First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/PF/18/0769

91 Zena Street, Glasgow, G33 1HY ("The Property")

The Parties:-

Mrs Anna Marie Campbell, 91 Zena Street, Glasgow, G33 1HY ("the Homeowner")

The Wheatley Group, Yourplace Property Management, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ("the Property Factor")

Tribunal Members:-

Ms Helen Forbes (Legal Member)
Ms Carol Jones (Ordinary Member)

Decision

The Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Property Factors (Scotland) Act 2011 ("the Act") in respect of compliance with Sections 2.1 and 6.9 of the Property Factor Code of Conduct ("the Code").

The decision is unanimous.

Background

1. By application received on 2nd April 2018 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination that the Factor had failed to comply with Sections 2.1, 2.5, 4.6, 5.5, 5.7, 6.4 and 6.9 of the Code. Details of the alleged failures were outlined in the Homeowner's application and associated documents comprising letters and emails to and from the Factor, the Factor's Written Statement of Services, the Factor's complaints procedure, various invoices, photographs, a home report in respect of the Property, stage 1 and

stage 2 complaints correspondence, and a scope of works document. In correspondence with the Housing and Property Chamber, the Homeowner clarified that she wished the Tribunal to consider the alleged breaches of Sections 2.1, 2.5, 6.4 and 6.9 of the Code. The failures outlined by the Homeowner were in relation to two matters: 1) The alleged cessation of cyclical maintenance by the Factor and a failure to inform her that a major programme of roof works would not proceed. The Homeowner alleged that this contributed to a decline in the state of her roof, with major repair works now required. 2) A roof related repair notified as an emergency in October 2017, which had still not been completed satisfactorily.

2. The Homeowner also applied for a determination that the Factor had failed to comply with its duties under section 17 of the Act by failing to comply with the Written Statement of Services, the Code, and the Act.

3. By Minute of Decision dated 5th April 2018, a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.

4. Notice of Referral and Hearing was sent to the Parties on 8th May 2018. A hearing was set down for 25th June 2018.

5. The Tribunal issued a Direction dated 30th May 2018, in the following terms:

> "The Parties are required to lodge the following documentation and information with the First-tier Tribunal for Scotland (Housing and Property Chamber), Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT by 18th June 2018:
>
> 1. The Property Factor is required to produce a full copy of the Deed of Conditions from which they derive their authority to provide factoring services to the development of which the Property forms part;
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> 2. The Homeowner is required, in relation to section 7A of the Application form, to provide the Tribunal with an outline of her complaint. The Homeowner has made reference to, and included, documentation relating to the Property Factor's complaints process. While this may be appropriate evidence, it does not set out clearly the details of the complaint to the Tribunal or give fair notice to the Property Factor. The Homeowner should provide an outline and details of why she is alleging a failure to comply with specific paragraphs of the Code of Conduct.
>
> 3. The Homeowner is required to specify the duties or legal responsibilities that she believes have not been carried out by the Property Factor, as required by section 7B of the Application form. The Homeowner has referred to documentation and the outcome of complaints made to the Property Factor, but there is insufficient detail of the exact nature of the duties or legal responsibilities that have not been carried out."

6. On 11th June 2018, the Homeowner responded by email to the Direction, clarifying the matters about which she was complaining. The Homeowner included further alleged breaches of the Code in terms of sections 2.4, 3.3 and 6.1.

7. On 11th June 2018, the Factor responded by email to the Direction, attaching a copy of the Title Sheet for the Property, incorporating the Deed of Conditions.

8. On 12th June 2018, the Factor requested a postponement of the hearing as Donna Baillie, Regional Business Manager, who had been dealing with this case, would not be available. The postponement request was refused on the grounds that good reason had not been shown why a postponement was necessary. An extension to 19th June 2018 was granted to allow the Factor to respond to the Homeowner's response to the Direction.

9. On 19th June 2018, Ms Susan Mackie, the Factor's Regional Business Manager, made representations by email, including a response in respect of the alleged breaches of 2.4, 3.3 and 6.1. She also requested a postponement of the hearing but this was subsequently refused by the tribunal for the reasons previously referred to.

10. On 21st June 2018, the Homeowner lodged a report from Ashlar Consulting on the standard of the repair carried out to the front guttering at the block of flats comprising 85-91 Zena Street, Glasgow, of which the Property forms part.

Hearing

11. A hearing took place at 10.00 on 25th June 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Homeowner was present. The following representatives of the Factor were present: Ms Susan Mackie, Regional Business Manager; Mr Tom Cuthill, Common Repairs Team Manager; and Mr David Adams, the Factor's in-house Solicitor.

Preliminary points

12. The report lodged by the Homeowner on 21st June 2018 was not received timeously in terms of Rule 22. There was no objection on behalf of the Factor to the late lodging of the report, although they had not yet received a response, having circulated it to their contractor. The Tribunal agreed to allow the late lodging of the report, as the Homeowner had a reasonable excuse in terms of Rule 22(2), in that the report had only just become available.

13. There was some discussion about the alleged breaches of the Code that the Homeowner was seeking to rely on. It was pointed out by the Tribunal that no evidence would be heard in relation to the alleged breaches of sections 2.4, 3.3 and 6.1 as these had not formed part of the Application. The Homeowner clarified that she was complaining about alleged breaches of sections 2.1, 2.5, 6.4 and 6.9.

14. It was discovered that representations and productions said to have been lodged by email by the Factor on 29th May 2018, and copied to the Homeowner on 14th June 2018, had not been received by the Tribunal or the Homeowner. The Tribunal adjourned to allow the matter to be investigated. The documents were copied and it was discovered that there were only three items that were not already lodged with the Tribunal, namely a written summary, two further editions of the Written Statement of Services and a one-page repairs history. The Tribunal allowed the Homeowner time to read the documents and offered her the opportunity to adjourn the hearing to another date if she felt it would be inequitable to proceed with the hearing.

15. The hearing reconvened and the Homeowner stated that, although she is dyslexic, she was able to skim over the documents and she wished to proceed with the hearing. The Tribunal agreed to accept the late lodging of the documents, as the Factor had a reasonable excuse in terms of Rule 22(2), in that they believed the documents had been emailed to the Tribunal and the Homeowner within the timescale allowed.

Evidence and Representations

16. The Tribunal then dealt with each of the Homeowner's complaints in turn.

Failure to comply with section 2.1 of the Code

17. Section 2.1 states: *You must not provide information which is misleading or false.*

The Homeowner said she had contacted the Factor on a number of occasions regarding the major programme of roof works that began in 2012, which she described as cyclical works. She became aware of the works because her mother lives in another block in the same street, and her mother's block was in phase 1 of the programme. The programme did not proceed in respect of the Homeowner's block of flats. The Homeowner had to request a reason on several occasions, and she was given a number of different reasons for the cancellation of the programme such as a lack of consent by homeowners, and because there was a Glasgow Housing Association ("GHA") tenant in her block. She was told that the Factor would be in touch. She felt she had been 'palmed off by whatever sounded reasonable.' As for misleading information, she felt that no one had checked the facts and it wasn't until she began the complaints process in 2017 that she discovered the reason that the programme of roof repairs had not gone ahead.

She also referred to the guttering repair reported in October 2017 and said she was not convinced that anyone had actually looked at the roof before commencing work. There was a reference in documentation to cast iron gutters, which was incorrect. There was a reference to the scaffolding being relocated, which seemed odd when there was only one area of guttering that required repair. A charge had been made for a tarpaulin on the roof, when there was no tarpaulin. She was informed that, when the work was to be completed, it was discovered that the soffits were rotten. The description of

the work was incorrect. There was a reference to the soffit boards being replaced or painted and this wasn't done. When the scaffolding came down, the Homeowner said that the repair had not been carried out. She was told then that the soffits were all right and that the job had been signed off.

On behalf of the Factor, Ms Mackie said there was some confusion about the term 'cyclical works'. The proposed roof renewal work that was started in 2012 was actually major improvement works. Cyclical works were works done on a regular basis. The Homeowner had mentioned the job being cancelled but, in fact, she had not been provided with any information by the Factor to say it was going ahead. She had received information when works were being carried out to her mother's block. If the Factor had intended improving the block in which the Homeowner lived, she would have been notified. The decision would have been taken by the GHA and they would have notified the Factor if they were going ahead. There was no formal process started for phase 3 of the project, which would have been the Homeowner's block. As for why the programme was cancelled, information had come from the local authority to the effect that there were no longer grants available for the programme, and a view was taken that, without grants, it was unlikely that customers would pay the costs involved. A decision was taken by GHA to cancel the programme.

Responding to questions from the Ordinary Member as to whether an assumption was made that the homeowners would not want to proceed with the project in the absence of grant funding, Ms Mackie said the Factor knew from experience that the work was very unlikely to proceed without grants. Responding to questions from Mr Adams as to whether any decision had ever been taken to proceed with the major roof repairs on the Homeowner's block, she said the Factor's Asset Manager had mentioned that there was some discussion about phase 3 of the programme, but the Factor had no record of this. She said the owners would be contacted individually or a meeting would have been scheduled to discuss the scope of the work. In summary, she said, there had been no contact with the Homeowner to discuss the programme, so there had been no misleading information. The email lodged by the Homeowner from the Factor dated 31st January 2013 merely stated that a roofing project was being carried out, the proprietors' meetings were yet to go ahead, and there would be contact in due course. None of this happened, because the programme was cancelled.

The Ordinary Member referred to the Factor's Appendix 8, which was a document entitled 'Scope of Works' for phase 3 of the Zena Street Re-roofing and Ancillary Works. This included the Homeowner's block. The Homeowner had also lodged this document and she said she received it at meetings to do with her mother's block. It was pointed out to Ms Mackie that the document was clearly a document drawn up in anticipation of the programme being carried out to the Homeowner's block.

The Homeowner said that the Factor's Donna Baillie had described the repairs as cyclical, and this was referred to in their Written Statement. There was a cyclical repair project previously in place and this was cancelled in

2009. She was told by the Factor's staff that they could not afford to continue doing the cyclical works for the amount the Homeowner was paying. The guttering was no longer attended to, and when the new programme for major roof works was mentioned, the Homeowner had assumed this was the reason why the cyclical repairs had stopped. There was also an asbestos survey carried out at her block, which she assumed was preparation for the major work that was to be carried out. Since 2009, there had been no services other than insurance arranged by the Factor. The owners no longer reported repairs to the Factor as they had lost faith in the Factor. She referred to the Factor's production 13, which was a repairs history, and said no bills were issued in relation to the repairs detailed. If there was, indeed, no cyclical programme, why was she not billed for the repairs? She had been billed for gutter cleaning until 2009.

In response, Ms Mackie said there may be times when the local housing office would bear the cost of the repairs and choose not to bill owners, particularly if the repair was minor. In response to questions from the Tribunal as to whether there was a cyclical maintenance programme in place, Ms Mackie said no, and that, if there had been, she would have had sight of some evidence to that effect. Mr Cuthill said the repairs detailed on the sheet may have been carried out to the other side of the building. The programme of works is issued by GHA, and it would be them who would write to owners. Depending on the location of the property, the gutters would be cleaned every one to three years. If the cost was not above the threshold, no consent would be sought. The only other scenario he could conceive where the owners would not be billed would be if the correct procedure was not followed and the Factor was not given the necessary information to bill the owners.

There was some discussion about the fact that the recent Written Statement uploaded to the Factor's website contains incorrect information. It was uploaded in March 2018 and it has only just come to light that there is an error on page 12 where it states that if a social landlord owns a property in the block 'a cyclical maintenance programme will be in place', rather than 'may be in place'. All previous Written Statements, and all those lodged with the Tribunal, are correct, and state 'may' rather than 'will'.

In response to questions from the Legal Member as to how the Homeowner would know what services were the core services when the Written Statement is generic and all developments do not receive the same services, Ms Mackie said the homeowners can contact the Factor to request details. The Legal Member indicated that the Code requires that the Written Statement makes this clear. Ms Mackie said a letter goes out with the Written Statement confirming the services and the charges.

Mr Cuthill confirmed that there are no common areas relating to this particular block. He conceded that the wording relating to services within the Written Statement may be unclear.

The Homeowner said that the Factor had mismanaged the proposed major roof repair project. She was aggrieved that she was not consulted and did not

get an opportunity to apply for a grant. The roof was now in a mess and she had been put at a disadvantage, having to go through a gruelling procedure to raise complaints in this regard. She had relied on the Factor to have the job done correctly.

Responding to matters in relation to the 2017/2018 repair, Mr Cuthill said that there had been problems in identifying the work that required to be done. On initial inspection, the area was inspected from ground level and the full extent of the problem was not seen. It was two weeks before Christmas and this led to delays. In January 2018, it was noticed that scaffolding would be required. It was stated that the fascia was not rotten. Following the work, there was a complaint and it was evident that the work was not up to standard. Further work was carried out in May 2018. Mr Cuthill had understood that the job was complete; however, following receipt of the report by Ashlar Consulting lodged by the Homeowner, he accepted that the repair may not be satisfactory. Mr Cuthill has issued the report to the contractor and awaits their comments. With regard to the mention of cast iron guttering, he felt that was probably just an incorrect code selected while inputting the job to the system. In response to questions from the Ordinary Member regarding the work that had been done, Mr Cuthill said there had been remedial repairs in February 2018. There had been a call from the occupier at number 85 Zena Street in April 2018 and the job was supposedly completed in May 2018. Mr Cuthill said there was a pronounced dip in the guttering. That was much straighter now, but the terms of Ashlar Consulting's report would be considered.

The Homeowner said that the Factor had also provided information that was misleading or false in relation to recent correspondence concerning longer term solutions for the roof of the Homeowner's block of flats. An assessment had been carried out by one of the Factor's Asset Officers. Options were provided, and the Homeowner informed the Factor that she wished a quote for fully renewing the gutter/fascia and soffit (with UPVC), stripping back the eaves course of tiles and fitting eaves trays. She and her neighbours then received a letter from the Factor with an interest form stating that the quote requested was for 'a roof and gutter renewal'. This was not correct. Mr Cuthill accepted that this matter was not well communicated, and said he would sort this out. In response to questions from the Tribunal as to the likely costs for the work, he was unable to say, given that scaffolding would have to be used. The work is unusual due to the properties having formerly had flat roofs and now having pitched roofs.

Failure to comply with section 2.5 of the Code

18. Section 2.5 states: *You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers)*

It was clear that this had been fully covered in the complaints correspondence lodged with the Tribunal, and it was agreed that nothing further was required

by way of oral evidence. The Factor had upheld this complaint in the first and second stage complaints lodged by the Homeowner. The Factor had offered the Homeowner an *ex gratia* payment of £100. The Homeowner did not accept the payment. The Homeowner said that she refused the payment because it was not sufficient to compensate for the decline in the standard of her roof, which was a direct consequence of the Factor's failure to correspond timeously.

Failure to comply with section 6.4 of the Code

19. Section 6.4 states: *If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.*

The Homeowner reiterated that she believed a cyclical repair programme was in place and it had been cancelled. A programme of works had not been set up in relation to the major roof repair programme. Although new roofs had been put on the other blocks, no action had been taken on her block.

In response, Ms Mackie said that as a factoring agent, they do not have to have a programme of works for this particular block of flats. The Written Statement may not be clear on this point, but it is currently being reviewed and will be made clearer. Responding to questions from the Legal Member as to how it was to be made clearer, Ms Mackie said they will give clearer guidance to homeowners. She pointed out that, if there had been ongoing maintenance, the Homeowner would have been receiving bills. It is the responsibility of the owners to report issues that require repairs.

Responding to questions from Mr Adams as to whether she considered the roofing programme to be cyclical maintenance, the Homeowner said that the terminology used by the Factor for the programme was immaterial and it was up to the Factor to define the terms. The Homeowner referred to page 7 of the Written Statement under the heading 'Project Management of Complex Repairs and Cyclical Maintenance', and said she believed that these services should be effectively managed by the Factor as part of the core services provided. The Homeowner also said she believed the cyclical repairs had been cancelled in 2009 and the roofing project in 2012 without consultation or consent, and this was the reason the roof is now in a poor state of repair. With regard to the recent works, there had been several visits to fix the problem and the work was still not up to standard. Periodic inspections were required.

Failure to comply with Section 6.9 of the Code

20. Section 6.9 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.*

The Homeowner said that no one had pursued why the major roof repair work was not carried out at her block. There was some discussion about the meaning of the particular section of the Code and the Homeowner accepted that this section related to pursuing contractors or suppliers after actual work had been carried out, so that excluded the major roof repair programme.

In relation to the more recent issues with the roof, the Homeowner said that she had been unaware that there had also been work carried out in April 2018, and that, despite reporting the issue as an emergency in October 2017, it was still substandard after four visits. She said she had lost faith in the contractors.

On behalf of the Factor, Mr Cuthill pointed out that no payment had yet been asked for from the homeowners for the recent repairs. A six month warranty with defects liability for all repairs had been obtained. He did not feel it was reasonable that the work had not yet been completed to a satisfactory standard. Ms Mackie said that the contractor, City Building, is their partner and they are bound to contract with them. If the work was owner-led, they could use a different contractor.

Failure to comply with property factor's duties

21. The Homeowner said that the Factor had failed to comply with duties set out in their Written Statement of Services in relation to programme management, repair and maintenance, communication, and emergency repairs. She referred to the Customer Service Commitments contained in the Written Statement at page 26.

In response, Ms Mackie said that cyclical maintenance was not an opt-in/opt-out situation. Homeowners could opt in or out of services such as cleaning. She said that there had been a long period between 2013 and 2017 when there was no notification of repairs by homeowners in that block.

Responding to questions from the Tribunal, the Homeowner said that she phoned the Factor a couple of times between 2009 and 2013, when the services she believed were cyclical stopped. There had been a quote for a roof repair in 2009 and it was too expensive. The owners arranged gutter cleaning themselves. They became fed up of asking the Factor to arrange repairs as they felt they were not getting a good service.

Findings in Fact

22.

(i) The Homeowner has been the registered proprietor of the Property since 3rd November 2002.

(ii) The Property is registered in the Land Register of Scotland under Title Number GLA92025.

(iii) The Property is an upper flat in an ex-local authority block of four properties.

(iv) The Factor became a registered Property Factor with registration number PF000212 on 1st December 2012. The Factor's duty under section 14(5) of the Act to comply with the Code arises from that date.

(v) The Factor arranges common insurance for the development of which the Property forms part.

(vi) The Factor provides a general property maintenance service only if issues are reported to the Factor by the homeowners.

(vii) In 2013, the GHA commenced a major roof works programme in Zena Street which was facilitated by the Factor.

(viii) There was email correspondence between the parties in January 2013 when the Homeowner requested details of the major roof works programme and she was told that owners in her block of flats would be contacted in the next few weeks to arrange proprietors' meetings. The Factor mentioned the availability of grant assistance from the local authority.

(ix) No major roof work programme took place at the block of flats where the Homeowner resides.

(x) In 2015, the Homeowner contacted the Factor to say that she had heard nothing about works to her property and asking if the work was still planned. The Factor did not respond.

(xi) On 18th October 2017, an emergency repair was reported to the Factor by the Homeowner in respect of the guttering at her block of flats. There was a subsequent lack of clarity as to what, if any, work was carried out, and an invoice raised by the Factor and issued to homeowners was cancelled as a goodwill gesture.

(xii) On 19th October 2017, a follow-up programmed repair was raised and was due to be completed within 30 working days, with new guttering to be fitted on 1st November 2017. This work was not carried out.

(xiii) The work was scheduled to be carried out on 28th November 2017. At that time the plumber established that the soffits at the Property were rotten and the gutter could not be fitted.

(xiv) A revised repair works order was raised on 30th November 2017. The work was carried out on 18th January 2018 and the Homeowner was advised of this by letter dated 25th January 2018.

(xv) On 28th January 2018, the Homeowner reported to the Factor that the work had not been carried out as described.

(xvi) On 14th December 2017, the Homeowner raised a complaint with the Factor, regarding failure to inform or consult on the proposed major roof works, failure to address emergency repairs timeously, failure to provide cyclical maintenance for three years, failure to provide enough information re insurance, failure to respond to queries within reasonable timescales, failure to provide adequate detail in relation to outstanding debt, and failure to provide sufficient detail in 'full description of works' as part of the consent process re repairs to the guttering.

(xvii) On 26th January 2018, the Factor's Donna Baillie responded to the Homeowner regarding the Stage 1 complaint. The complaint that there had been a failure to keep the Homeowner informed of the withdrawal of the planned cyclical roofing project and the recent roof repair was upheld. An ex gratia payment of £100 was offered. The Homeowner did not accept this payment.

(xviii) On 30th January 2018, the Homeowner took her complaint to Stage 2.

(xix) On 27th February 2018, the Factor's Maureen Dowden, Director of Governance issued her findings to the Homeowner. She found that it was reasonable to expect the 2017/2018 repair to have been carried out to satisfactory standards and upheld this aspect of the complaint, apologising for the service received. She informed the Homeowner that the offer of £100 remained open.

(xx) On 13th February 2018, the Factor's Donna Baillie emailed the Homeowner with information about possible solutions to the roof problems and providing short and long term options for consideration.

(xxi) On 13th February 2018, the Homeowner informed the Factor by email that she wished to have a quote arranged for long-term Option 2.

(xxii) On 20th March 2018, the Factor issued letters to homeowners within the Homeowner's block of flats stating that a neighbour had requested 'a roof and gutter renewal', which was long-term Option 1, and including interest forms. This information was incorrect.

(xxiii) The Factor has breached section 2.1 of the Code by providing information which is misleading or false.

(xxiv) The Factor has not breached section 6.4 of the Code.

(xxv) The Factor has breached section 6.9 of the Code by failing to pursue the contractor to remedy the defects in inadequate work.

(xxvi) The Factor has not breached its property factor duties.

Determination and Reasons for Decision

23. The Tribunal took account of all the documentation provided by parties and the oral submissions and evidence led on behalf of the parties.

Failure to comply with section 2.1 of the Code

24. The Tribunal found that the Factor had failed to comply with this section of the Code by:

> (1) providing contradictory and incorrect information to the Homeowner in regard to the repair notified in October 2017, including references to scaffolding being relocated, a non-existent tarpaulin on the roof, and cast iron guttering. The description of the work carried out was incorrect.
>
> (2) sending out letters and interest forms to homeowners within the Homeowner's block of flats on 20th March 2018, stating that a neighbour had proposed a project to carry out a roof and gutter renewal, when the neighbour (the Homeowner) had clearly requested a different, and less costly, option. In normal circumstances, this could be considered a simple mistake on the part of the Factor; however, considered against the considerable history of concerns and complaints from the Homeowner in relation to roofing matters, it was crucial that the Factors take matters seriously and take care to issue accurate information to homeowners.

The Tribunal did not consider that false or misleading information had been provided in relation to the major roof works programme that was proposed from 2013 onwards. The Factor provided information to the Homeowner that the owners in her block of flats would be contacted in the next few weeks to arrange proprietors' meetings. That nothing came of this does not mean that the information was false or misleading, as there was clearly an intention at the time to take matters forward.

The Tribunal observed that Ms Mackie's evidence to the effect that the Homeowner had not been provided with any information by the Factor to say that the project to her block was going ahead, and that all information had been received when works were being carried out to her mother's block, was weakened somewhat by the existence of the Scope of Works document (Factor's Appendix 8). This document clearly referred to the Homeowner's block and phase 3 of the project, and it was provided to the Homeowner at some time; however, it was not considered to be false or misleading, as the intention to carry out such works was obviously there at the time the document was compiled.

Failure to comply with section 2.5 of the Code

25. The Tribunal did not consider this allegation as the Factor had upheld this complaint during the process of the Homeowner's complaints through the

Factor's complaints procedure. In terms of section 17(3) of the Act, the homeowner can only make an application where the property factor has 'refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern'. The Tribunal took the view that, although the Homeowner was not satisfied with the action taken by the Factor, in that she did not wish to accept the ex gratia payment offered, the Factor had attempted to resolve the Homeowner's concern without any delay.

Failure to comply with section 6.4 of the Code

26. The Tribunal did not find that the Factor had failed to comply with this section of the Code, as it was not evident that the core service agreed with homeowners included periodic property inspections and/or a planned programme of cyclical maintenance. The Tribunal noted that the Homeowner believed that a programme of cyclical maintenance was in place up to 2009; however, there was no compelling evidence of this before the Tribunal.

    The Tribunal observed with some concern that the Factor's generic Written Statement of Services is confusing and unclear, and it is not surprising that homeowners might find it difficult to understand. The Code requires that the Written Statement should set out the core services that it will provide. In this case, the Written Statement does not do that. By introducing services that 'may' be provided, it merely serves to confuse homeowners. However, this was not a matter of complaint by the Homeowner, so no finding was made by the Tribunal in that regard.

Failure to comply with section 6.9 of the Code

27. The Tribunal found that the Factor had failed to comply with this section of the Code, by failing to pursue the contractor to actually remedy the defects. This repair was reported as an emergency in October 2017. The contractor has attended on at least four occasions. The Tribunal took account of the fact that the Factor had upheld the Homeowner's complaint in this regard during the second stage complaint, however, that was in February 2018. At the time of the hearing, in late June 2018, the repair has still not been carried out to a satisfactory standard, and the Homeowner has had to instruct an independent report at her own cost. That report includes statements to the effect that the repairs completed are unsatisfactory and totally ineffective. The gutter is misaligned and there is no consistency in the placing of gutter supports. The work done will lead to early failure. The Tribunal noted that the Factor had obtained a warranty from the contractor.

Failure to carry out the Property Factor's duties

28. The Tribunal did not find that there had been a failure to carry out the Property Factor's duties, in part because the Homeowner had not made it clear exactly which duties in relation to the management of the common parts of land, or the management or maintenance of land, the Factor had failed to carry out, despite being given further opportunity to do so. The Homeowner seemed to

be relying on the fact that the Factor had upheld her complaints to prove a failure to carry out the Factor's duties, and that all the failures combined had led to the decline in her roof. The Tribunal did not find that this was the case. It was unfortunate that the Homeowner was not kept informed about the major roof works and the cancellation of the programme; however, there had been no concrete commitment to beginning work on the Homeowner's roof; therefore, it was, perhaps, unwise of the Homeowner to rely completely upon something that was never a certainty, and was obviously not in progress at any time over the four year period since it was first mentioned.

The Tribunal made an observation that the actions of the Factor suggested a lack of respect within the organisation for individual homeowners. The organisation is responsible for providing services to a large number of properties and homeowners, and the Factor would be advised to take more care to ensure it is acting professionally towards each individual.

Proposed Property Factor Enforcement Order (PFEO)

29. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO.

30. The Tribunal proposes to make a PFEO requiring the Factor to carry out the following within four weeks of the date that the PFEO is issued:

    (1) Provide the Homeowner with an estimate of the cost of long-term option 2 in respect of the ongoing work to her roof;

    (2) Pay the Homeowner from their own funds the sum of £500, to reflect the strain and anxiety experienced by the Homeowner, and the time and cost commitment the Homeowner has had to invest, due to the Factor's lack of compliance with the Code.

Right of Appeal

1. **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.**

H Forbes

Legal Member and Chairperson
1st August 2018