receive any interest on the client account. They noted the homeowner's comments regarding alternative funding methods for large scale works. There could be the option of utilising Glasgow City Council's Missing Share Scheme, but this only applied to maintenance and repairs and required that the majority of owners had already paid their shares.
17. With regard to the buildings' insurance, the property factors stated that it would only be available where an insured peril, such as storm, fire, flood or vandalism, had caused the damage. As the investigations to date had not discovered an insured peril, the insurers would not provide cover.
18. The view of the property factors was that, based on the history of repairs at the building, it appeared that other owners were not engaging or willing to fund many repairs. They sympathised with the homeowner's position, but if owners collectively did not agree a way forward and fund the necessary repairs, the property factors were unlikely to be able to assist and might have to consider whether to continue to manage the property. Glasgow City Council might need to become involved to ensure that owners completed the repairs, but the property factors suspected that option would be more expensive for owners.
19. In their Stage 2 response, the property factors said that they sympathised with the situation in which the owners find themselves, as it is clear the building will require substantial funding to rectify the problems, but they did not believe that the building problems were their responsibility as the property factors. It was not their role to fund maintenance and repairs. It is every homeowner's responsibility to fund the necessary repairs and, if funding is not available, the works cannot proceed. Responding to the complaint under Section 2 of the 2021 Code, the property factors said that there had been many communications between the homeowner and them, but they accepted that there had been some delays in communications regarding the stairwell issues in the latter half of 2023. Due to the complex nature of the situation, it took some time to reach the position where they could issue a proposal to owners in January 2024. They apologised for any delays and instances where the homeowner had not had a timely response and offered as a goodwill gesture £50 in this regard to resolve the complaint.
20. In his complaint under Section 3 of both Codes, the homeowner had referred to the fact that the property factors had taken £200 from each owner as a float, with no explanation, there having been no float in the past. The property factors' response was that their review of floats was communicated in their

client portal Development News on 23 December 2022 and a letter was issued on 25 January 2023 advising of the increase. For large scale works they required to obtain funding in advance from homeowners. All funds received were held in a client account and the property factors did not benefit from any interest within that account.

21. In relation to the complaint under Section 6.1 of the 2012 Code that the property factors had failed to perform maintenance of the building, making it fall into severe disrepair, the property factors stated that they did not believe that to be the case. They had continued to carry out the core services, but larger scale works require agreement and funding from homeowners.

Case Management Discussion

22. A Case Management Discussion was held by means of a telephone conference call on the morning of 4 December 2025. The homeowner was present. The property factors were represented by Mr Fraser Hamilton and Ms Leanne Holt. They lodged a copy of the Property Owners Policy issued by Protector Insurance.
23. The homeowner told the Tribunal that he bought the Property in 2010. In 2014, the property factors arranged an inspection which led to a meeting regarding a subsidence issue, with urgent work required at a cost of £5,500 per flat. Owners were told their properties would have no value if the works did not take place. No work was carried out. In 2020, the need for roof repairs was identified. In February 2022, Glasgow City Council erected acrow props within the common stairwell to prevent a collapse. He accepted that works had not been carried out because the owners would not provide the funds, but his complaint was the lack of communication and the failure to explore other options and whether the Council could help. He stated that they could have done more, such as allowing owners to pay by instalments.
24. The property factors responded that the possibility of grant funding had been discussed, but it would only be provided if all owners were on board. That was not the case, so an application to the local authority could not proceed.
25. In relation to an insurance claim for work to the common staircase, the property factors re-stated that their brokers had appointed consultants, who had been unable to identify an insured peril. The property factors had then engaged Belfor UK, who had been unable to gain access to all the flats, but had been unable to identify an insured peril within the flats they had been able to inspect. This had been communicated to owners. As regards the roof repairs of 2020, the property factors told the Tribunal that temporary repairs had been carried out and estimates obtained for stripping out defective flashings and replacing rotted sarking boards, but only three owners out of eight had opted to pay, so they had no alternative but to close down the proposal. The homeowner replied that there had been no meaningful updates regarding the stairwell repairs over a two-year period, apart from the report by Belfor UK.

26. The homeowner told the Tribunal, with reference to the overall objective of protecting homeowners' funds, that the property factors had not been matching Direct Debit amounts to actual costs. They should have increased the Direct Debits rather than allowing debt to accrue. The property factors said that they reviewed Direct Debits annually and that they would have increased them from February 2025, but they ceased factoring the building on 31 December 2024. The Tribunal noted that the homeowner was disputing part of the sums claimed by the property factors but did not consider the issue further, as it was not included in the applications.
27. In his concluding remarks, the homeowner stated his general concern about the length of time he had waited for replies to his emailed enquiries and complaints, sometimes weeks and even months, and the inability of the property factors to take on board what he was saying. He felt that they had tried to wear him down. He told the Tribunal that he was content for the applications to be decided on the basis of written representations and the evidence given at the Case Management Discussion and he did not require to have an evidential Hearing. The Respondents also indicated that they were content for the matter to be decided on that basis.

Findings of Fact

- i. The homeowner is the proprietor of the Property, which is a first floor flat in a traditional tenement of 8 flats.
- ii. The property factors, in the course of their business, have managed the common parts of the Development of which the Property forms part since 1999. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors first registered on 23 November 2012. Their present registration is dated 17 May 2019.
- v. The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- vi. The contract between the property factors and the homeowner was terminated on 30 December 2024.
- vii. The homeowner made applications to the First-tier Tribunal for Scotland Housing and Property Chamber on 9 April 2025, under Section 17(1) of the Act.
- viii. The WSS states (Section 6.1) that the property factors will endeavour to acknowledge receipt of emails within five working days and that multiple emails from the same client may not always be individually acknowledged.
- ix. The WSS states (Sections 7.4 and 7.5) that a Stage 1 or Stage 2 complaint will be acknowledged within 10 working days and that a response should be received within 25 working days thereafter.
- x. The WSS states (Section 8.3) that "In all cases where the Deed of Conditions specify an insured peril(s) we will provide a comprehensive policy".

- xi. Section 4.2 of the WSS advises homeowners how to request routine repairs and provides details of a telephone number and website address.
- xii. The Protection Insurance Property Owners Policy covers accidental physical loss of, destruction of or damage to the property, but specifically does not indemnify the insured for gradual deterioration or for wear and tear.

Reasons for Decision

28. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
29. The Tribunal considered carefully all the evidence and documentation before it. The written representations run to many hundreds of pages, and the applications are made under a large number of Sections of the 2012 and 2021 Codes of Conduct. The Tribunal has considered everything presented to it, even if not every adminicle of evidence is set out in this Decision.
30. The view of the Tribunal was that the real issue is that the owners within the building have been unwilling or unable to agree to carry out extensive and expensive common repairs. It appeared to the Tribunal that the property factors had made genuine attempts to advise homeowners of the need for repairs, had taken steps to obtain estimates or indications of cost and had sought approval to instruct the works, but the owners did not agree in sufficient numbers to go ahead and did not provide the necessary advance funding. The property factors would have been acting outwith the authority given to them by their contract with the homeowners, set out in the WSS, had they taken it upon themselves to instruct work for which they did not have majority approval and funding. It was clear that the homeowner had been one of very few who accepted their responsibilities in relation to common repairs, but if a majority consensus could not be achieved, there was nothing more that the property factors could do.
31. The WSS stated (Clause 8.3) that “in all cases where the Deed of Conditions specify an insured peril, we will provide a comprehensive policy.” The Tribunal had not been provided with a Deed of Conditions for the building, and it is also possible that the common repairs burdens are contained in the individual flat titles rather than in a separate Deed of Conditions. Accordingly, the Tribunal could not speculate as to whether the burdens included an obligation to insure the building or, if so, the precise terms of that obligation, but the Tribunal’s experience suggested that such a burden would not require owners to arrange cover against gradual deterioration or failure to carry out routine maintenance, because insurers would not provide such cover. The Protector Insurance Property Owners Policy in the present case specifically excludes indemnity for damage caused by gradual deterioration or by wear and tear (Section 1 – “Property Damage All Risks – Exclusions”, at page 32 of the policy). In relation to the common repairs which are the subject of the

present applications, it appears that the owners have failed to act collectively to authorise the property factors to arrange common repairs to prevent gradual deterioration and that, this being the cause of the problems with the building, the insurers have failed to identify an insured peril. The view of the Tribunal was that the property factors had used their best endeavours by instructing temporary repairs and obtaining reports and estimates, but ultimately, if the owners could not provide majority instructions, the property factors could not instruct the work.

32. The Tribunal then considered the two applications. The Tribunal can only have regard to the specific Sections of the 2012 and 2021 Codes which a homeowner specifies in the application. These are as set out in paragraph 2 of this Decision, namely Sections 2.5, 3.5A (plus the Section 3 Overall Objective), 4.5, 5.1, 6.1 and 6.9 of the 2012 Code, and OSP2 OSP4, OSP 6, OSP11 and Sections 2.5, 3.5A (plus the Section 3 Overall Objective), 4.5, 5.1, 6.1 and 6.9 of the 2021 Code. The homeowner also alleged failure to comply with the property factor's duties. The homeowner had specified a number of additional Sections in his complaints to the property factors, but the Tribunal cannot stray outwith the terms of applications before it. The Tribunal set out in Paragraph 11 of this Decision the reason that it did not consider the complaints under Section 5.1 of either Code.

The 2012 Code

33. Section 2.5 provides that property factors must respond to enquiries and complaints received by letter or email within prompt timescales. The view of the Tribunal was that, in their Stage 2 response to the complaint, the property factors had accepted that there had been some delays in communications in 2023. The homeowner did not provide specific evidence of delays in responding to enquiries during the period that the 2012 Code was in force (from 1 October 2012 until 15 August 2021). The Tribunal noted that there had been a large amount of correspondence between the Parties over a number of years and regarded it as understandable that some correspondence might not have been answered within the target time of five working days set out in the WSS. The Tribunal did not regard the homeowner as having been significantly prejudiced by any such delays and did not uphold the complaint under Section 2.1 of the 2012 Code. The timing of responses to the homeowner's complaints at Stage 1 and Stage 2 is considered in Paragraphs 41 and 42 of this Decision, as they relate to events which post-dated the coming into force of the 2021 Code, so cannot be determined under the 2012 Code.
34. The overall objectives set out in Section 3 of the Code are protection of homeowner's funds, clarity and transparency in all accounting procedures and ability to make a clear distinction between homeowners' funds and a property factor's funds. The homeowner had alleged that the property factors had received the benefit of interest on his share of the cost of proposed repairs (£5,606.17) before they refunded the money to him when the work did not go ahead. The property factors stated in their Stage 1 and Stage 2 responses that all funds held for clients are kept in a client account separate

from their business accounts. This is specified in Section 5.10 of their WSS. The homeowner had provided no evidence to indicate a failure to comply with that Section of the WSS, and the Tribunal did not uphold the complaint under Section 3 of the 2012 Code.

35. Section 4.5 states that property factors must have systems in place to ensure the regular monitoring of payments due from homeowners and must issue timely reminders to inform individual homeowners of any amounts outstanding. Section 4 of the 2012 Code relates to Debt Recovery and is not applicable to attempts by property factors to ingather, from homeowners, funds to enable agreed communal repairs to go ahead. Accordingly, the Tribunal did not uphold the complaint under Section 4.5 of the 2012 Code.
36. Section 6.1 of the 2012 Code stipulates that property factors must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. They must inform homeowners of the progress of this work, including estimated timescales for completion. The Tribunal noted the terms of Section 4.2 of the WSS, which tells homeowners how to report routine maintenance or repair items. In the present case, the owners never reached the stage of agreeing to carry out the necessary repairs, so the requirement to keep them informed of progress did not apply. Accordingly, the Tribunal did not uphold the complaint under Section 6.1 of the 2012 Code.
37. Section 6.9 of the 2012 Code requires property factors to pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. The homeowner did not provide any evidence of any failings under this Section, and the complaint was, therefore, not upheld.

The 2021 Code

38. OSP2 of the 2021 Code states that property factors must be honest, transparent and fair in their dealings with homeowners. There was no evidence before the Tribunal to support an alleged failure to comply with OSP2, so the Tribunal did not uphold the complaint.
39. OSP4 provides that property factors must not provide information that is deliberately or negligently misleading or false. The Tribunal was unable to find, from the evidence provided, information that was deliberately or negligently misleading or false, so did not uphold the complaint.
40. OSP6 requires that property factors must carry out the services they 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 Tribunal saw no evidence to suggest that the property factors' staff lacked the training or information they needed to be effective. The view of the Tribunal was that, whilst there had been occasional delays in responding to emails, in general the property factors had carried out their responsibilities using reasonable care and skill. The Tribunal did not uphold the complaint under OSP6.

41. OSP11 says that property factors must respond to enquiries and complaints within reasonable timescales and in line with their complaints handling procedures. The Tribunal noted that the WSS states that the property factors would endeavour to acknowledge receipt of emails within five working days, and the property factors had accepted that there had been occasions when they had failed to do so in relation to the problem with the common staircase. The papers before the Tribunal included hundreds of emails passing between the Parties and, whilst some had not been acknowledged within five working days, the Tribunal did not regard such failures as being sufficient in the circumstances to merit a finding of failure to comply with the WSS or with OSP11. In relation to complaints handling, the WSS states (Section 7) that the Stage 1 investigation process should be completed within 25 working days from the date of the complaint acknowledgement, which should be within ten working days of receipt. A Stage 2 complaint will be acknowledged within ten working days, and a homeowner should receive a final response within 25 working days thereafter.
42. The homeowner's complaint was sent on 17 January 2024, and the Stage 1 response was sent on 25 March 2024, so failed by approximately two weeks to meet the target times (which, added together amounted to 35 working days) set out in the WSS. The homeowner escalated his complaint to Stage 2 on 25 March 2024, and the final response was not sent until 19 July 2024. In an email of 22 May 2024, the homeowner added a number of additional complaints. These included the property factors' failure to acknowledge his email of 25 March or to provide their Stage 2 response. The property factors answered these additional complaints on 19 July 2024 and apologised for the delay in the Stage 2 response being issued, but by the date of the homeowner's email of 22 May 2024, some 40 working days had already passed since 25 March, allowing for Easter holiday weekend. The view of the Tribunal was that these two delays were significant in the particular circumstances of this case and both constituted failures to comply with OSP11.
43. Section 2.5 of the 2021 Code states that a property factor must provide a homeowner with their contact details, including full postal address with postcode, telephone number, contact email address and any other relevant mechanism for reporting issues or making enquires. The Tribunal found that all this information is clearly set out in the WSS, so did not uphold the complaint under Section 2.5.
44. The overriding objectives of Section 3 of the 2021 Code are, to all intents and purposes, the same as those in the same Section of the 2012 Code, so the complaint was not upheld for the reasons given in relation to the 2012 Code.
45. Section 4.5 of the 2021 Code relates to debt recovery procedures and in particular to dealings with customers in default or in arrears difficulties. The homeowner's complaint related, however, not to debt recovery but to attempts to ingather funds for common repairs. The failure by owners to agree

to and fund common repairs does not constitute a debt. Accordingly, the Tribunal did not uphold the complaint under Section 4.5 of the 2021 Code.

46. Section 6.1 of the 2021 Code states that, 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. There was no evidence provided that the property factors had failed to make prompt repairs where they had the delegated authority in the WSS to do so, and they could not be held responsible in relation to more substantial repairs which would require majority agreement and advance funding, so the Tribunal did not uphold the complaint under Section 6.1 of the 2021 Code.

47. Section 6.9 of the 2021 Code states that, if applicable, documentation relating to any tendering or selection process must be made available if requested by a homeowner. The homeowner did not provide any evidence that any such information had been requested by him but not provided. Accordingly, the Tribunal did not uphold any complaint under Section 6.9 of the 2021 Code.

Property factor's services

48. The Tribunal decided that the property factors' failure to comply with OSP11 of the 2021 Code also constituted a failure to carry out the property factors' duties under Section 7 of their WSS.

Property Factor Enforcement Order

49. Having decided that the property factors had failed to comply with OSP11 of the 2021 Code of Conduct and failed to comply with the property factor's duties, the Tribunal then considered whether or not to make a Property Factor Enforcement Order. The Tribunal noted that the homeowner had been engaged in correspondence with the property factors over a prolonged period and his anxiety in relation to the common repairs that he, at least, was prepared to pay for, and the increasing frustration in the tone of his correspondence should have been clear to them and they should have understood that this situation would be exacerbated by any delay in responding to his complaints. Accordingly, the Tribunal proposes to make a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision. The view of the Tribunal was that the level of compensation set out in the Notice is fair, reasonable and proportionate.

50. The Tribunal's Decision was unanimous.

Right of Appeal

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.

George Clark

Legal Member

27 January 2026
Date