Housing and Property Chamber
First-tier Tribunal for Scotland

Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the PF Act") and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Reference numbers: FTS/HPC/PF/22/2918 and FTS/HPC/PF/22/2924 ("the Applications")

Re: Property at 20, Bay Street, Fairlie, near Largs, KA29 0AL ("the Property")

The Parties:
Ms. Helen Cairns residing sometime at the Property and now at 19 Keppenburn Avenue, Fairlie, KA29 0BB. ("the Homeowner")

Indigo Square Limited, 42, Holmlea Road, Glasgow G44 4AL ("the Property Factor")

Tribunal Members
Karen Moore (Chairperson) and Mary Lyden (Ordinary Member)
Decision.

1. With regard to the section 14 duty:

the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:

i) In respect of application FTS/HPC/PF/22/2918, the Property Factor did not fail to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2012 at Written Statement of Services at Sections1.1a, 1.1b,a and 1.1d; Communications and Consultation at Sections 2.1, 2.2, 2.4 and 2.5; Debt Recovery at Section 4.9; Insurance at Section 5.3,

Carrying out repairs and maintenance at Sections 6.3 and 6.6 and Complaints resolution at Section 7.2;

ii) In respect of application FTS/HPC/PF/22/2294, the Property Factor did not fail to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at OSPs 1, 2, 3, 4, 5, 6, 8, 10, and 11;

iii) In respect of application FTS/HPC/PF/22/2924, the Tribunal dismissed the complaints of failure to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at Written Statement of Services at Sections 1. 1.1 A (a), 1A(b), 1.1B (d) ; Communications and Consultation at Sections 2.1, 2.2, , 2 .4, 2.5 and 2.7; Insurance at Section 5.3 , Carrying out repairs and maintenance at Sections 6.3 and 6.6 and Complaints resolution at Section 7.1 and 7.3 as these complaints were not notified in terms of Section 17(3) of the PF Act.

2. With regard to property factor duties, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor failed to comply with the property factor duties to the extent that the Property Factor did not properly intimate the changes to their written statement of service. The Tribunal did not propose to make a Property Factor Enforcement Order.

Procedural Background.

Previous Application

1. Prior to the two Applications before the Tribunal, the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) in January 2022 for a determination that the Property Factor had failed to comply with the Code of Conduct for Property Factors 2021 ("the 2021 Code"). The application was accepted and referred to the Tribunal. The Tribunal identified procedural flaws with this Application and, following Case

Management Discussions (CMD) on 29 April 2022 and 9 August 2022, this application was withdrawn at a CMD on 21 April 2023.

Applications before the Tribunal.

2. The Homeowner made two further applications received between 17 August 2022 and 23 January 2023 for determinations that the Factor had failed to comply with both the Code of Conduct for Property Factors 2012 ("the 2012 Code") and the 2021 Code.

3. Application FTS/HPC/PF/22/2918 is in respect of complaints under the 2012 Code and comprised the following documents: -(i) application form dated 11 December 2021 and 12 August 2022 comprising the First-tier Tribunal standard application form, Form "C1", indicating that the parts of the 2012 Code complained of are Written Statement of Services at Sections1.1a, 1.1b,a and 1.1d; Communications and Consultation at Sections 2.1, 2.2, 2.4 and 2.5; Debt Recovery at Section 4.9; Insurance at Section 5.3, Carrying out repairs and maintenance at Sections 6.3 and 6.6 and Complaints resolution at Section 7.2 (ii) copy timeline of events relevant to the complaints(iii) copy intimation letters to the Property Factor intimating the before-mentioned complaints dated 13 October 2022 (iv) copy email correspondence with the Property Factor; (v) copy survey report with copy tender documents (vi) copy minutes of an owners' meeting (vii) copy of the Property Factor's WSoS and (viii) a copy of the Homeowner's land certificate, AYR5189.

4. Application FTS/HPC/PF/22/2924 is in respect of complaints under the 2021 Code comprised the following documents: -(i) application form dated 12 August 2022 comprising the First-tier Tribunal standard application form, Form "C2", indicating that the parts of the 2021 Code complained of are Overarching Standards of Practice at Sections OSP1, 2, 3, 4, 5, 6, 8, 10, 11 and 12; Written Statement of Services at Sections1.1, 1.1a, 1.2a, 1. 2a(1) and (3) and 1.(A) 1; Communications and Consultation at Sections 2.1, 2.3, 2.4, 2.6 and 2.7; Insurance at Section 5.5, Carrying out repairs and maintenance at Sections 6.3, 6.6, 6.9 and 6.11 and Complaints resolution at Section 7.1 and 7.3 (ii) copy timeline of events relevant to the complaints(iii) copy

intimation letters to the Property Factor intimating the before-mentioned complaints dated 22 May 2022 and 3 June 2022 (iv) copy email correspondence with the Property Factor (v) copy correspondence from co-owners; (vi) copy correspondence between the Property Factor and contractors (vii) copy note of meeting of co-owners and (viii) copy voting mandates.

5. Both Applications complain of a failure to carry out property factor duties.

Case Management Discussions (CMDs)

6. Following CMDs on 29 April 2022 and 9 August 2022 in respect of the first Application which was later withdrawn, a CMD was held on 21 April 2023 and adjourned further to 10 August 2023 due to the Homeowner's having symptoms of the Covid virus.

7. The CMD on 10 August 2023 was adjourned to a Hearing and a Direction was issued.

8. At each CMD, the Property Factor made a preliminary plea that the Homeowner had not complied with Section 17(3) of the PF Act and had not given notice of the nature of her complaints. The Tribunal proceeded under reservation of this plea until evidence was heard.

Hearings

9. A Hearing of evidence took place on 14 June 2024 at 10.00 at the Glasgow Tribunal Centre, York Street, Glasgow. The Property Factor maintained their preliminary plea. The Applicant, having declined to take the Tribunal through the Applications in evidence, made an opening statement in respect of the background to the Applications. The Homeowner advised the Tribunal that she felt intimidated and attacked and stated that the Tribunal was not supporting her or mediating on her behalf. The Tribunal explained its function as an impartial judicial body and explained that its role is not to represent Parties. As the Homeowner was visibly upset and unprepared to present her

case, the Tribunal adjourned the Hearing to a later date. No evidence was heard.

10. The Tribunal re-issued previously issued the Direction which had not been complied with and issued a Note to the Parties explain how a Hearing is conducted.

11. The adjourned Hearing of evidence took place on 29 November 2024 at 10.00 at the Glasgow Tribunal Centre, York Street, Glasgow. At that Hearing, the Homeowner was accompanied by her brother-in-law, Mr. B. Shields, as a supporter in terms of Rule 11 of the Rules.

12. Prior to the adjourned Hearing, the Homeowner complied with the Direction issued by the Tribunal on 18 June 2024 and lodged inventoried productions and a note in tabular form specifying her complaints. The Property Factor did not comply with the Direction and did not lodge a response to the Homeowner's submissions.

13. On behalf of the Property Factor, Mr. Gilmour renewed the preliminary plea that prior notice of the complaints had not been given in terms of Section 17(3) of the Act. The Hearing proceeded under reservation of a determination of the preliminary plea.

14. As witness statements lodged in evidence were strongly disputed and both Parties stated that they wished to have witnesses attest to their respective viewpoints, the Tribunal adjourned the Hearing for the witnesses to be present and issued a further Direction, which was complied with by the Property Factor.

15. The further adjourned Hearing of evidence took place on 22 January 2026, at which the Homeowner was accompanied by her friend, Mr. Bradshaw, as a supporter in terms of Rule 11 of the Rules. The Hearing was adjourned due to lack of time to Monday 27 April 2026 and a Direction was issued. The

Hearing of 27 April 2026 was adjourned further at the Property Factor's request.

16. The final Hearing session took place on 23 July 2026.

17. With the exception of the CMDs on 29 April 2022 and 9 August 2022 which were held by telephone conference call, the proceedings were held in person at the Glasgow Tribunal Centre, York Street , Glasgow. With the exception of the CMD on 21 April 2023, the Homeowner was present and unrepresented and the Property Factor was represented by Mr. Brian Gilmour.

Directions

18. The Tribunal issued the following Directions:

    a) on 25 August 2023: *"The Homeowner is directed to : i) With regard to Application FTS/HPC/PF/22/2918 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner before 16 August 2021 with reference to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application and ii) With regard to Application FTS/HPC/PF/22/2924 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner after 16 August 2021 with reference to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application. This Direction should be complied with no later than 15 September 2023 and should be provided by email or hard copy to the Tribunal and the Property Factor. 2. The Property Factor is directed to submit any response to the Homeowner's compliance with the above Direction no later than 29 September 2023 by email or hard copy to the Tribunal and the Property Factor*."

    b) On 12 February 2024, *"The Homeowner is directed to : i) With regard to Application FTS/HPC/PF/22/2918 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner before 16 August 2021 with reference*

to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application and ii) With regard to Application FTS/HPC/PF/22/2924 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner after 16 August 2021 with reference to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application. This Direction must be complied with no later than 18 March 2024 and should be provided by email or hard copy to the Tribunal and the Property Factor. 2. The Property Factor is directed to submit any response to the Homeowner's compliance with the above Direction no later than 22 April 2024 by email or hard copy to the Tribunal and the Property Factor. 3. Both Parties must re-submit the documentary productions already submitted in accordance with Practice Direction No.3 and the "Guidance to Tribunal Administration and Parties Documentary Evidence". If submitting new or additional documentary productions, Parties must submit these in accordance with the said Practice Direction No.3 and Guidance."

c) On 18 June 2024, "*The Homeowner is directed to : i) With regard to Application FTS/HPC/PF/22/2918 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner before 16 August 2021 with reference to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application and ii) With regard to Application FTS/HPC/PF/22/2924 to specify what alleged acts or omissions of the Property Factor (individually or cumulatively) are relied upon by the Homeowner after 16 August 2021 with reference to each of the breaches the specific sections of the 2012 Property Factor Code narrated in that Application. iii) If referring to a specific meeting or meetings please include a chronological timeline in your response to this Direction. For example, include the date, time, and purpose of the meeting and who was present. It would also be beneficial to include information regarding the outcome of the meeting or what followed on from this. This Direction must be complied with no later than 26 July*

2024 and should be provided by email or hard copy to the Tribunal and the Property Factor. 2. The Property Factor is directed to submit any response to the Homeowner's compliance with the above Direction no later than 26 August 2024 by email or hard copy to the Tribunal and the Property Factor."

d) On 10 December 2024, *"The Homeowner. 1. With regard to the Property Factor's renewed preliminary plea that prior notice of the complaints has not been given in terms of Section 17 of the Act, the Homeowner, Ms. Cairns, with reference to the submissions already lodged by her, is required to indicate the correspondence which gives prior notice, either explicitly or implicitly. 2. With regard to her knowledge of the appointment of the Property Factor and the Property Factor's subsequent instructions to surveyors and building professionals in relation to roof works at 20, Bay Street, Fairlie, the Homeowner, Ms. Cairns is required to submit a timeline of owners' meetings, correspondence and other relevant interaction with the Property Factor. In particular, the details or minutes of any meeting in May 2021 surrounding the request by homeowners asking the Property Factor to 'pause' the process of taking forward the proposed works to the building should be included 3. The Homeowner, Ms. Cairns, is required to consider reviewing the extent of the complaints with a view to concentrating the Applications on the most relevant of those complaints. In the event that she wishes to withdraw any of her complaints, Ms. Cairns is asked to indicate in writing which of the complaints are to be withdrawn The Property Factor 4. With regard to their appointment as Property Factor and their subsequent instructions to appoint and instruct surveyors and building professionals in relation to the roof works at 20, Bay Street, Fairlie, the Property Factor is required to submit a timeline of all interactions with the owners from the initial contact from the owner, Mr. Wotherspoon, all owners' meetings, correspondence and other relevant interaction with the owners of 20, Bay Street, Fairlie. 5. The Property Factor is required to confirm in writing who will represent them at the further adjourned Hearing"* and

e) On 5 February 2026, *"As the Tribunal has become aware from evidence heard during the course of the Hearings that both Parties might wish to submit further documentary evidence, the Tribunal directs both Parties as follows: No later than 20 February 2026, each Party should submit to the Tribunal and copy to each other a brief outline (not exceeding one A4 page Arial 12-point, 1.5 line spacing) of the additional documentary evidence which they wish to submit, the purpose of that evidence and the reason why that evidence could not be submitted at an earlier stage. If Parties wish to respond to the other Party's submission, they should do so by submitting a written response (not exceeding one A4 page Arial 12-point, 1.5 line spacing) to the Tribunal and copying it to each other no later than 6 March 2026."*

19. The Directions were either not complied with or complied with in part.

Evidence not in dispute

20. From the evidence and representations of both Parties, the issue at the heart of the Applications is the way in which the Property Factor dealt with a leaking roof at the Property which had caused ongoing water ingress and had been the focus of multiple unsuccessful repairs over many years. Both the Homeowner and the Property Factor agreed that the Property Factor became involved in or around November 2019 following an approach from another owner and took over their role in March 2020. They agreed that the Property Factor appointed building surveyors who carried out a building condition survey and, thereafter, prepared a detailed schedule of works which were put out to tender. Both agreed that the work set out in the tender was not instructed and so did not take place, and, that a less extensive and less costly repair was carried out at a later date.

21. The Homeowner and Property Factor agreed that a written statement of services was issued in 2019 and an updated written statement of services was issued in 2021.

22. Both agreed that the incidents complained of endured from late 2019 until late 2021.

Homeowner's Evidence.

23. Ms. Cairns, the Homeowner, gave evidence on her own behalf, dealing, firstly with the complaints raised in FTS/HPC/PF/22/2918 and the 2012 Code, secondly, with the complaints raised in FTS/HPC/PF/22/2924 and the 2021 Code and, lastly, with the property factor duties. Two witnesses, Mr. S. Bradshaw and Ms. K. Smith, gave evidence in support of Ms. Cairns.

FTS/HPC/PF/22/2918 and the 2012 Code

1.1a For situations where the land is owned by the group of homeowners

The written statement should set out:

A. Authority to Act

a. a statement of the basis of any authority you have to act on behalf of all the homeowners in the group3;

b. where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation

24. Ms. Cairns position was that the Property Factor did not have authority to act or to instruct the building surveyor to put "extensive future proofing" works out to tender. With reference to the title deed AYR5189 at Burden (fifth), Ms. Cairns' position was that the Property Factor could only act in respect of that title clause and, as no delegated authority had been given in respect of the tendered works, the Property Factor had no authority. She stated further that the Written Statement of Services (WSS) issued in November 2019 did not give the Property Factor an authority to obtain the tender as the WSS is restricted to the scope of the title deeds.

25. Ms. Cairns's position was that there had been an owners' meeting in November 2019 to change property factor. She accepted that she had not been present and had mandated the convenor to act on her behalf. She accepted that she had agreed to the change of property factor to Indigo

Square, the Property Factor. She stated that she had thought that the scope of the services provided by the Property Factor would be close cleaning, grass cutting and routine services and so was surprised when the Property Factor produced the tender documents. Ms. Cairns stated that she then became aware that her neighbours were also surprised at the scope of the tender and that the Property Factor was proposing major roof works and not just a repair. Ms. Cairns frequently referred to her neighbours as “vulnerable” and “confused” and stated that they did not realise what they were voting for. Her position was that the owners only wanted the roof issue fixed and did not want future proofing of the whole building.

26. Ms. Cairns stated that, from correspondence sent by the Property Factor, it was clear that the Property Factor had been contacting and engaging with surveyors and building contractors ahead of meeting with the owners. She stated that the WSS issued in 2019 does not set out any situations where the Property Factor is able to act without consultation and delegation from the owners and no such consultation was carried out.

27. Ms. Cairns stated that, when WSS was updated in December 2021. no summary of changes was provided and no explanation was given in respect of the new WSS. Ms. Cairns’ position was that the new WSS expanded the authority of the Property Factor, giving greater management and delegated powers. Her position was that she and the other homeowners were not made fully aware of this change.

1.1.D.1. Your in house complaints handling procedure and how home- owners’ may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure

28. Ms. Cairns’ evidence was that the Property Factor did not follow their in-house complaints handling procedure, firstly, by failing to send out complaint procedure in hard copy despite saying they had done so as it was never received, and, secondly by failing to escalate the complaint to a senior

partner or director, with Mr. Gilmour continuing to deal with the complaint himself. Ms. Cairns referred to a letter dated 2 September 2021 from Mr. Gilmour.

2: 2.1 You must not provide information which is misleading or false.

29. Ms. Cairns complaint in respect of this part of the Code was that Mr Gilmour failed to address the points raised by her in her email asking that the tender process be paused and proceeded with the tender process as confirmed by his later email.

You must not communicate with homeowners in any way which is abusive or intimidating or which threatens them (apart from reasonable indication that you my take legal action)

30. Ms. Cairns' complaint was that Mr Gilmour was shouting and aggressive in a long telephone call to her then partner, Mr. Bradshaw, regarding her request to pause the tender because of owners' concerns about the scope of the works and their wanting a better understanding of the process. She referred to a letter from Mr Gilmour dated 15 June 2021 to justify this phone call.

2:2.4 *You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those of the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies) No such procedure was in place or followed.*

31. Ms. Cairns' position was that the Property Factor did not have procedure to consult for this purpose.

6.3 *On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.*

32. Ms. Cairns' complaint in respect of this part of the Code is that Mr. Gilmour approached a contractor, EBS construction, before the tender process was underway. She stated that she was made aware of this as another owner told her that Mr. Gilmour had told him that the EBS director was doing Mr. Gilmour "a personal favour". She later became aware that EBS were asked to tender. She referred to an owners' meeting on 4 July 2021 minute which showed that there had been no consultation or vote on the choice of contractor and that the owners' wishes to use local contractors and not Glasgow contractors were ignored.

6.*6 If applicable, documentation relating to any tendering process (excluding 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 in advance.*

33. Ms. Cairns' position was that her request for hard copy tender documents due to an eye condition were ignored.

Section 7: 7.1 7.2 Complaints Resolution

7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

34. Ms. Cairns' position in respect of this part of the Code is the same as at that at 1.1.D.1 that Mr. Gilmour did not escalate her complaint but wrote that "I've decided it would be more suitable if I continue to provide the answers"

FTS/HPC/PF/22/2924 and the 2021 Code.

OSP2. *You must be honest, open, transparent and fair in your dealings with homeowners.*

35. Ms. Cairns' evidence was that, at the first owners' meeting with the Property Factor, the Property Factor had pushed instructing repairs to "future proof" the building which repairs were not necessary. Her evidence was that the Property Factor dealt only with two of the homeowners, one of whom is

vulnerable, in discussing and progressing the more extensive works. She referred to Minutes of an owners' meeting in July 2021 and to the witness statement of Alma Mearns in which owners voiced concerns about the Property Factor's conduct.

OSP3. *You must provide information in a clear and easily accessible way.*

36. Ms*.* Cairns' evidence was that Factor was not consistent in the wording used in their written correspondence to the owners and this caused confusion with the homeowners.

OSP4. *You must not provide information that is deliberately or negligently misleading or false.*

37. In respect of this part of the Code, Ms. Cairns referred to correspondence from the Property Factor in which he made reference to managing the Property "being a challenge" and inferring that owners are not "following protocols" when a factor is in place. She stated that the Property Factor appeared to write notes of thanks to owners who had voted before the votes were counted. With reference to correspondence from the Property Factor to her in October 2021, Ms. Cairns pointed out that the Property Factor's tone and language was confrontational towards her and misleading.

OSP5. *You must apply your policies consistently and reasonably.*

38. Ms. Cairns's complaint was that, on numerous occasions, the Property Factor ignored her reports of the water ingress into her flat and did not visit her flat, although invited, in contrast to how others were dealt with. She stated that this left her feeling marginalised and ignored. Ms. Cairns stated that in the early stages of their appointment, the Property Factor dealt only with one elderly owner and did not try to engage any of the other owners, herself included, in face to face discussions. She stated that the building surveyor did not carry out a full survey of her flat and so missed crucial evidence of water ingress, whereas other owners were treated with more concern.

OSP10. *You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.*

39. Ms. Cairns complaints in this regard were that the Property Factor wrote to all of the owners using her name and suggesting that she was the only owner who had concerns about the survey report, had left a case file of papers containing highly confidential information on her doorstep and had advised her employer that she had an unpaid common repairs bill.

OSP11. *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*

40. Ms. Cairns complaint in this regard was that the Property Factor did not follow their complaints procedure and did not escalate an unresolved complaint to another staff member.

OSP12. *You must not communicate with homeowners in any way that is abusive, intimidating or threatening.*

41. Ms. Cairns withdrew this complaint as it related to the telephone call between the Property Factor and Mr.Bradshaw which took place before the 2021 Code came into force.

Code Section 1.2

A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

• within 4 weeks of the property factor:
- *agreeing in writing to provide services to them; or*
- *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*

- *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
- *at the earliest opportunity(in a period not exceeding 3 months) where:*

o substantial change is required to the terms of the WSS.

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

42. This part of the complaint is that the Property Factor issued a new WSS in December 2021 without an accompanying summary of changes. Ms. Cairns stated that, when asking for an explanation as to the new changes, the Property Factor was dismissive and stated that the changes are mainly the same apart from a paragraph on the last page. From conversations with other owners, Ms. Cairns said that she became aware that the other owners were also not aware of any significant changes. Ms. Cairns pointed out that the timing of the issue of the new WSS was crucial as it coincided with a vote to retain the Property Factor and there had been no discussion or agreement as to what the new WSS would mean in respect of the Property Factor's delegated powers, the scope of which had been increased.

1. **A. Authority to Act**

(3) where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners

43. Ms. Cairns' stated that, by failing to respond to her requests for further information on the delegated powers in the new WSS, the Property Factor was not being clear about a significant change to their delegated powers and owners were not being made aware of these changes.

Code Section 2.1

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.

44. Ms. Cairns referred to several examples of the breach of this part of the Code being the number of communications she sent to the Property Factor to gain a better understanding of the scope of the works instructed by the surveyor and to understand how the tender had come about. She explained that this was against a background of a lot of confusion between all of the owners who did not want a full future proofing of the building but simply wanted a targeted approach to the repairing question.

45. Ms. Cairns referred to a meeting on 14 September 2021 at her home at which the Mr Gilmour of the Property Factor behaved highly unprofessionally, slapped his knees and said that the owners were all talking nonsense. Ms. Cairns referred to witness statements lodged by her from Kate Smith, Shane Bradshaw, Stephen Preston and Alma Mearns, all of which support her view of Mr Gilmour's behaviour. She explained that Ms. Smith is a friend who attended to support her as she did not want to be intimidated in her own home.

Code Section 2.3

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.

46. Ms. Cairns had three elements to this complaint: firstly, she requested tender documents in paper copy and did not receive these, secondly, her request for a copy of the original instruction from the Property Factor to the building surveyor was not answered for some time and, thirdly, the Property Factor failed to respond to her requests for explanations as to what the surveyor had been asked to do. Ms. Cairns referred to a letter of 7 September 2021 in which the Property Factor stated that he would no longer provide answers to her questions and stated that repeatedly answering and providing the same information which impacted on his ability to provide a customer service. Ms. Cairn's position was that she and several owners did not understand why they were being given quotes from Glasgow contractors without having a meeting to discuss any of it.

Code Section 2.4

Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

47. Ms. Cairns complaint about this part of the Code is the same as those set out at 2.2 above

Code Section 2.6

A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

48. Ms. Cairns' stated that, in her opinion, there is not an open and transparent procedure to consult and obtain authority. Her experience was that some homeowners were prioritised and given separate meetings and had consultations with the Property Factor without the whole group of homeowners being made aware. She referred to meetings which the Property Factor had with two owners, in particular.

Code Section 2.7

A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

49. This complaint relates to the Property Factor's complaints procedure. Ms. Cairns maintained that the Property Factor did not escalate her formal complaint to another senior manager but allowed Mr Gilmour to retain control of that complaint

Code Section 6.3

A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.

50. Ms. Cairns stated that she repeatedly alerted the Property Factor both to water ingress in her front bedroom and that this problem had been missed in the building condition report without explanation.

Code Section 6.6

A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they

have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

51. Ms. Cairn's complaint in this regard was that the Property Factor pursued only the future proofing of the building without giving advice on other options. No explanation was given as to which works were necessary or within budget. She stated that the Property Factor focused only on the full works and made no suggestion that repairs to the South Gable wall could be prioritised and carried out separately in an effort to resolve the water ingress

Code Section 6.9

If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

52. Ms. Cairns stated that she had to make repeated requests for a paper copy of the tender document which she required due to an eye condition. She maintained that she has still to receive a paper copy.

Section Code 6.11

A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.

53. This part of the complaint relates the Property Factor not disclosing a possible financial interest he has with EBS contractors following to a comment made by Mr Gilmour of the Property Factor to an owner that he had a connection with EBS contractors.

Code Section 7.1

A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*

- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*

- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*

- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*

- *Where the property factor provides access to alternative dispute resolution services, information on this.*

54. Ms. Cairns stated that the Property Factor did not offer to meet with her to discuss her complaints and concerns and did not escalate her complaint to a senior manager.

Code Section 7.3

A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles.

55. In this regard, Ms. Cairns referred to a letter from the Property Factor which stated that he would he would begin to charge owners if repeated requests were made for the same information.

Property Factor Duties.

56. Ms. Cairns' evidence in in respect of property factors duties was a rehearsal of her evidence in respect of the Code breaches and the way in which the Property Factor conducted himself. She emphasised the lack of clear correspondence and clear explanation from the Property Factor. Ms. Cairns referred to Mr. Gilmour's conduct at the meeting in September 2021 where he slapped his legs. She stated that he had been rude and abusive to her then partner, Mr. Bradshaw, in a telephone call. She referred further to the effect which the Property Factor's conduct had had on her vulnerable and confused neighbours. Ms. Cairns explained that the property had been a happy building until the Property Factor took over and caused upset and division between the homeowners.

Cross -examination by Mr. Gilmour.

57. For the Property Factor, Mr. Gilmour put the Property Factor's position to Ms. Cairns at each complaint but she did not retract from her initial evidence and did not accept an alternative point of view.

Mr. Bradshaw's Evidence.

58. Mr. Bradshaw gave evidence in respect of a phone call on 15th June 2021 from Mr. Gilmour asking why the owners did not want to proceed with the tender. Mr. Bradshaw explained that there had been a meeting without the Property Factor at Ms. Cairn's home on 12th June 2021 and a vote had been taken not to proceed with the tender as owners felt railroaded into the project and did not want the work to proceed. Mr. Bradshaw said that Mr. Gilmour raised his voice and said that the owners were misunderstood that they would not pay anything at this point. Mr. Bradshaw said he asked Mr. Gilmour what would happen if an owner was not able to pay at the end of the day and Mr. Gilmour said that they would be taken to court.

59. Mr. Bradshaw stated that Mr. Gilmour had said that Ms. Cairns did not have a right to hold a meeting and take a vote. He said that Mr. Gilmour became loud and aggressive and he was shocked by his attempts to intimidate.

60. Mr. Bradshaw spoke of a meeting on 14th September 2021 at the Property which was attended by the owners and by Mr. Gilmour and Mr. Douglas, the building surveyor. Mr. Bradshaw's view was that the owners were confused and attended the meeting to ask questions about the work. Mr. Bradshaw's view was that the owners were also stressed and said that Mr. Gilmour agreed with this view and felt there was confusion in the room. Mr. Bradshaw said that, at one point, Mr. Gilmour said that he did not want he did not have to sit here and listen to you all talking nonsense and slapped his legs.

Cross -examination by Mr. Gilmour

61. In answer to Mr Gilmour's questions in cross- examination, Mr Bradshaw was firm in his evidence that Mr. Gilmour had been aggressive on the phone call and unprofessional at the meeting. He denied that his allegations were unfounded and said that he took notes at the time. Mr Bradshaw did not know who called the meeting but was aware that the meeting was originally to be hosted at the Property Factor's office but that had changed. He agreed that he was aware that the purpose of the meeting was to introduce the surveyor and present the survey report. He did not agree that, every time Mr Gilmour spoke, he was told that he had said enough. Mr Bradshaw accepted that Mr Gilmour offered to chair the meeting but Ms. Cairns said that Mr. Gilmour had said and that she chaired the meeting.
62. With regard to the phone call, Mr Bradshaw was firm that the call was as he had explained and denied saying "There is a new sheriff in town" when speaking to Mr. Gilmour about himself.

Ms. Smith's Evidence

63. Ms. Smith gave evidence in respect of a meeting which she attended in 2021.She said that she attended the meeting to support Ms. Cairns as Ms. Cairns felt bullied and threatened. Ms. Smith stated that she was aware of the background to the meeting, that owners were unhappy with proposed roof works and were confused by the survey report. She understood that there were elderly and vulnerable owners who were concerned about the expensive works which were proposed. Ms. Smith said that she was aware that owners

were also concerned that the works were not being carried out by local contractors.

64. With reference to the Property Factor, she recalled him saying “I have to sit here and listen to this nonsense”. Ms. Smith said that she called him out as he is in a position of power and was being unprofessional. Ms. Smith said that she was in no doubt that the owners were confused and that there was general concern about the costs. She was she had no doubt that the owners did not understand the report.

65. Ms. Smith stated that it seemed to her that the Property Factor was rude, was getting annoyed and had no respect to his clients. Her view was that the Property Factor seemed to want control and did not want to listen to the owners’ views.

66. In answer to questions from the Tribunal, Ms. Smith stated that the surveyor was at the meeting for the first hour and that she thought that six or seven of the owners some of whom are in their 80s were concerned about the costs. When asked was a way forward agreed, Miss Smith stated that she recalled the surveyor discussing prioritising certain works and but that he did not see how it would be resolved and he could not give an opinion on what caused the water ingress.

Cross -examination by Mr. Gilmour

67. In answer to Mr Gilmour’s questions in cross- examination, Ms. Smith agreed that she had seen the background papers before the meeting and agreed that she was not aware of the previous repair background, had not been at the meeting in 2019 and is not a building expert. Ms. Smith maintained that all owners were confused. She recalled owners asking why local builders were not being used and was aware that some owners were old and vulnerable and so were confused. Ms. Smith agreed that she was not aware if any money had been spent and agreed that an uncosted report would “be a waste of time”. She did not recall Mr. Gilmour being told not to speak.

68. In re-examination by Ms. Cairns, she did not recall Mr. Gilmour slapping his legs.

Property Factor's Evidence

FTS/HPC/PF/22/2918 and the 2012 Code

1.1a For situations where the land is owned by the group of homeowners

The written statement should set out:

A. Authority to Act

a. a statement of the basis of any authority you have to act on behalf of all the homeowners in the group3;

b. where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation

69. Mr Gilmour for the Property Factor dealt with the "authority to act" complaint for both Codes together. With reference to submissions and productions lodged by the Property Factor in September 2025 in response to the Tribunal's direction, Mr. Gilmour set out the timeline of events from Property Factor's initial involvement in 2019 to the completion of the roof repair in 2023.

70. He stated that one of the owners at 20 Bay Street approached the Property Factor at their office in the autumn 2019 to discuss factoring. That owner then invited the Property Factor to attend an owners' meeting called by him on 14th November 2019. At that meeting, which Mr. Gilmour attended, the owners took a vote to dismiss the current factor and to appoint the Property Factor in their place. At that meeting, it was clear to Mr Gilmour that the reason for dissatisfaction with the existing Property Factor was that the water ingress repair at the heart of this whole matter had been dealt with by the current factor by way of patch repairs and the cause had not been investigated. Mr. Gilmour stated that his advice to the owners was that a survey should be carried out to investigate the cause of the water ingress and recommend works. Mr Gilmour confirmed that all owners mandated the change of factor to the Property Factor.

71. Mr Gilmour explained that the Property Factor took over on 30th March 2020. Following lockdown, in June 2020, the Property Factor wrote to the owners confirming that a survey and building condition report had been instructed. However the instructed surveyors delayed and this caused frustration and lack of confidence on the part of the owners. Mr. Gilmour stated that he then recommended instructing another surveyor. Around this time the initial surveyor reported back.

72. Mr Gilmour stated that on the 11 December 2020, the Property Factor wrote to the owners asking for instructions on whether to proceed with the initial surveyor or change to the alternative surveyor, Wiseman.

73. Mr. Gilmour stated that Ms. Cairns invited Mr Gilmour and some other owners to a WhatsApp call. Around the same date, the Property Factor sent out a sample building condition report and schedule of works which detailed the step by step process for a works tender. Mr. Gilmour stated that this was as an example to show the owners what to expect and the steps that would be taken in the process.

74. Mr. Gilmour stated that the WhatsApp call took place on 17th December 2020 ,following which the Property Factor updated the owners in writing on the queries raised in that call.

75. Mr. Gilmour stated that on 5th January 2021, the Property Factor issued sample survey reports to all of the owners, after which a further follow-up call took place with Ms. Cairns and two other owners on 15th January 2021.

76. Mr. Gilmour stated that by 2nd February 2021, the Property Factor had mandates from the owners to proceed with Wiseman surveyors. He stated that an update was sent to all of the owners in February 2021, and, on 14th May 2021, the detailed survey and schedule of works were issued. Mr Gilmour explained thar it is standard practise to circulate this once the tenders

from contractors are in place as it provides context to the report. Mr. Gilmour stated that he stressed that costs were not circulated at this time because the tenders had not yet been costed.

77. Mr. Gilmour stated that, on 18th May 2021, Ms. Cairns contacted the Property Factor to say that she could not make a decision on proceeding with the tender until all of her queries had been answered and, by 28th May 2021, Ms. Cairns had asked the Property Factor on behalf of herself and three other proprietors to stop the tender process.
78. Mr Gilmour stated that he explained that he could not see the sense in this as no costs would be incurred until work was actually instructed and so it made more sense to have the work costed and then a fully informed decision could be made.

79. Mr. Gilmour stated that he attempted to contact the homeowner by phone mid-June 2021 but could not do so, and so, she gave him the telephone number of her then partner ,Mr Bradshaw. Thereafter, the telephone conversation between Mr Gilmour and Mr Bradshaw took place.

80. Mr. Gilmour stated that around this time, the Property Factor contacted the owners to arrange a meeting to discuss the building condition report, scheduled works and tender process. He said that the meeting eventually took place at Ms. Cairns' flat on 14th September 2021. Mr Gilmour explained that during this time he received frequent correspondence from Ms. Cairns questioning the scope of the works and the survey and raising the issue that owners did not expect the works to be so extensive. He stated that he answered this correspondence.

81. Mr. Gilmour stated that the meeting on 14th September should have been straightforward with the surveyor presenting the report to the owners, answering questions and discussing it. He said that the meeting did not go well.

82. Mr. Gilmour advised that, following the meeting, the Property Factor sent a summary of the meeting to the owners and, thereafter, sent an update from the surveyor.

83. Mr. Gilmour's position was that following emails from another owner to the Property Factor, the Property Factor wrote to the owners asking if they wished the Property Factor to continue in their role and, following a vote of 5 in favour, 2 against and 1 abstention, the Property Factor remained in their role.

84. He explained that, thereafter, a new statement of services was issued on 8th December 2021 which was bespoke to the Bay St property.

85. Mr. Gilmour stated that a meeting took place on 7th February 2022 at the Property Factor's offices to discuss the works to be done and following this feedback from the owners, at the end of March 2022, the surveyor issued a revised specification of works.

86. Mr. Gilmour explained that the Property Factor attempted without success to secure a local contractor and so the owners arranged the appointment of a contractor themselves and the work was completed in July 2023.

87. With reference to the title deeds, Mr. Gilmour pointed out that Burden (Fifth) allows the owners of the majority of houses in the building to appoint a factor "with full powers… and a resolution by such majority… shall be final and binding on all the proprietors". His position was that the Property Factor acted on the instructions of the majority of owners throughout. He pointed out that the request for a "pause" in the tender process was not supported by a majority and so there was no binding instruction to stop the process. Mr. Gilmour's position was that the Property Factor did not rely on the core services set in the first WSS but relied solely on the instructions of the majority of the owners.

1.1.D.1. Your in house complaints handling procedure and how home- owners' may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure

88. Mr. Gilmour's position was that the Property Factor followed the process correctly. With reference to the productions, Mr. Gilmour's position was that Ms. Cairns' complaints were escalated correctly. He explained that the Property Factor issued a Stage 1 response on 2 September 2021. The complaint was then escalated to a different senior person with a Stage 2 response being issued by Val West, a director, on 6 October 2021. He pointed out that Ms. Cairns did not complete the complaints process.

2: 2.1 You must not provide information which is misleading or false.

89. Mr. Gilmour's position was that the Property Factor could not pause as the tender process as s without an instruction from the majority of owners as required by the title deeds and there was no majority. He stated that the correspondence of 15 June 2021 was accurate as the survey and schedule had been circulated to all owners on 14 May 2021 for review before issue.

You must not communicate with homeowners in any way which is abusive or intimidating or which threatens them (apart form reasonable indication that you my take legal action)

90. Mr Gilmour accepted that there was a heated call with Mr. Bradshaw but did not accept that he had shouted or was aggressive. He stated the Mr. Bradshaw was aggressive and said that "there is a new sheriff in town".

2:2.4 *You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those of the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of*

homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies) No such procedure was in place or followed.

91. Mr. Gilmour's position was as set out in his earlier evidence on authority to act and the timeline. He was firm that a clear and full process was in place and followed as set out in the Property Factor's productions.

6.3 *On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.*

92. Mr. Gilmour's evidence was that EBS's involvement was neither a tender or pre-selection process. He explained that, having known EBS professionally, he asked EBS to "take a look " at the building to give a general view and that no works were instructed and no contractor was preferred at that stage. He pointed out that the owners were invited to nominate local firms by letter dated 2 July 2021.

6.*6 If applicable, documentation relating to any tendering process (excluding 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 in advance.*

93. As set out in his earlier evidence, Mr. Gilmour's position reflected the timeline of actions taken by the Property Factor. He stated that all tender papers were circulated to every proprietor electronically and repeatedly re-sent to Ms Cairns when she reported that she had not received attached documents. He confirmed that no charges had been made.

7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

94. Mr, Gilmour repeated his evidence in respect of the Stage 1 and Stage 2 letters and explained the phrase “I’ve decided it would be more suitable if I continue to provide the answers” to provide a single point of contact in an ongoing situation. He stated that this was not blocking escalation.

FTS/HPC/PF/22/2924 and the 2021 Code.

OSP2. *You must be honest, open, transparent and fair in your dealings with homeowners.*

95. Mr. Gilmour’s position was that Property Factor kept the owners fully informed throughout. With reference to the timeline and supporting documents set in his response to “authority to act” , he stressed that a full step- by step process was provided in writing to the owners from December 2020,through the January and February 2021 to the circulation of the detailed building survey report and schedule of works on 14 May 2021. He denied owners were not informed equally or that the Property Factor sought to favour Glasgow based contractors referring to the number of local builders contacted by the Property Factor at a later stage.

OSP3. *You must provide information in a clear and easily accessible way.*

96. Mr. Gilmour’s position was that the Property Factor’s communications set out the process in plain terms and with timeous documents to all proprietors. With reference to the productions, he pointed out that the Property Factor circulated the sample surveyor reports and a step-by-step note in December 2020 and January 2021, the full survey and schedule of works on 14 May 2021 and issued written summaries of meetings and vote outcomes promptly. He denied using any conflated terminology. Mr. Gilmour stated that the revised and bespoke WSS which was issued on 8 December 2021 explained the Property Factor’s role, the major works procedure and other procedures.

OSP4. *You must not provide information that is deliberately or negligently misleading or false.*

97. Mr. Gilmour's position and, again, with reference to the productions and the owner ballot was that the Property Factor's letters were factual updates and that the thank you letters were a courteous acknowledgement of the votes. He stated that the formal result notices were only issued after the counts closed. With regard to the comments referring to "protocols" and "contradictory instructions", these reflected the fact that different proprietors owners had different views and were contacting the Property Factor with different instructions.

OSP5. *You must apply your policies consistently and reasonably.*

98. Mr. Gilmour strongly denied that the Property Factor applied policies inconsistently. He disputed that Ms. Cairns had been ignored and pointed out that on the day after the meeting in her flat on 14 September 2021, he issued a written summary. He stated that on receipt of Ms. Cairns' requests for a pause to the tender process in May 2021, the Property Factor contacted owners and, as there was not a majority instruction, continued the process in line with the title deeds and the Code. Mr. Gilmour stated further that the eventual choice of JT Masonry followed the same consultation process with all owners.

OSP10. *You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.*

99. Mr. Gilmour's position was that the Property Factor's correspondence named owners only where necessary and disclosed no personal data. With specific reference to the correspondence in October 2021 with Mr Wallace, Mr. Gilmour stated that this does not evidence misuse of personal data and is a reference to information already known to the owners as Ms. Cairns had spoken about her flat at the meeting held there on 14 September 2021. He stated that as Mr Wallace had copied to all owners, it was reasonable for the Property Factor to reply to all. With reference to the confidential package being left unattended on Ms. Cairns doorstep. Mr. Gilmour stated that the Property Factor had no record of hand delivery and all correspondence was

issued by post. With reference to notifying Ms. Cairns' employer, Mr. Gilmour advised that this was an application to the local authority under the Missing Shares scheme.

OSP11. *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*

100. With reference to the productions, Mr. Gilmour's position was that the complaints were escalated correctly. He explained that the Property Factor issued a Stage 1 response on 2 September 2021. The complaint was then escalated to a different senior person with a Stage 2 response being issued by Val West, a director, on 6 October 2021.

Code Section 1.2

A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

• within 4 weeks of the property factor:

- *agreeing in writing to provide services to them; or*
- *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*
- *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
- *at the earliest opportunity(in a period not exceeding 3 months) where:*

o substantial change is required to the terms of the WSS.

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

101. Again, with reference to the productions, Mr. Gilmour stated that revised and bespoke WSS was issued to all proprietors on 8 December 2021 with the changes highlighted. He stated that the new WSS reflected the new Code and had a Schedule bespoke to 20 Bay Street. As before, he stated that the Property Factor did not rely on the WSS to instruct works but relied on the instruction of the majority of owners.

Code Section 2.1

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.

102. Mr. Gilmour's firm position was as stated previously in his evidence that the Property Factor consulted and corresponded with all proprietors throughout the process.

Code Section 2.3

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.

103. Mr. Gilmour stated that the Property Factor has no record of a hard copy request being received or refused. He pointed out that Ms. Cairns herself submitted a hard copy to the Tribunal. With reference to the phrase "this is the final time we will provide this information" in correspondence, he

explained that is referred to the number of times which the Property Factor had answered the same questions. Mr. Gilmour stated that he received in around 220 pieces of correspondence from Ms. Cairns in the same vein.

Code Section 2.4

Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

104. Mr. Gilmour denied that the Property Factor refused to provide information and stated that the Property Factor received around 220 pieces of correspondence from Ms. Cairns in the same vein. He explained the phrase "this is the final time we will provide this information" in correspondence, referred to the number of times which the Property Factor had answered the same questions and was not a refusal to provide information.

Code Section 2.6

A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

105. Mr. Gilmour's firm position was as stated previously in his evidence that the Property Factor consulted and corresponded with all proprietors throughout the process. With regard to separate meetings, he explained that two owners had presented themselves at his office without prior arrangement

and he spoke with them as he would do with any client who arrived unannounced.

Code Section 2.7

A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

106. Mr. Gilmour was firm that the Property Factor met both the WSS and the Code timescales and kept owners informed throughout. With regard to Ms Cairns' complaint he again pointed out that this received a Stage1 written response on 2 September 2021 and a Stage 2 response on 6 Oct 2021.

Code Section 6.3

A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.

107. Mr. Gilmour stated that the Property Factor did and does have procedures for owners to report repairs. He stated that their records show that Ms Cairns' reports of water ingress were passed onto the surveyor and contractors were, covered by the summary of the meeting held on 14 September 2021 and were included in the tender to other contractors in April and May 2022.

Code Section 6.6

A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they

have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

108. Again, Mr. Gilmour's firm position was as stated previously in his evidence. He stated that the Property Factor was initially contacted with a view to addressing patch repairs on the roof and to find a solution to the recurring problem. His best advice as a professional by to arrange for a building surveyor and to follow the recommendations. He pointed out that the surveyor recommendations were scaled back following the September 14 meeting and, in early 2022, the Property Factor issued a specification to address the owners' immediate priorities which could be costed separately, tender process.

Code Section 6.9

If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

109. Again, Mr. Gilmour, confirmed, as stated in his previous evidence, that the Property Factor complied fully with this part of the Code and issued all tender materials to every proprietor by email , whether requested or not.

Section Code 6.11

A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.

110. Mr. Gilmour was firm that the Property Factor had no financial or other interests with any contractor at 20 Bay Street and stated that this was confirmed in writing to all of the owners on 4 and 12 November 2021.

Code Section 7.1

A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*

- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*

- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*

- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*

- *Where the property factor provides access to alternative dispute resolution services, information on this.*

111. Mr. Gilmour repeated his earlier evidence in respect of the complaints handling timeline.

Code Section 7.3

A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles.

112. Mr. Gilmour's position was that no charges were made. He stated that Ms. Cairns was advised that if she persisted with the volume of repetitive correspondence, the Property Factor would have to consider making a charge for dealing with replies.

Property Factor Duties.

113. Mr. Gilmour's position was that the Property Factor had not failed to comply with property factor duties and had maintained high standards of practise throughout.

Cross -examination by Ms. Cairns.

114. Mr. Gilmour did not accept Ms. Cairns' alternative point of views to any extent.

Summing up and outcome sought by the Homeowner

115. Ms. Cairns stated that she cannot underestimate the extent of the emotional and financial impact and sheer frustration that the whole process has had on her. She explained that she has had to move from the home which she loved because of this issue and has moved three times and changed job since. She advised the Tribunal that, if successful and if a property factor enforcement order was made, she sought a letter of apology to her and wished it to be sent to all of the other owners in the building. She asked that she be given compensation for her financial expenses and emotional distress.

116. In answer to questions from the Tribunal, Ms. Cairns confirmed that, at the time of the tender process, the Property was not her main residence but she later resided there full time. She confirmed that she sold the Property during the tribunal process.

Summing up and outcome sought by the Property Factor

117. Mr. Gilmour renewed his preliminary plea. He stated that, with regards to the evidence, he considered that the Property Factor had been criticised for not doing enough and also for doing too much. His firm position was that the Property Factor had breached neither the codes nor the duties

Additional Evidence before the Tribunal.

118. In addition to the evidence at the Hearing, the Tribunal had the benefit of the written submissions lodged by the Parties in response to the later directions and the various documents which accompanied these submissions. In particular, the Tribunal had the benefit of the tender documents and title sheet AYR5189.

Tribunal's assessment of the evidence.

119. The Tribunal's view is that neither Party acquitted themselves well during the whole of the proceedings. Neither complied with the Directions in full. Both interrupted and talked over each other, causing the Tribunal to repeatedly warn both. The cross-examination by both was a series of argumentative exchanges. On one occasion, Mr. Gilmour threw his papers across the desk, and, when being told by the Tribunal to leave the room to calm down, threw his chair into the table.

120. The Tribunal found Ms. Cairns to be unreliable as her evidence was peppered with unfounded hyperbole with repeated reference to vulnerable, elderly and confused fellow owners, without substantiation. The Tribunal found that she failed to listen to the Tribunal, failed to answer questions in a straightforward manner and failed to address the individual Code breaches by repeating evidence she had already given and which was irrelevant to Code breach in hand.

121. The Tribunal found Mr Bradshaw to be relatively straightforward in his evidence but found the evidence itself to be to have little relevance to the complaints made in the Applications.

122. The Tribunal found Miss Smith to be straightforward and truthful in her evidence but found her evidence to be of little assistance as she spoke of only one incident and appeared to have been briefed by Ms. Cairns and so placed little weight on it.

123. The Tribunal found Mr. Gilmour to be straightforward and truthful in respect of the facts of the Application but found his tone and behaviour to be unprofessional. The Tribunal found that he, too, failed to listen to the Tribunal and frequently made unhelpful and unwarranted remarks.

124. Both Parties complained of the length of time which the tribunal process took. However, adjournments were requested by both Parties. Had the Parties acted with decorum and complied with the Directions, matters could have been dealt with more swiftly.

125. The Tribunal did, however, appreciate the effort which both Parties took in eventually preparing their respective written representations.

Property Factor's Preliminary Plea.

126. The Property Factor's preliminary plea was that the Homeowner had not complied with Section 17(3) of the PF Act and had not given notice of the nature of her complaints.

127. Section 17 (3) of the PF Act states: *"No such application may be made unless(a)the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and (b)the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern."*

128. As part of the Application, Ms. Cairns had lodged three notifications all dated 13th October 2022 as follows:-

i) Letter notifying the Property Factor that she believed they had they had failed to carry out the property factor duties with reasons;

ii) Letter notifying the Property Factor that she believed they had they had failed to comply with Sections1.1a, 1.1b, 1.1d, 2.1, 2.2, 2.4, 2.5; 4.9; 6.3, 6.6 and 7.2 of the 2012 Code with reasons;

iii) Letter notifying the Property Factor that she believed they had they had failed to comply with OSP1, 2, 3, 4, 5, 6, 8, 10, 11 and 12 of the 2021 Code with reasons.

129. Ms. Cairns' letter notifying the Property Factor that she believed they had they had failed to carry out the property factor duties gave the reason as the way in which the Property Factor introduced that new WSS issued in 2021 and the lack of explanation given to owners on the reason for the issue of the new WSS, causing Ms. Cairns to have grave suspicions of the Property Factor's motivation for its issue. Ms. Cairns wrote that she believed that there should have been an owners' meeting to discuss why a change had been made. Ms. Cairns' evidence at the Hearing in respect of property factor duties focussed on breaches of the Codes and the way in which the Property Factor conducted himself. She did not notify the Property Factor that these were the duties with which the Property Factor had failed to comply. Taking Ms. Cairns' evidence at its highest, the Tribunal took the view that, as written notification had been given about the way in which the new WSS had been introduced, the Tribunal could consider the property factor duties complaint to this extent.

130. Ms. Cairns' letter notifying the Property Factor of breaches of the 2021 Code, made no reference to Sections1.1, 1.1a, 1.2a, 1. 2a(1) and (3),1.(A) 1; 2.1, 2.3, 2.4, 2.6 2.7; 5.5, 6.3, 6.6, 6.9, 6.11, 7.1 and 7.3 of that Code as set out in the Application FTS/HPC/PF/22/2924 and so gave no notification of any failures to comply with these parts of the 2021 Code. Ms. Cairns did not refer the Tribunal to any parts of the Application and productions which might have assisted her to evidence compliance with Section 17(3) of the PF Act, as requested to do by the Directions.

131. The Tribunal upheld the Property Factor's preliminary plea that there had been no notification in terms of Section 17(3) of the PF Act with regard to Application FTS/HPC/PF/22/2924 at Sections1.1, 1.1a, 1.2a, 1. 2a(1) and (3),1.(A) 1; 2.1, 2.3, 2.4, 2.6 2.7; 5.5, 6.3, 6.6, 6.9, 6.11, 7.1 and 7.3 of the

2021 Code and that there had been no notification in terms of Section 17(3) of the PF Act.

132. Accordingly, the Tribunal dismissed the complaints in Application FTS/HPC/PF/22/2924 at Sections1.1, 1.1a, 1.2a, 1. 2a(1) and (3),1.(A) 1; 2.1, 2.3, 2.4, 2.6 2.7; 5.5, 6.3, 6.6, 6.9, 6.11, 7.1 and 7.3 of the 2021 Code.

133. With regard to property factor duties, other than failing to consult on the issue of the new WSS in 2021, there was no notification in terms of Section 17(3) of the PF Act. Therefore, the Tribunal restricted consideration of failing to comply with the property factor duties to failing to consult on the issue of the new WSS in 2021.

Findings in Fact.

134. The Tribunal found the following facts established and that on the balance of probability:

1. The Parties are as set out in the Application;
2. The Property Factor was appointed in at an owners' meeting in November 2019 by a vote of all of the owners of 20 Bay Street;
3. The Property Factor took up the appointment on 30 March 2020;
4. The Property Factor issued a WSS in 2020 and another in 2021;
5. The title to the Property is registered under AYR5189;
6. Burden (Fifth) of AYR5189 provides that the owners of the majority of houses in the building to appoint a factor "with full powers to attend to all mutual repairs… and all other matters which may be delegated … and a resolution by such majority… shall be final and binding on all the proprietors".
7. On or around the beginning of February 2021, by postal voting ballot, a majority of the owners instructed the Property Factor to appoint building surveyor to investigate recurring roof issues and to recommend a solution.
8. The Property Factor carried out this instruction;
9. The Property Factor acted in accordance with Burden (Fifth) of AYR5189;
10. The building surveyor acted on the appointment and prepared and issued a tender for works pack to the Property Factor;

11. The Property Factor issued the building surveyor's tender for works pack to the owners;
12. An owners' meeting was held on 14 September 2021 to discuss the tender for works pack;
13. The owners raised questions and concerns on tender for works pack;
14. The Property Factor issued a letter to the owners summarising the meeting;
15. The building surveyor reported back to the Property Factor in writing on the matters raised at the 14 September 2021 meeting;
16. The Property Factor reported the building surveyor's comments to the owners;
17. A majority of the owners instructed the Property Factor to terminate the appointment with building surveyor and stop the tender process, which the Property Factor did;
18. Roof repair work was eventually carried out by a separate tender process;
19. The Property Factor took instructions from the majority of owners and reported back to owners throughout;
20. The Homeowner made a formal complaint to the Property Factor in August 2021;
21. The complaint was dealt with in two stages and escalated to a senior staff member in accordance with the Property Factor's policy.

Decision of the Tribunal and Reasons for the Decision

FTS/HPC/PF/22/2918 and the 2012 Code

1.1a For situations where the land is owned by the group of homeowners

The written statement should set out:

A. Authority to Act

a. a statement of the basis of any authority you have to act on behalf of all the homeowners in the group3;

b. where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation

135. The Tribunal's view is that this part of the Code relates to land management and not to building maintenance. In any event, the Tribunal was satisfied that the Property Factor had full authority to act. Accordingly, this part of the complaint is not upheld.

1.1.D.1. Your in house complaints handling procedure and how home- owners' may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure

The Tribunal was satisfied that the Property Factor followed their complaints handling procedure. Accordingly, this part of the complaint Is not upheld

2: 2.1 You must not provide information which is misleading or false.

136. The Tribunal found no evidence of misleading or false information being provided by the Property Factor. The fact that the Homeowner did not like the replies she received is not tantamount to providing information which is misleading or false. The Property Factor provided factually correct information. Accordingly, this part of the complaint is not upheld

2:2.2 You must not communicate with homeowners in any way which is abusive or intimidating or which threatens them (apart form reasonable indication that you my take legal action)

137. The Tribunal noted that Mr Gilmour accepted a heated exchange in telephone call with Mr. Bradshaw, who is not a homeowner. The Tribunal had no evidence of the Property Factor acting in a way which is abusive, intimidating or which threatening to either Mr. Bradshaw or the Homeowner. Accordingly, this part of the complaint is not upheld.

2:2.4 *You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those of the core service. Exceptions to this are where you can*

show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies) No such procedure was in place or followed.

138. The Tribunal agreed with Mr. Gilmour that the documentary evidence on authority to act and the timeline spoken to by him show that the Property Factor's has a robust procedure in place. Accordingly, this part of the complaint is not upheld.

6.3 *On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.*

139. The Tribunal had no evidence of a breach of the part of the Code. The Tribunal accepted that EBS's involvement had been an informal look around the Property and had not been an appointment. No contractors were appointed as part of the aborted tender process and the eventual contractor was appointed on the instructions of the owners. Accordingly, this part of the complaint is not upheld.

6.*6 If applicable, documentation relating to any tendering process (excluding 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 in advance.*

140. The Tribunal accepted Mr. Gilmour's that all tender papers were circulated electronically and repeatedly re-sent to the Homeowner and confirmed that no charges had been made The Tribunal did not find the Homeowner's account to be reliable. Accordingly, this part of the complaint Is not upheld.

7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the

written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

141. As set out at 1.1.D.1 above, the Tribunal was satisfied that the Property Factor has a compliant complaints handling procedure and followed it. Accordingly, this part of the complaint is not upheld

FTS/HPC/PF/22/2924 and the 2021 Code.

OSP2. *You must be honest, open, transparent and fair in your dealings with homeowners.*

142. The Tribunal preferred Mr. Gilmour's evidence in respect of this part of the Code. The Tribunal had no evidence of a breach of this part of the Code. Accordingly, this part of the complaint is not upheld

OSP3. *You must provide information in a clear and easily accessible way.*

143. Again, the Tribunal preferred Mr. Gilmour's evidence in respect of this part of the Code and the Property Factor's correspondence to be clear and fulsome. Accordingly, this part of the complaint is not upheld

OSP4. *You must not provide information that is deliberately or negligently misleading or false.*

144. As set out at 2.2.1 above, the Tribunal found no evidence of misleading or false information being provided by the Property Factor. Again, the fact that the Homeowner did not like the replies she received is not tantamount to providing information which is misleading or false. The Tribunal was satisfied that the Property Factor's letters were factual updates and could see no reason for anyone to take the view that thank you letters were anything other than that. With regard to the comments referring to "protocols" and "contradictory instructions", the Tribunal's view is that in these were simple statements of fact. Accordingly, this part of the complaint is not upheld.

OSP5. *You must apply your policies consistently and reasonably.*

145. Again, the Tribunal preferred Mr. Gilmour's evidence in respect of this part of the Code and found no evidence that the Property Factor applied their policies to the Homeowner any differently than to any other owner. If anything, the Property Factor gave her greater consideration in responding to her in the face of her barrage of repetitive correspondence. Accordingly, this part of the complaint is not upheld.

OSP10. *You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.*

146. The Tribunal had no evidence of a breach of the part of the Code. The Tribunal accepted that Mr. Gilmour's position that the Property Factor's correspondence named owners only where necessary and disclosed no personal data. There was no proof as to left the confidential package unattended on the Homeowner's doorstep, nor was there proof of what the package contained. Accordingly, this part of the complaint is not upheld.

OSP11. *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*

147. As set out at 1.1.D.1, 2.2.1 and 7.1 above the Tribunal was satisfied that there was no evidence of a breach of this part of the Code. Accordingly, this part of the complaint Is not upheld.

Property Factor Duties

148. As set out at paragraph 127 above, the Tribunal took the view that, as written notification had been given about the way in which the new WSS had been introduced, the Tribunal could consider the property factor duties complaint to this extent. The Tribunal had no evidence that the Property Factor acted in a duplicitous way and noted that , the 2021 Code does not require an owners' meeting to be held when a revised WSS is

issued. The Tribunal noted further that the title deeds do not provide that the Property Factor has a power to call an owner's meeting.

149. the Tribunal then considered the way in which the Property Factor had acted in light of the wording of Section 1.2 of the 2021 Code which relates to the issue of a new WSS. The Tribunal noted that that part of the Code provides "*where: substantial change is required to the terms of the WSS. Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version."*

150. The Tribunal had regard to the changes made in the new WSS and noted that the font size of the revised WSS was significantly smaller than in the original, project management fees which were not mentioned in the original WSS appeared in the revised version as a rate of up to 12% and the revised version contained greater detail in respect of how common repairs would be dealt with. No summary as required by the Code accompanied the issue on the new WSS. The covering letter issuing the new WSS states that 'This is as per the previous WSoS but has some additional detail to cover off any concerns owners may have about communal repair management and associated costs', which is not entirely accurate and does not reflect the substantial impact of the changes. The Tribunal took the view that the Property Factor made no real attempt to provide a summary or to highlight the key changes to the original WSS and was under a duty to do so. The Tribunal noted that Ms. Cairns emailed the Property Factor on 10 December 2021 stating: *"I would like you to advise me what is different in thi sone to the previous one"* and that , rather than provide an explanation, the Property Factor replied on the same date *"The bulk of this is the same with some additional clarifications on the last page that specifically deal with quries owners raised*". The Tribunal found this unhelpful, at best, at a time when the relationship between the Parties was strained.

151. Accordingly, the Tribunal found that the Property Factor failed to comply with the Property Factor Duties to this extent.

Property Factor Enforcement Order (PFEO)

152. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *"(1)The First-tier Tribunal must, in relation to a homeowner's application referred to it … decide … whether to make a property factor enforcement order."*

153. Section 20 of the Act provides *"(1)A property factor enforcement order is an order requiring the property factor to (a)execute such action as the First-tier Tribunal considers necessary, (b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable."*

154. The Tribunal's view is that the Property Factor's breach of the property factor duties could easily have been avoided had they been more open with the owners and Ms. Cairns, in particular. However, the Tribunal took the view that Ms. Cairns was aware of the changes to the WSS and so the impact of the breach on her was annoyance rather than direct or indirect loss. As the Property Factor no longer manages the Property, the revised WSS is no longer in effect and the Tribunal took the view that there is no point in the Tribunal ordering any action to be taken. The Tribunal was not persuaded that the breach was such that it should order a payment to be made to Ms. Cairns. Therefore, the Tribunal determined not to make a PFEO.

155. The decision of the Tribunal is unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Karen Moore, Chairperson 2 October 2026