

Housing and Property Chamber

First-tier Tribunal for Scotland



FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER)

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PF/20/2100

Re: 32 Tudsbery Avenue and 2 Dingwall Place, Edinburgh, EH16 4GX (“The Property”)

The Parties:-

Miss Valerija Voitovic residing at 32 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Homeowner”) and

Residential Management Group Scotland Limited, having a place of business at RMG House, Essex Road, Hoddesdon, EN11 0DR (“The Factor”).

Tribunal Members

Karen Moore (Legal Member)

Carol Jones (Ordinary Member)

Decision

The Tribunal determined that the Factor had failed to comply with Section 14 of the Act in respect of compliance with Sections 6.1 and 6.9 of the Property Factor Code of Conduct (“the Code”).

Background

1. By application received between 5 October 2020 and 15 November 2020 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with Sections 6.1 and 6.9 of the Code. The Application comprised the following documents: -application form dated 3 October 2020; copy email correspondence between the Homeowner and the Factor; prints of photographs of the Property; copy invoices issued by the Factor and copy of the Factor’s Written Statement of Service.

2. In response to the Application, the Factor lodged written representations and productions comprising:- copy invoice from the Eden Group for £1,524.84; copy invoice, from McDonald Roofing Contractors Ltd for £2,685; copy email dated 10 November 2020 from RMG Scotland to Ms Voitovic; copy of a site plan annotated by the Factor; copy Tree Survey by AV Arboriculture dated 5 March 2013; copy quotation from Frontier Forestry Ltd dated 21 August 2020 and copy estimate from McBean Land and Property dated 2 November 2020.

Hearing

3. A Hearing took place at 10.00 on 15 January 2021 by telephone conference. The Homeowner and Ms Lisa Pieper of the Factor took part. The Homeowner had three witnesses. The Factor had no witnesses.
4. From the Application, the Homeowner's complaint related to the Factor's handling of three matters: roof repairs, work required to a tree at the Property and damage to the front door of the Property.

Homeowner's Position.

5. The Tribunal dealt with the Homeowner's evidence first and with each of the Homeowner's complaints in turn.

Homeowner's complaint under Section 6.1 of the Code.

6. Section 6.1 of the Code states: *"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."*
7. In evidence to the Tribunal, the Homeowner explained that her complaint in respect of this part of the Code firstly related to the roof at 32 Tudsbery Avenue and 2 Dingwall Place both of which blocks of flats form the Property and which roof had leaked from the original construction of the Property in 2015. She referred to the photographs lodged by her as part of the Application and to apparent staining and mould on the ceiling of the common hallway at the Property and advised the Tribunal that the owners of the top floor flats had water ingress into their homes. She advised the Tribunal that water comes into the Property every time it is raining. The Homeowner explained that the Factor had instructed repairs and a gutter clean in 2018 but this failed to resolve the issue. She explained that the Factor had advised the owners of the Property that a claim could be made on the house builder policy but that, as the excess is £5,000.00, this was not recommended by the Factor.
8. In response to questions from the Tribunal, the Homeowner explained that she moved into her flat in the Property in 2015 having purchased direct from Places for People, the developer, and that the first property manager was Places for People

until the Factor took over around 2017. Ms. Pieper helpfully advised that the Factor took over the property management in 2018.

9. With regard to the invoice from McDonald Roofing Contractors Ltd for £2,685 lodged by the Factor, the Homeowner stated that it was not clear what work had been instructed by the Factor and carried out by the contractor.
10. The Homeowner then gave evidence in respect of the next part of her complaint under this Section 6.1 of the Code which related to a large poplar tree growing close to the Property and the roots of which are growing through the mono-blocked common access path, causing damage. The Homeowner's concern in this respect is that the tree should have been removed by the developer prior to or during construction. The Homeowner stated that the Factor's response was to obtain excessive quotes for the removal of the tree. She explained that it was not clear to her and the other owners what work the Factor had asked contractors to quote for, what work would be done and what guarantees would be given.
11. In response to questions from the Tribunal, the Homeowner stated that she had not seen the Factor's productions relating to the tree and being the copy Tree Survey by AV Arboriculture dated 5 March 2013; copy quotation from Frontier Forestry Ltd dated 21 August 2020 and copy estimate from McBean Land and Property dated 2 November 2020 until these were lodged by the Factor in response to the Application.
12. The Homeowner advised the Tribunal that Ms. Pieper had visited the Property in August 2020 in response to complaints about the damage to the path caused by the tree roots and had undertaken to obtain costs for the work which would be required, however, that nothing further had been received from the Factor until the productions were lodged in December 2020. The Homeowner advised that around that time the Factor had written to her to advise that Places for People had agreed to meet the cost of the work required to remove the tree but it was not clear if Places for People had also undertaken to meet the cost of re-instating the mono-blocked common access path.

Homeowner's complaint under Section 6.9 of the Code.

13. Section 6.9 of the Code states: *"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."*
14. The Homeowner advised the Tribunal that this part of her complaint related to damage to the main door to the Property which appeared to have been caused by the cleaners who had jammed their leaflets under and between the frame and the side of the door to keep it opened whilst they carried out their work. The Homeowner

referred the Tribunal to photographs lodged by her as part of the Application which showed leaflets under and between the frame and the side of the main door. The Homeowner advised the Tribunal that the Factor's response was that there was not sufficient evidence to pursue the cleaning contractors. She explained that the Factor did not accept that the door was working fine before contractors had arrived, that the door was still propped open at that time and remained propped open after they left and that after that the door was damaged.

15. The Homeowner confirmed to the Tribunal that as far as she knew the photograph referred to by her had been taken on the day the damage was caused.

Cross-examination on behalf of the Factor.

16. The Tribunal invited Ms. Pieper to put the Factor's position to the Homeowner. Ms. Pieper asked the Homeowner to confirm that there had been no reports of water ingress following the 2018 repair until the end of 2019. The Homeowner maintained that there had been water ingress and there had been reports of this to the Factor.

Homeowner's witness, Mr. Jonas Skruibis

17. Mr. Skruibis explained that his flat is a top floor flat at 32 Tudsbery Avenue which forms part of the Property and that water ingress had been a constant issue since he moved in in 2015. He explained that there were leaks into the main bedroom and into the kitchen, which although minor at first had become a huge issue. He explained that when there is rain there is a build-up of water in the stair well. He stated that he had raised the problem with the developer, Places for People, and then with the Factor but the problem had not been resolved. He stated that he had emailed the Factor and had asked that the roof at his part of the Property be looked at numerous times and had reported leaks after the 2018 repair. He stated that his emails had not been followed up. He advised that Ms Pieper had said that the roof work could not be instructed as there is a debt due by an owner. Mr. Skruibis said that he had asked the Factor about the developer's or installers' roof warranty but was told that the owners cannot make a claim on the warranties.
18. In response to direct questions from the Homeowner, Mr. Skruibis maintained that he had complained to the Factor about leaks from the roof continually from 2015 and had complained again by email of 7 January 2021. He stated that the Factor had advised him that work had been carried out recently, but he had no knowledge of what had been done and when.
19. With regard to the damage to the door, Mr. Skruibis advised that he had seen the door jammed by the leaflets and was aware that one of the other owners, Ewelina had taken photographs of it. He was aware that the damage had been reported to the Factor who had said that there was not enough evidence to claim against the cleaners.

20. Ms. Pieper was invited to put the Factor's position to the witness but had no questions to ask of Mr. Skruibis.

Homeowner's witness, Mrs.Ewelina Hajdari

21. Mrs. Hajdari explained that she resided at 2 Dingwall Place which forms part of the Property and that cleaners carried out a monthly clean of the common parts. She advised the Tribunal that on July 7 2019 her husband had noticed that the cleaner put leaflets under the main door to keep it opened. She explained that she and her husband reported this to the Factor. Her husband had also spoken to the cleaning company employee at the time who had apologised and advised that he would contact the company's insurers. Mrs Hajdari explained that she and her husband had contacted the Factor with this information on numerous occasions, but the Factor took more than half a year to respond and when they did, the Factor had simply had the door repaired at the owners' cost.

22. Ms. Pieper was twice invited to put the Factor's position to the witness but had no questions to ask of Mrs. Hajdari.

23. In response to questions from the Tribunal, Mrs. Hajdari confirmed that the photograph had been taken on the day the damage was caused and sent to the Factor at the time it was time stamped, being 2.43pm on 7 July 2019.

Homeowner's witness, Mr.Nowak

24. Mr. Nowak explained that he resided in a second floor flat at 32 Tudsbery Avenue which forms part of the Property. In response to questions from the Homeowner, he advised the Tribunal that there is a large poplar tree around 6-8 metres from the main door, the roots of which have caused him and his visitors to trip. He agreed with the Homeowner that the issue had been ongoing for years but, in the last one and a half to two years, the roots had begun to lift the mono-block on the path. He agreed with the Homeowner that he had seen the productions lodged by the Factor in December 2020 relating to the tree, but it was not clear to him if Places for People had undertaken to meet the cost of removing the tree and re-instating the mono-blocked common access path or if there would be a cost the owners.

25. In response to questions from the Tribunal, Mr. Nowak confirmed that he had only recently seen the reports and quotations relating to the tree.

26. Ms. Pieper was invited to put the Factor's position to the witness but had no questions to ask of Mr. Nowak.

Factor's Position

27. Ms. Pieper gave evidence on behalf of the Factor in respect of the Homeowner's complaints. Ms. Pieper advised that she would rely on the Factor's written

representations and deal with the matter of the tree first, then the roof and then the door.

Factor's position in respect of the tree.

28. Ms Pieper stated to the Tribunal that she was aware that there is a tree close to building causing problems, that it was brought to her attention around March 2020 and that she visited the Property and met with owners, when the Covid-19 restrictions were relaxed and she was able to do so in August 2020. She stated that the mono-block path is owned by the owners of the flats and that, in terms of the Deed of Conditions, until adopted by the council, the owners are responsible for the repair and maintenance. She explained that the owners had refused to pay anything and that this was a challenge. She agreed with the owners to carry out investigation into the works required and costs. Ms Pieper explained, with reference to the Factor's productions, that Frontier Forestry Ltd would remove the tree and McBean Land and Property would then treat the suckers and the roots and prepare a maintenance plan before re-instating the damaged mono-blocking. She also said that Frontier Forestry Ltd could only remove the tree in April so she would obtain other quotes. Ms. Pieper explained that it was her intention to have the developer, Places for People, meet the cost and that this was the reason for her colleague writing to the owners on 18 December 2020 with the information that the developers had agreed to pay.

29. In response to questions from the Tribunal, Ms Pieper produced a copy the Factor's letter of 18 December 2020. She explained that this was a general letter sent to all the owners and that the Factor would now go back to the developer's to agree the final detail. She stated that the Factor was delighted that developer had said it would pay the costs as gesture of goodwill. Ms. Pieper said she understood that the developer has workmen on site and that the developers will cover cost this way. In response to further questions from the Tribunal, Ms. Pieper agreed that the owners had not been told of this and explained that this is because the final detail is not yet known. She explained that the developer had fenced off an area of the common path for safety reasons. She agreed that the quotes had not been sent to the owners and that communication with the developer had mainly been verbal and so there was no written commitment from the developer in respect of works and costs. Ms. Pieper agreed that the letter of 18 December 2020 was not clear and could have been better expressed but the Factor had just wanted the owners to know that the developer had agreed to pay as a gesture of goodwill.

30. In response to questions from the Tribunal, Ms Pieper stated that the Factor would have carried out regular visual inspections of the Property and common areas but agreed that the Factor had not noticed the issue with the tree.

Homeowner's cross-examination of the Factor with regard to the tree.

31. The Homeowner drew Ms. Pieper's attention to the Tree Survey by AV Arboriculture dated 5 March 2013 and its comments relating to the poplar tree in question. Ms

Pieper explained that the Factor recently received this in August 2020 from the developer and that it was a pre-build report. She agreed that it had not been sent to the owners.

32. Ms. Pieper did not accept that she had refused or failed to give the Homeowner a contact in the developer's organisation to allow the Homeowner to make her own enquiries.
33. With regard to the Frontier Forestry Ltd and McBean Land and Property reports and quotations and the costs to be paid by the developer, Ms Pieper agreed that the letter of 18 December 2020 and the statement that £10,526.40 in relation to the McBean estimate as set out in the Factor's written representations were not compatible. She stated that her understanding was that the developer would meet the whole cost for the tree removal and re-instatement of the mono-blocking but accepted that this was not clear. She accepted that, in hindsight, the letter of 18 December 2020 could have been more detailed and more accurate.
34. In response to questions from the Tribunal, Ms. Pieper agreed that emails from the developer had not been provided to the owners and explained this was because the emails contained unrelated information. Ms. Pieper undertook to provide the relevant wording to the Homeowner and the Tribunal, which she did during the course of the Hearing.
35. In response to questions from the Tribunal, Ms. Pieper explained that the developer still has an interest in the development, that there are 73 ownership units of which the 36 are privately owned with the remainder being rented. She explained that the developer and its construction company, Hart Builders, are still on site and have cordoned off the path to repair it.
36. In response to questions from the Tribunal, the Homeowner stated that she was not aware that the relevant common path was owned in common with all 73 ownerships and thought it was owned by the owners of the Property. She was aware of the mix of tenure in the development and that the developer had an ongoing interest. She also stated she could not remember receiving the written statement of services or a development schedule in 2018.
37. In response to questions from the Homeowner, Ms. Pieper agreed that the Factor should have made the ownership clear to all of the owners.

Factor's Position in respect of the roof.

38. Ms. Pieper stated to the Tribunal that there had been considerable debt of around £10,000 at the Property and this impacted on the Factor instructing repairs. She advised that the debt had been reduced to around £5,000 and so roof repairs had been instructed recently.
39. Ms. Pieper stated that Mr. Skruibis had reported roof leaks and that McDonald roofing had carried out a repair in October 2018. She stated that there had been no more reports of leaks until 2020 when Mr Skruibis was in contact again. Ms. Pieper agreed that she had told him that the Factor needed funds for the repair and when the communal debt reduced, a repair was done in 2020. Ms. Pieper stated that the Factor had tried to get the repair progressed under the developer's Premier Guarantee on the roof but, as the excess is £5,000.00 and the repair cost was considerably less, it did not make sense. She also explained that the block insurance cover is for damage caused by extreme weather conditions only and not wear and tear. She explained that the key obligations as factor were to pay the insurance and electricity and that funds ingathered go towards this first. In response to questions from the Tribunal. Ms. Pieper explained that only Mr Skruibis was made aware of this as he had been the party complaining of the leak.

Homeowner's cross-examination of the Factor with regard to the roof.

40. In response to the Homeowner's questions regarding the choice of instructing, McDonald Roofing in 2018, Ms. Pieper confirmed that no assessment or survey had been carried out and that McDonald Roofing had been instructed because they had installed the roof and so knew its construction. She stated that the Factor had taken McDonald Roofing's opinion of the work required in good faith and had not received any complaints regarding their work. She stated that the Factor had monitored the work for 12 months and had no evidence that water was incoming and so there was no reason to think the repair had not been successful. Ms. Pieper added that a report on a recent repair will tell more and stated that as part of the roof is flat, water pools there, and, if there is a build-up of leaves, water can leak into the building.
41. In response to the Homeowner's questions regarding the cost of the repair by McDonald Roofing in 2018, Ms. Pieper confirmed that the cost was £2,685.12 and agreed that this was above the limit of £350.00 as set out in the Written Statement of Services but explained that it was dealt with as an emergency repair although it took some 6 months to be carried out. Ms. Pieper agreed that the Factor had not written to the owners with the cost and that no breakdown of cost or works carried out had been requested from McDonald Roofing. She thought it likely that a significant part of the cost was hire of equipment.
42. In response to questions from the Tribunal, Ms. Pieper stated that the roof repair would not have been covered by a warranty as the repair was to the gutters and cleaning and the warranty was for the roof materials. She agreed that the owners

had not been kept informed and that the repair was notified June/July 2018 and carried as an emergency on 4 October 2018.

43. In response to the Homeowner's questions regarding a recent repair carried out in December 2020, Ms. Pieper stated that she did not know if the repair had been carried out or just assessed. She explained that because of the Christmas/New Year break the contractor, TCEX Roofing, had not yet reported back to the Factor. Ms. Pieper accepted that Mr. Skruibis had reported water ingress. She stated that the Factor would not write to the owners and would only communicate with Mr Skruibis. Ms. Pieper stated that as the common debt had decreased the Factor was prepared to meet the cost of the repair at present and then recharge the owners and would not insist on the owners paying upfront.

Factor's Position in respect of the door.

44. Ms. Pieper stated that the damage to the door had been reported to the Factor and the Factor had instructed the Eden Group to look at it. She stated that the Factor could not conclude that leaflets jammed under and to the side of the door had been so jammed by the cleaners and could not conclude that this caused the damage to the door. Ms Pieper stated that she phoned the Eden Group the day before the hearing and she was told that the door closing mechanism had failed because the hydraulic fluid had leaked and that this was common to doors of this type and age. She was told that the leaflets would not have helped the situation but that the leaflets would not have caused the door to fail.
45. Ms. Piper explained that she had asked the owners who had made the complaint for further hard evidence, but they could not provide it and so the Factor could not approach the cleaner on behalf of the owners. She did however say that she had phoned the cleaning company the day before the hearing and they said they had no record of the issue. She also stated that the cleaners no longer operate in Scotland.

Homeowner's cross-examination of the Factor with regard to the door.

46. In response to the Homeowner's questions regarding the quality of evidence provided in relation to the damage to the door and the photograph of the door jammed by the leaflets, Ms. Pieper stated that the Factor did not consider this conclusive or strong enough as the leaflets could have been placed by anyone. She stated that the photograph simply showed that leaflets had been placed there and did not document or show damage.

Summing Up

47. Neither party had anything to add in respect of summing-up.

Tribunal's assessment of evidence

48. The Tribunal had regard to the Application, the Factor's written representations and the oral evidence at the Hearing. The Tribunal considered that the Homeowner, her witnesses and Ms. Pieper all gave evidence at the Hearing truthfully and any differences in their evidence were differences in viewpoint and not deception or

attempts to deceive. In particular, Ms. Pieper on behalf of the Factor conceded points where it was fair to do so.

49. With regard to the issue of the door, the jamming of the leaflets under and to the side of the door and the likelihood of damage to the door being caused by that action, the Tribunal agreed with the Homeowner and her witnesses that, on the balance of probabilities, the damage was caused by the cleaners. The Tribunal found that there was no other reasonable explanation on the information presented and found it extraordinary that the Factor, in both the evidence given by Ms. Pieper and the Factor's written representations, had imposed such a high standard of proof without any reason to do so.
50. With regard to the Factor's written representations, the Tribunal found parts of this to be ambiguous and parts to be at odds with the oral evidence given by Ms. Pieper at the Hearing. With regard to the tree, the written representations state that the Homeowner *"has not provided any evidence to back up this claim. It should be noted that Ms Voitovic has not researched the species of tree, so has not therefore established what the root structure is likely to be. It follows that there has not then been any evidential assessment of the ideal distance between the tree and nearby buildings. The allegations are therefore made without substance."* However, the written representations go on to contradict this by agreeing that the tree is causing damage by stating *"In August 2020, the Property Manager undertook a visual inspection of the tree and observed that it was almost certain that the tree's roots were lifting a number of block pavements to adjacent footpaths (also referred to as monoblock). No damage was observed to nearby buildings. The Property Manager then contacted Frontier Forestry Limited for an assessment. Frontier advised that the roots were lifting the monoblock and that the most appropriate action would be to remove the tree."* In respect of the oral evidence, Ms. Pieper did not dispute the Homeowner's evidence and did not call her expertise or assessment of the tree into doubt. Ms. Pieper agreed that the tree was the cause of the damage to the path. The wording of the Factor's letter of 18 December 2020 states that the Factor *"has been communicating with the developer for a considerable time to remove the tree at their cost."* The Tribunal has, therefore, disregarded the written representations in respect of the tree as being without merit.
51. With regard to the roof, the Factor's written representations state *"The work undertaken in 2018 and referred to by the Applicant was primarily to clear gutters that were thought to be the cause of the water ingress. Subsequent to that, reports were received of further water ingress. Assessment of the preferred approach established that the contractor would need a cherry picker to access the roof. Anticipated costs were therefore high."* The evidence given by Ms. Pieper was that no further reports were received and that no contractor was approached until December 2020, the latter point of which accords with the evidence on behalf of the Homeowner. The written representations further state *"It is the funding issue that is the impediment to progress. Proprietor debt is quite high for this block, so that there are insufficient funds with which to pay a contractor. This has been explained to all owners in general terms"*. The evidence given by Ms. Pieper was that only Mr Skruibis as the owner who made the

complaint of the roof leak was advised of this. The written representations go on to state:” *It is hoped that the position will shortly improve and that the factor can again look at arranging the works. RMG Scotland did look further into the suggestion of making a claim on the owners’ building guarantee. As the excess for a claim is £5,000, it was not considered good value for money to pursue this. With regard to this point, the factor has again followed procedures for carrying out works. The needs for works has been investigated and an approach to resolve the leaks identified. The factor is keen to arrange the works, which can proceed once the proprietors have made payments into the relevant factor fund.*” None of these points accord with the oral evidence given by the Parties. In particular, Ms. Pieper accepted that the Factor did not follow its repairs procedures as set out in the Written Statement of Services. The Tribunal has, therefore, disregarded the Factor’s written representations in respect of the roof as being without merit.

Tribunal’s Findings in Fact

52. From the Application, the Factor’s written representations in respect of the door and the Hearing, the Tribunal held the following findings in fact either proved or evidenced by the Parties:-

- i) The Homeowner has been an owner at the Property since 2015 and the Factor has been the property manager since 2018;
- ii) There has been water ingress at the Property for some time and, in particular, since 2018;
- iii) The Homeowner or her fellow owner have reported the water ingress to the Factor;
- iv) The Factor instructed McDonald Roofing Contractors to carry out works to remedy the water ingress in 2018;
- v) The Factor did not specify the works to be carried out, did not ask McDonald Roofing Contractors to detail the work which it carried out, nor did the Factor ask for an itemised breakdown of its invoice;
- vi) McDonald Roofing Contractors invoice was for £2,685 which sum is in excess of the Factor’s authority as set out in its Written Statement of Services;
- vii) The Factor did not seek prior authority of the Homeowner and the other relevant owners before instructing McDonald Roofing Contractors to carry out the works;
- viii) The Factor did not inform the Homeowner and the other relevant owners of the progress of the works carried out by McDonald Roofing Contractors;
- ix) There is a large poplar tree growing close to the Property, the roots of which are growing through the mono-blocked common access path, causing damage;
- x) The Homeowner and the other owners reported concerns regarding this to the Factor;
- xi) The Factor obtained reports on the tree being the copy Tree Survey by AV Arboriculture dated 5 March 2013 and obtained quotations for works to remove the tree and repair the damage being quotation from Frontier Forestry Ltd dated

21 August 2020 and estimate from McBean Land and Property dated 2 November 2020;

- xii) The Factor did not inform the Homeowner and the other relevant owners of the actions it had taken in respect of the tree and did not provide the Homeowner and the other relevant owners with the relevant reports and quotations it had obtained;
- xiii) The Factor did not inform the Homeowner and the other relevant owners of the communications it had entered into with the developer, Places for People, and did not provide the Homeowner and the other relevant owners with copies of these communications;
- xiv) The Factor issued a letter to the Homeowner and the other relevant owners on 18 December 2020 advising that Places for People had agreed to meet the cost of the work required to remove the tree;
- xv) This letter of 18 December 2020 was premature as the detail of the agreement between the Factor and Places for People was not yet agreed and was ambiguous as it did not make clear the extent of the undertaking proposed by Places for People;
- xvi) The Factor arranges cleaning services at the Property;
- xvii) The main door to the Property was damaged by cleaners who had jammed their leaflets under and to the side of the door to keep it opened whilst they carried out their work and
- xviii) The Factor did not pursue the Homeowner's and the other owners' complaints with the cleaners.

Decision of the Tribunal and reasons for the Decision

53. Having made the Findings in Fact as set out above, the Tribunal had regard to the breaches of the Code complained of by the Homeowner.

54. With regard to Section 6.1 as set out in full in paragraph 6 above, the Factor by its own admission did not "*inform homeowners of the progress*" of the works instructed in respect of the roof and the tree and provided no information in respect of "*estimated timescales for completion*". The Factor was not transparent with the Homeowner and the other owners in respect of its actions in arranging roof repairs and taking decisions in respect of roof guarantees. The Factor did not discuss or take instructions from the Homeowner and the other owners in respect of repairs outwith its authority and proceeded on its own account without regard to its general duty of care to the Homeowner and the other owners. The Factor was not transparent with the Homeowner and the other owners in respect of its actions in dealing with the poplar tree and withheld, deliberately or otherwise, information regarding its negotiations with the developer. The Tribunal had no difficulty in determining that the Factor had failed to comply with Section 6.1 of the Code.

55. With regard to Section 6.9 as set out in full in paragraph 13 above, the obligation on the Factor is that it “*must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided*”. This is a mandatory obligation on the Factor and not an option. The Factor, by its own admission, did not “*pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.*”, but refused to do so even though it had first-hand evidence from eyewitnesses to the likelihood of the damage caused by the contractors. The Tribunal had no difficulty in determining that the Factor had failed to comply with Section 6.9 of the Code.

Property Factor Enforcement Order

56. The Tribunal having determined that the Factor has failed to carry out its Section 14 duties in in terms of Section 17 of the Act, then considered whether to make a property factor enforcement order in terms of Section 19 of the Act. The Tribunal had regard to the whole circumstances of the Application and to the detrimental effect of the Factor’s failure on the Homeowner and so proposed to make a property factor enforcement order which will follow separately to conform with Section 19 (2) of the Act which states:- “*In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so (a)give notice of the proposal to the property factor, and (b)allow the parties an opportunity to make representations to it.*”

57. The decision 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.

Karen Moore

Chairperson

5 February 2021

