Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Case reference: FTS/HPC/PF/20/1394

Re:- 522 Paisley Road West, Glasgow G51 1RN

The Parties:-

Mr Ali Badar, 522 Paisley Road West, Glasgow G51 1RN
("the Applicant")

and

James Gibb Residential Property Factors, 65 Greendyke Street, Glasgow G1 5PX
("the Respondent")

Tribunal Members:

Richard Mill (legal member) and Mike Links (ordinary member)

Decision

The Tribunal unanimously determined that the respondent has complied with the Code of Conduct for Property Factors ("the Code") and complied with their property factor duties.

Background

By application received on 18 June 2020, the applicant complains about the respondent breaching a number of sections of the Code and their property factor duties. The complaints under the Code, refer to sections 5.6, 6.1, 6.4 and 6.9. The complaint in respect of the respondent's duties relates to the alleged breach of section 3.2 of their own Written Statement of Services which obliges them to maintain, manage and repair common areas.

A Direction was issued on 31 December 2020 to regulate documents required from the parties. An initial hearing, to take place by teleconference, was to take place on

20 January 2021. In advance of this, the respondent made application to postpone on the grounds that the ongoing restrictions as a consequence of the Covid-19 pandemic had materially impacted upon their ability to prepare a response to the application. In the interests of justice the Tribunal granted the postponement application and allowed the respondent further time to prepare their representations and productions. A fresh hearing was assigned to take place on 12 March 2021.

The hearing on 12 March 2021, conducted by teleconference, was also postponed. Both parties submitted on the day that this was necessary. That hearing was converted into a Case Management procedural hearing and a further Direction issued by the Tribunal to regulate procedure. Further submissions were thereafter required by both parties.

Documentation submitted into evidence

The written application by the applicant was accompanied by a report by Professor Tim Sharpe, architect. The applicant was subsequently required to submit a copy of the photographs referred to within Professor Sharpe's report and the relevant Title Deeds for the property. Those additional documents were provided along with other items.

The applicant lodged amended written submissions on 5 March 2021 and then further amended written submissions on 24 and 25 March 2021 with an inventory which lists 22 items. On 1 April 2021 the applicant lodged a further production numbered 23.

The respondent lodged a first written submission dated 16 February 2021, together with appendices numbered 1-6. A further written submission dated 30 April 2021 was lodged with an additional appendice number 7.

Hearing

The hearing took place by teleconference on 25 May 2021 at 10.00 am.

The applicant, named as Mrs Amna Ali, joined the teleconference hearing personally. She was represented by Miss Holly Sloey of Govan Law Centre and supported by her husband Mr Ali Badar. The respondent was represented by Mr David Reid, Group Managing Director. He was accompanied by Lorraine Stead, Operations Director (Glasgow) and Ms Alison Edwards, who is the Development Manager for the applicant's property and tenement.

The Tribunal utilised its inquisitorial function making inquiry into the property, common areas and chronology. The Tribunal thereafter inquired regarding the Code complaints, and finally the duty complaints. Both parties representatives were afforded the opportunity of making submissions throughout. Both Mrs Ali and Mr Badar provided evidence at times, as did the respondent's personnel. Both parties representatives made concluding submissions.

The Tribunal reserved its decision.

Preliminary matters

- The application was submitted to the Tribunal in the name of Mrs Amna Ali. The heritable proprietor of the property is Mr Ali Badar. He is the husband of Mrs Amna Ali. Mrs Amna Ali is not the registered homeowner and accordingly does not have the right to bring the application in her name. The heritable proprietor and registered homeowner is Mr Ali Badar. In the circumstances, the Tribunal allowed the application to be amended under Rule 32 of the First-tier Tribunal for Scotland (Housing & Property Chamber) Rules of Procedure 2017. The applicant was amended to Mr Ali Badar. This was with the consent of the respondent.

- The applicant's representative conceded in her most recent further amended written representations that section 5.6 of the Code was no longer said to be breached given information provided by the respondent. This particular complaint was therefore formally withdrawn at the outset.

- The applicant had latterly raised in the written submissions that an overpayment had been made to the respondent. The respondent's written submissions confirmed that this matter had been investigated and that an overpayment had appeared to have been made. The matter was clearly able to be resolved between the parties themselves. The applicant apparently has some difficulty evidencing the overpayment but it is accepted that a credit is due to the applicant. This line of complaint was formally withdrawn from the live issues before the Tribunal.

The applicant's general complaints

The applicant and his family have lived in the property since 2012. There have been repairs issues occurring since, mainly leaks and dampness. The applicant asserts that the respondent has failed to deal with these complaints timeously, delayed necessary works, and that the repairs are often ineffectual.

Findings in Fact

1. The applicant is the heritable proprietor of 522 Paisley Road West, Glasgow G51 1RN ("the property").

2. The property is a large flat located on the ground and basement floors of a three storey over basement traditional tenement. The accommodation comprises four apartments and two bathrooms in the basement and four apartments, kitchen living room on the ground (entry) level.

3. The property is believed to be a 'Greek' Thompson designed tenement and is part of a category B listed block which includes 522-526 (even numbers only) Paisley Road West, Glasgow. The tenement was constructed around 1880. Numbers 522 and 526 are ground and basement flats entered by their own door and 524 is a tenement stair leading to four flats in total (two on the first

floor and two on the second floor). The 'development' (known by the respondent as Development No 30298) consists of the tenement block comprising the six residential units.

4. The respondent is a registered property factor – No PF000103. Messrs Grant and Wilson, Property Agents and Factors, was the former property factor. The business of Grant and Wilson was acquired by James Gibb Property Management Limited, the respondent, on 2 March 2015. The respondent discloses in the Development Schedule that their appointment date was on 1 April 2001 (now over 20 years ago) to reflect the former involvement of Grant and Wilson whose business they acquired.

5. The respondent has issued a formal Written Statement of Services to the applicant and all other homeowners. A Development Schedule exists for the property and the five other properties within the tenement at 522–526 Paisley Road West, Glasgow. This has also been issued to the applicant and all other homeowners. The Written Statement of Services and corresponding Development Schedule does not oblige the respondent to undertake detailed building surveys nor a planned cyclical programme of works. This would be out of the ordinary and not a standard obligation which a property factor would be burdened with in a tenement of the type within which the property is situated. Rather, routine property inspections are conducted bi-annually as confirmed in the Development Schedule. These checks are to identify obvious defects only which have not already been brought to the attention of the respondent.

6. The tenement building within which the property is comprised will suffer from decay and deterioration through age, having been built around 140 years ago. Substantial and expensive maintenance will be necessary on an ongoing basis to maintain the building's integrity. The fact that the property is listed will influence the repairs undertaken, the manner in which they can be undertaken and ongoing maintenance will be a recurring cost. It is unknown when the last significant major overhaul of the tenement was undertaken but this is most likely to have been decades ago. In the absence of a major planned improvement and renovation of the tenement ad hoc repairs have been instructed to common areas throughout more recent years by the respondent and their predecessor property factors. Routine minor repairs will not require listed building consent but more major works will and this complicates more major works.

7. The respondent is a property factor of some scale and employs numerous staff at different levels to manage the developments for which they are responsible for; the tenement block at 522-526 Paisley Road West, Glasgow being one. Reports of matters requiring repair or attention can be notified to the respondent by telephone, email or by letter. These items of correspondence are routinely replied to and actioned as required. The respondent has procedures in place to ensure that issues regarding property repair or maintenance are actioned. The respondent has actively engaged with the applicant at all times and extensive communications between the applicant are summarised and catalogued in Appendix 5 for the respondent.

The respondent has a bank of contractors, many of whom are recommended and approved by relevant insurers who can attend to investigate reports and to provide further advice where necessary prior to repairs being carried out.

8. In terms of the Development Schedule the respondent's authority to act for non-emergency repairs is £350 + VAT per job. In respect of non-emergency repairs which attract a greater value, which applies to the majority of maintenance jobs, this firstly requires a relevant ballot to be undertaken of homeowners and once approval is obtained this will then also require the respondent to be placed in funds by all relevant homeowners to enable works to be instructed. The respondent cannot be expected to instruct works which the homeowners have not funded. There has been a historical problem in the tenement with a lack of homeowners funding necessary projects despite agreeing to necessary work being undertaken. This remains an ongoing problem with recent proposed gutter work in 2021 being stalled due to lack of commitment on the part of relevant homeowners. Only one from six of the homeowners has paid for this particular work.

9. The applicant first complained to the respondent in 2013 regarding water ingress at the property. The respondent reacted in a timeous manner to this report. The matter was not ultimately investigated and repaired on the instructions of the respondent as the applicant refused to allow the respondent to send their plumber due to fears that the incident was not a communal issue and would incur a callout charge. The applicant arranged for the necessary works and did not subsequently inform the respondent or raise any subsequent issue regarding the original complaint of water ingress again. The applicant has not specified or evidenced this work to the Tribunal.

10. In 2017 the applicant complained about further water ingress to the property. The respondent timeously reacted to this complaint and sent out a relevant contractor who could not identify the source of the water ingress. There are periods of time when the tenement appears 'dry' and this is for the vast majority of the time. Water ingress appears episodic and unpredictable. This is not uncommon in a building of the age of the tenement. The respondent then instructed the relevant insurer to make investigations which led to the appointment of a loss adjuster. A professional survey was undertaken by the loss adjuster concluding that the water ingress was due to wear and tear and in particular due to decayed stonework. This led to an insurance claim being made by the applicant to Allianz Insurance plc for internal damage to the property. The claim was repudiated on the basis that the damage was not as a result of one of the listed perils. In particular, it was ultimately identified that the difficulty had arisen due to defective stonework over a period of time which had allowed water to penetrate into the applicant's property. Insurance companies do not provide insurance cover to reimburse homeowners for losses arising from poor maintenance and wear and tear.

11. In 2018 further water ingress was reported by the applicant to the respondent. The respondent timeously instructed a relevant contractor to investigate, namely McGregor Property Maintenance. The water ingress, on this occasion, was traced to a crack in the front steps leading to the front door of

the tenement which was repaired. This contractor identified that further work was necessary, being the provision of a new damp proof course (DPC) and improvements to an external drain channel. McGregor Property Maintenance had offered to undertake the necessary drain channel work. This was quoted for at a figure above the non-emergency repairs authority to act which is in place. None of the six homeowners, including the applicant, were prepared to fund the cost of that necessary work. The work was delayed and subsequently another lower quote was obtained from another contractor, I&D Cant, who completed the work within the respondent's authority to act level of funding with the costs being apportioned in quarterly billing.

12. Apathy exists on the part of all relevant homeowners in the tenement to commit to funding necessary cyclical maintenance or necessary ongoing repairs. In or about September 2018, the respondent obtained quotes for the provision of the new DPC at the tenement. Quotes were obtained from Wise Property Care and Keenan Plastering Services. A recommendation was made for the latter organisation to conduct the necessary works as this was the cheaper quote. Whilst a majority of homeowners agreed to the proposal, they did not subsequently place the respondent in funds. A number of reminder letters to homeowners had to be issued by the respondent. After some 5 months, only three of six of the homeowners had contributed their share of the funds to enable the DPC to be replaced. After further communication from the respondent in February 2019 a further two homeowners paid their share. Such reminder letters are issued to all the homeowners and thus even those who have paid are kept fully up to date with regards the delay and reasons for it. The respondent, on the strength of five-sixths of the sums being ingathered, agreed to fund the missing share and bridge the sums required to enable the work to be undertaken. This reflects the respondent's commitment to carry out necessary works for the benefit of homeowners.

13. The respondent recognises that the stage has been reached whereby substantial extensive and costly works require to be undertaken to the tenement to improve all common parts of the tenement including the roof, rainwater fixtures and fittings, stonework, etc. This is on the basis of more recent ongoing reports of dampness and water ingress. The respondent intends to instruct CRGP Limited, reputable and experienced surveyors to review the entire building and to produce a report on necessary works. The cost of this survey report will be £1,010 + VAT and prior to it being instructed the necessary approval from all relevant homeowners and funding will require to be put in place. The survey is very likely to reveal the need for extensive and expensive repairs. These may require listed building consent. The works cannot be carried out in the absence of the homeowners approving, and importantly funding the works.

Reasons for Decision

The Tribunal was satisfied that it had sufficient detailed evidence upon which to reach a fair determination of the application.

The Tribunal's decision is based upon the Tribunal's detailed findings in fact which were established on the basis of the extensive documentary and oral evidence.

The Tribunal has considered all documentary and oral evidence and made findings in fact in relation to the relevant live disputes between the parties as identified by the applicant and Mrs Ali at the hearing (as well as basic findings in fact regarding the property, common parts thereof and the contractual relationships between the parties). It is not necessary to make findings in facts in relation to every element of the application or historical disputes between the parties. The failure to make more extensive findings in fact does not carry with it any assumption that the Tribunal has failed to consider the whole evidence or that the Tribunal's reasoning was based upon a consideration of only parts of the evidence.

The applicant's complaints and assertions are almost exclusively vague and lack specification. There is no specification as to which repair work the respondent failed to provide updates upon. There is no specification as to which contractor is said to have carried out inadequate work. There is no specification as to exactly what damage has been caused to the applicant's property nor is there any corresponding credible and reliable evidence to vouch the damage or the applicant's claimed financial losses. The applicant was afforded the opportunity to provide further specification and indeed the Tribunal directed that this happen in order to provide fair notice to the respondent regarding the complaints. The further versions of the written representations received however failed to provide the reasonably required specification which is expected in litigation between parties in matters of this kind. Both the applicant, and perhaps more importantly his wife Mrs Ali who has been most directly involved in matters, gave oral evidence but their evidence was similarly vague and lacked specification.

The Tribunal firstly determined the applicant's Code complaints with reference to its primary findings.

Three sections of the Code were ultimately put at issue, all under section 6 'Carrying out repairs and maintenance'.

> 6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

The Tribunal was satisfied that the respondent does have procedures in place to allow homeowners to notify them of matters requiring repair, maintenance or attention. The Tribunal accepted the respondent's evidence on this which was found to be credible and reliable. The Tribunal was similarly satisfied that the respondent does inform homeowners of the progress of work to be carried out. Progress reports are not issued with any specific or particular frequency, but are provided periodically on a job specific basis at intervals commensurate with the job type and urgency. Mrs Ali gave evidence surrounding the complaints in relation to this section of the Code. She complained that many telephone calls to the respondent had not been

taken seriously or followed up. She could provide no specification of additional calls and communications with the respondent beyond those which are all catalogued by the respondent in their Appendix 5. The Tribunal found the detail of the communication log contained within Appendix 5 credible and reliable and attached weight to this documentary evidence. The Tribunal noted that no complaint has been made under section 2 of the Code relative to communications. In particular no complaint has been raised regarding a breach of section 2.5 of the Code which requires the respondent to respond to enquiries and complaints within prompt timescales. Otherwise, Mrs Ali complained that she had not been provided with updates on repair works were not being progressed more quickly. Mrs Ali could not specify which works she was actually complaining about. The Tribunal accepted the evidence on behalf of the respondent that updates have been provided to the applicant in respect of all jobs from time to time, commensurate with the particular job involved. The main delays which have occurred have always been as a consequence of homeowner apathy and lack of funds being ingathered by the respondent. All homeowners are routinely advised of the respondent's further reminders and attempts to ingather such funds and, in the circumstances, the applicant could be under no illusions as to why delays were occurring. The respondent has not breached section 6.1 of the Code.

6.4 If the core service agreed with homeowners includes a period of property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

The core service agreed with homeowners does not include a planned programme of cyclical maintenance so this is of no relevance. Bi-annual property inspections do take place. These are routine inspections as per the agreement with homeowners. These are not undertaken by a qualified surveyor for the purpose of preparing an ongoing rolling programme of maintenance and repair works. Periodic building surveys do not form part of the core service agreed between the applicant and the respondent. There is no contact for this. The type of tenement which the property is comprised within does not lend itself to this type of arrangement. If the applicant and other homeowners wish that type of service then they would require to renegotiate their contract terms with the respondent accordingly. Additional costs to third parties would undoubtedly apply. The respondent has not breached section 6.4 of the Code.

6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

The applicant failed to identify which contractor or which works are said to have been defective or inadequate. It was suggested this may have been McGregor Property Maintenance but there is no credible or reliable evidence that this is the case. Alternatively a general approach was taken by the applicant to the effect that stonework repairs had been poor. Reference was made to Professor Sharpe's report which referred to this type of quality of stonework repair. There was absolutely no evidence at all before the Tribunal to allow a finding to be made as to whether any of the stonework repairs undertaken recently on the instructions of the respondent (or indeed over the last 20 years, including works instructed by Messrs

Grant & Wilson) had been inadequate in any way. There is no clear indication within Professor Sharpe's report nor within the accompanying photographs which evidence recent inadequate stonework repairs which the respondent has instructed. Warranties would be unrealistic in respect of ad hoc minor repairs such as been carried out in the recent past. Collateral warranties are obtained by the respondent from relevant contractors where relevant such as occurred in respect of the DPC undertaken by Keenan Plastering Services. The respondent has not breached section 6.9 of the Code.

The Tribunal thereafter determined the applicant's further complaints with reference to the assertion that the respondent has failed to comply with their property factor duties. It is specifically said that the respondent has breached section 3.2 of their own written statement of services which is in the following terms:-

> The services provided cover the maintenance, management and repair of the "communal" areas detailed in section 03 of your Development Schedule.

The applicant relies upon the report prepared by Professor Tim Sharpe, an architect. The report is based upon an inspection which took place on 19 March 2019, now over two years ago. Other than reporting the factual condition of the tenement this report opines that the respondent takes a reactive approach to maintenance as opposed to a proactive one, and instead of monitoring the condition of the property he seemed to mainly carry out work when a failure has occurred. The Tribunal did not have the benefit of hearing oral evidence from Professor Sharpe. The Tribunal was able to attach some weight to Professor Sharpe's professional opinion being satisfied that he is suitably qualified to provide opinion evidence. However, his opinion to the effect that a proactive approach to maintenance does not in any way support the suggestion that the respondent has failed in some way. The respondent's obligations do not include acting in a proactive way. Any apparent belief on the part of Professor Sharpe that the respondent had such an obligation is erroneous and unfounded. Such a belief may be applicable in an ideal scenario but does not correlate to what happens in the real world. To this extent the Tribunal found that Professor Sharpe's views and opinions were more akin to an academic analysis.

The report of Professor Sharpe highlighted issues with the external stonework being cracked and poorly pointed, and a lack of "sound" weatherproof skin on the building, and there is a need for works to the external ground to provide improved ground and subsoiled damage and to protect the drains from blockage. These broad categories of work which Professor Sharpe identifies as requiring to be undertaken are of no surprise to the Tribunal and can be of no surprise to any of the homeowners within the tenement, including the applicant. The precise and specific works and the specification thereof requires to be analysed by a relevant building surveyor and the respondent now has the intention of employing CRGP Limited to carry out such an analysis subject to relevant funding being put in place by all relevant homeowners.

The problems encountered by the applicant at the tenement have been intermittent. There has not been persistent water ingress. Indeed when Professor Sharpe inspected the property and tenement in March 2019 he found it to be 'dry'. The bi-annual inspections undertaken by the respondent are, as per the definition in the

Development Schedule 'routine'. These are not undertaken by a qualified surveyor. These inspections are to identify obvious issues from the external building and other common areas and would not ordinarily involve an internal inspection of any of the individual properties unless specifically arranged. It is reasonable to conclude that the bi-annual property inspections which the respondent has carried out, referred to by Ms Alison Edwards did happen and were competent.

Professor Sharpe refers to the complexity of the tenement structurally. The basement level of the tenement is slightly below the external ground level. Effective ground drainage is relied upon to prevent the accumulation of water that would penetrate the building. The area is paved which produces run-off water especially during wetter weather which is very common in todays' climate. There are also other factors likely to cause difficulty such as an old tree stump which could be the source of water penetration to the tenement via its roots and there are steps down to the external drain which bridges the DPC. The complexity of the design and structure of the building is not the fault of the respondent. This complexity makes management of the common repairs difficult and makes the diagnosis of water ingress and damp very difficult.

The respondent arranged for the drainage channel to be replaced at the site of the drain as recommended. This work was delayed as none of the homeowners, surprisingly including the applicant, contributed the relevant funds. Ultimately a cheaper quote below the agreed threshold was obtained which allowed the respondent to carry out this work. This demonstrates the respondents' perseverance. This lack of commitment on the part of the applicant has also been seen on other occasions. Delays were caused to internal re-instatement works due to the failure to choose wallpaper and on one occasion Mrs Ali chased workmen away from her property. The respondent also pursued with vigour the replacement DPC which again was delayed due to the lack of payment of necessary funds by homeowners. The respondent even funded the missing one sixth share of the costs up front to enable those important works to be undertaken. The respondent has gone above and beyond what they have been obliged to do.

It is unclear when the last major overall and renovations of the entire tenement was carried out, but it is likely to have been decades ago. The block was built in or about 1880. It would be reasonably anticipated that any homeowner would be required to invest funds in the renovation and upkeep of such a tenement building over time. The costs involved in maintaining and renewing common parts of a substantial tenement building such as the one in which the applicant's property is comprised would be expected to be substantial. It is commonplace to find the type of decay and resulting problems faced by the applicant in such tenements. It is also extremely common in tenement blocks to find a lack of commitment on the part of all relevant owners to meet the required costs. Individuals such as the applicant purchase such properties knowing these commitments and risks. The respondent cannot be held to account and found responsible for these costs and the failure of the owners themselves to commit to ongoing extensive repairs and renewals.

The applicant purchased the property in 2012 and in her own evidence Mrs Ali stated that damp and water penetration was evident immediately. The applicant stated that a mortgage valuation report had been obtained but no detailed condition report had

been instructed and obtained from a surveyor. Perhaps this would have been the responsible type of report to obtain when purchasing a property of this type.

There is no doubt that the respondent's approach has been reactionary in nature as opposed to being proactive, all as noted by Professor Sharpe. This however is not in any way unusual in terms of a property factor's performance in managing a traditional tenement building which over time requires significant investment into the upkeep of the common parts. It is understandable that a competent property factor will seek to carry out the most cost efficient repairs, carrying out only the work which is necessary, and most expeditiously in order to save costs to all proprietors. There has been a historical problem in the tenement regarding the commitment of all of the relevant heritable proprietors to commit to more widespread common repairs.

In order to establish a breach of reasonable care and fulfilment of the respondent's duties, the applicant requires to establish:

- When the specific disrepair issues which the applicant claims the respondent has failed or unreasonably delayed actioning arose, and what these actually are;

- That the respondent was aware of the nature and extent of these items of disrepair, but chose (even by omission) not to act;

- That a property factor of ordinary competence acting with normal skill and care would have instructed works prior to when the respondent in fact did.

The applicant would also require to establish (ie prove by credible and reliable evidence) causation to the required standard of proof, which is a balance of probabilities in respect of the alleged losses. The applicant would require to establish that it is more likely than not that the respondent's acts and omissions have actually caused damage to the properties and the tenement and led to the applicant's alleged losses. The applicant has fallen far short of evidencing this.

The applicant has failed to produce any independent expert opinion evidence supporting the allegations of professional negligence on the part of the respondent. The Tribunal finds that the respondent has acted competently.

The Tribunal finds that on the basis of its primary findings in fact that the decay and disrepair to the tenement including stonework and damp is the consequence of wear and tear over many years. The respondent has acted timeously and reasonably in response to the repair issues arising.

The Tribunal is satisfied that the respondent has taken seriously the applicant's complaints regarding water ingress and did instruct relevant contractors to attend at the tenement. There is sufficient documentary evidence, supported by the respondent's witnesses at the hearing, to this effect. The Tribunal finds all this evidence credible and reliable. The respondent responded reasonably to all reports received. All issues brought to their attention have as a matter of fact been remedied, other than more extensive improvements which the respondent is planning to progress by way of an initial comprehensive building survey.

The applicant has also expressed concerns regarding the property's insurance cover as arranged by the respondent, as it appears to be lacking despite the high premiums as it does not cover issues related to wear and tear. This was not pursued at the hearing and no Code complaints were made under section 5 but it nonetheless appears prudent for the Tribunal to make comment upon this issue. The suggestion is entirely unfounded and perhaps is indicative of the applicant's lack of understanding regarding the required maintenance and repair of the tenement and whose responsibility this is. The suggestion that insurance cover can be obtained to cover losses arising from wear and tear, is entirely misplaced. Insurance policies do not cover wear and tear. The other strand of this complaint is that the cost of the cover is too high. However the applicant has not vouched the ability to secure the same level and terms of insurance cover at a cheaper cost. The complaints are unfounded.

The Tribunal had little hesitation in concluding that the respondent has met all of their obligations arising from the Code and their duties. No Property Factor Enforcement Order is necessary.

The Tribunal finds it necessary to comment upon the remedy sought by the applicant. The applicant asserts that due to the failures on the part of the respondent to remedy repairs and effective works, she and her husband have required to take their own action at a cost of "around £7,000" which they seek to recover from the respondent. Again there is a complete lack of specification of the applicant's position. On the basis of the Tribunal's findings and foregoing reasons, the applicant has failed to establish any fault on the part of the respondent and has failed to evidence that the respondent is liable for any claimed losses. No causation of any losses is evidenced. The applicant is not entitled to any damages. Moreover the applicant has failed to evidence any losses to any credible or reliable degree. There is no clear reliable documentary evidence which evidences any losses. Reference was made to credit card statements and PayPal payments which are evidenced in the applicant's inventory. However this vouching does not disclose the nature of any work undertaken, the identity of the contractors, nor are there any professional receipts.

Reference is also made to the considerable stress and inconvenience suffered and they wish to be compensated in the sum of £1,840 which is calculated at £20 per week for the 92 weeks that the situation is said to have continued for. There is no specification as to what 'situation' has actually continued for 92 weeks nor which 92 weeks are relied upon. On the basis of the Tribunal's findings and foregoing reasons, the respondent is not liable to the applicant in any way as they have complied with the Code and complied with their duties. Any stress and inconvenience which the applicant has suffered is as a consequence of being the homeowner of a list B category property within a common tenement which now requires substantial repairs and renovations at significant cost.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal,

the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member [redacted]

Date: 28 May 2021