

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/PF/23/0679**

**Property: 31 Lothian Street, Edinburgh EH1 1HE (“the Property”)**

**The Parties:-**

**Mrs Cecilia Carlsson, Flat 2501, BLK82, Bamboo Grove, 74-86 Kennedy Road, Wanchai, Hong Kong S.A.R (“the homeowner”)**

**James Gibb Property Management Limited, registered in Scotland under the Companies’ Acts (SC299465), having their registered office at Bellahouston Business Centre, 423 Paisley Road West, Glasgow G51 1PZ and having a place of business at 4 Atholl Place, Edinburgh EH3 8HT (“the property factors”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Robert Buchan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) decided that the property factors had failed to comply with OSP11 and Sections 2.7, 6.1, 6.4 and 7.1 of the Property Factors Code of Conduct effective from 1 October 2012 and had failed to carry out the property factor’s duties.**

**Background**

1. By application, dated 4 March 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with Overarching Standards of Practice (“OSP”) and 6 and 11 and Sections 2.7, 6.1, 6.4 and 7.1 of the Property Factors Code of Conduct

effective from 16 August 2021 (“the Code”). The complaint also related to a failure to carry out the property factor’s duties.

2. The homeowner’s complaint was that she had received poor service from the property factors in connection with water damage to the Property resulting in a stalled and potentially dangerous situation. On 13 February 2022, she advised them about a significant water ingress from the exterior into the Property on lower ground level, affecting the fuse box. The reinstatement of the interior could not begin before the external issue was resolved. A similar situation which arose in 2020 had been dealt with fairly quickly by the property factors. It had now turned out that the 2020 repairs were badly done. It had been extremely hard to establish and maintain contact with the property factors over the present issue and the homeowner did not believe that they had provided service to her in a timely way. She also thought they had failed to respond to her enquiries and complaints within a reasonable timescale. The homeowner stated that she was losing rent income every month, as her tenant could not use or inhabit the affected room. The homeowner had agreed to a 30% reduction in rent since May 2022. She also contended that the value of the Property was affected negatively and that she would not be able to sell it with an unsolved situation in an uninhabitable room, she could not renovate, raise the rent or bring in better paying tenants, as she had planned to do in autumn 2022.
3. The Homeowner wanted the property factors to repair and secure the exterior wall so that she could swiftly rectify the interior. She also wished the property factors to compensate her for the loss of rent (£3,225 to 4 March 2023), inconvenience, costs for the electricity cost of a dehumidifier (£129.35) and the equivalent of £250 per month in respect of lost value of the Property (£3,000). She wanted all their factoring fees since March 2022 to be refunded (£587.16), her total financial claim being, therefore, £6,941.51. In addition, she wanted the property factors to apologise in writing to her tenants and the other residents in the building for having knowingly put them at risk.
4. The application was accompanied by copies of the property factors’ Written Statement of Services (“WSS”), an Insurance Report dated 1 June 2022 from Rainbow International Restoration indicating that the problem initially appeared to them to be a grey pipe that runs from the outside of the Property directly above a cubby hole containing the electrical circuit board, but that following further investigation they believed that the ingress of water was coming from wind-driven rainwater saturating the external eroded sandstone. They added that

what had appeared to them to be a grey waste pipe was actually a conduit tube protecting a copper pipe which travels through the wall of the building. The homeowner also provided copies of a letter from MCP Contracting Ltd dated 9 November 2022 referring to inappropriate pointing of the traditional stonework, causing it to retain moisture, photographs of the affected areas inside and outside the Property and a large amount of email correspondence between the Parties, commencing on 14 February 2022. The emails included the formal complaint made by the homeowner on 27 October 2022, an email asking the property factors to escalate the complaint to Stage 2 of their procedure, and acknowledgements of both emails, the second of which set out in detail the various Sections of the WSS to which the homeowner's complaint related.

5. On 9 May 2023, the property factors issued their Stage 2 response to the homeowner's complaint. It followed her letters of 29 March 2023, intimating her intention to escalate the complaint to the Tribunal and included their response to the application. In these letters, the homeowner stated her belief that the property factors had not carried out services to the owners using reasonable care and skill and in a timely way. They had not acted swiftly at any time, nor used information provided by the homeowner in a professional way but had carelessly delayed the repair handling. They had led the homeowner to believe that they would co-operate and assist her in finding out the source of the water leak and rectify the problem but had then "practised radio silence for weeks on end and promised answers and updates that never materialised." They had failed to respond to the homeowner's enquiries and complaints within reasonable time scales and in line with their WSS complaints handling procedure. The homeowner had yet to receive a proper response or resolution and strongly believed that the property factors had failed to apply their complaints procedure "consistently and reasonably". They had also failed to "help prevent further damage or deterioration" to the building by failing to seek "to make prompt repairs to a good standard". After 13 months, nothing had been rectified. They had failed in arranging inspections and repairs "in an appropriate time scale" and thus in informing the homeowner of the progress of this work and estimated timescale for completion.
6. The property factors' response of 9 May 2023 summarised the visits to the Property by Rainbow International Reinstatement ("Rainbow"). The property factors stated that, although Rainbow International had subsequently changed their position and claimed it was the result of wind-driven rainwater saturating the external eroded sandstone, their initial finding that the source of water ingress was the "grey pipe" had

been proven to be correct. They had maintained the later position in subsequent months, despite the homeowner's tenants stating that when it rained, they could hear water pouring in. Water ingress through a thick sandstone wall would be a relatively slow process. It appeared to the property factors that the homeowner had been badly let down by Rainbow acting on behalf of her insurer. It was this failure to identify the precise cause of the ingress that was the root cause of the issues the homeowner subsequently experienced. The attempt by the letting agents to pass responsibility for an issue caused by a conduit pipe privately feeding services to the homeowner's Property was instrumental in the delays and inconvenience the homeowner and her tenants suffered.

7. The property factors conceded that, whilst they believed this private matter should never have been presented to them, they had let down the homeowner in terms of communication. They had failed to meet their response timescales and had not handled the complaint in accordance with their complaints procedure. To that extent, they upheld the complaint regarding breaches of OSP11 and Sections 2.7 and 7.1 of the Code of Conduct. They offered £500 in full and final settlement of the matter.
8. In relation to the complaints that the property factors had breached Property Factor's Duties relating to various Sections of their WSS, the property factors stated their view that these had all been addressed in relation to the complaints regarding alleged breaches of the Code of Conduct. They contended that the Tribunal would not address the same issues under both the Code of Conduct and Property Factor's Services.
9. They offered their sincere apology for the part they had played in the matter taking so long to be resolved and repeated their offer of £500, which they believed the Tribunal would find reasonable in the circumstances.
10. On 15 May 2023, the property factors provided the Tribunal with a copy of their response of the same day to the homeowner's letter of 9 May 2023, rejecting their offer of £500. The homeowner had stated that the property factors' failure to co-operate with her, while at the same time pretending to be of assistance, had delayed the repair/reinstatement and cost her greatly. If they had told her earlier on what they said in an email on 17 March 2023, namely that they would not be involved further, the homeowner would have known and would have acted independently, but instead they had let on that they intended to co-operate in finding the source of the problem. The homeowner had never

attempted to pass on responsibility for the matter to the property factors. She had tried to co-operate around a matter that affected both Parties. Her initial contact had been with the letting agency. The property factors were her second port of call. She contacted them as the water entering into the fuse box could be lethal and she was concerned for all the residents in the building. The report by MCP Ltd of 9 November 2022 said that the matter should be dealt with urgently as ingress to the consumer unit could prove fatal. It also stated that pointing repairs previously attempted were not to an acceptable standard and there was a need for the property factors to appoint a contractor to carry out works to the front façade at lower basement area. Despite that, the property factors had said in an email of 17 March 2023 that they could categorically state that the matter was nothing to do with the common fabric of the building for which they were responsible. The homeowner did not accept the offer of compensation and increased their claim to £6,594.35, to reflect another two months' partial loss of rent and lost value.

11. In their response, the property factors repeated that when water suddenly enters a property via a fuse box, the situation might reasonably be considered an emergency, but when it enters through a conduit feeding private services to the homeowner's Property, it is a private matter and not one for which the property factors can be held liable. It was the responsibility of the homeowner and her insurance company. They understood that the tenants were never evacuated from the building and stated that, had they been, the homeowner's insurers should have had a facility for arranging alternative accommodation. A video taken by a contractor sent by the property factors to investigate the matter clearly showed the volume of water flowing through the "grey pipe". There was no doubt that this is the source of the water ingress, despite the previous errors made by the homeowner's insurance company. They repeated that their involvement extended only to a failure to communicate and a breach of their complaints procedure and that the homeowner's claim was unreasonable and she might wish to address her claim to those responsible for mis-diagnosing the fault in the first instance.
12. On 30 June 2023, the property factors made further written representations to the Tribunal, in which they contended that, as the letters from the homeowner to them intimating her intention to escalate matters to the Tribunal post-dated the application form, the Tribunal should dismiss the application on the ground that no opportunity was given to the property factors to resolve any alleged breaches of the Code of Conduct or failures to comply with their Written Statement of Services.

### **Case Management Discussion**

13. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 27 July 2023. The homeowner was present. The property factors were represented by their Regional Director, Mr Roger Bodden.
14. As a preliminary matter, the Tribunal advised the Parties that it was not prepared to dismiss the application, as requested by the property factors on 30 June 2023. The homeowner had made a complaint with reference to specific Sections of the WSS on 17 January 2023 and the Tribunal regards an application as having been made when any preliminary issues raised at the sifting stage are resolved. The application was dated 4 March 2023, but the Tribunal had requested further information on 21 March 2023, as a result of which the homeowner had, on 29 March 2023, advised the property factors of the specific Sections of the Code of Conduct and the WSS with which she contended the property factors had failed to comply. The fact that these communications of 29 March 2023 postdated the date of signature of the application did not prejudice the validity of the application. No new matters had been raised and the property factors had already addressed the issues before the application had been made.
15. The Tribunal told the Parties that it was necessary to establish whether the work required was a communal repair. There appeared to be a degree of inconsistency within the documentation provided thus far to the Tribunal. Mr Bodden stated that the property factors' extensive investigations indicated that, following rainfall, water runs into the Property from a manhole in the street underneath the platform which leads to the main entrance door to the building. There is a conduit that is fixed to the underside of the platform and the water enters the Property along it. The conduit is private to the Property and that leads the property factors to the view that the water ingress is a private matter. The fact that the homeowner refers to water "rushing in" is not consistent with gradual water penetration through an external wall.
16. The homeowner expressed concern that 13 months on, the property factors were now saying it should not be a communal repair. The issue appeared to the homeowner to be exactly the same as a problem which had occurred two years before and, on that occasion, the property factors had acted very quickly, pointing was taken care of and the water ingress stopped. The homeowner stated that she had turned to the property factors, as water entering the fuse box represented a potential danger for everyone in the building. If the property factors had said at

the beginning what they were saying now, the homeowner would have carried out the necessary repair, but she had been in a position where she, her tenants and the letting agents were waiting for the property factors to act and now, 13 months later, they were saying it was not a communal repair after all. The conduit pipe contains BT cables and was there before the homeowner purchased the Property.

17. The homeowner confirmed that the problem was now resolved, and the interior reinstatement had been carried out. It had been dealt with as an insurance claim and the insurers had accepted that it was a private matter due to a blocked manhole resulting in water coming through the conduit pipe. She stressed, however, that it had seemed at the time to be exactly the same problem as had occurred in 2020 and that had been dealt with by the property factors as a communal repair. The tenants had only had to move out of the Property for one night, but the homeowner had then accepted a rent reduction of 30%, as the tenants were unable to use all of the space that they had rented, one room having had a hole in the wall and missing flooring from February/March 2022 until very recently, when the works were completed. There are two tenants living in the Property, which has a living room/kitchen and three bedrooms, but had the tenants been a family, the inconvenience to them would have been a lot worse. In addition, the homeowner had been unable to raise the rent in line with the market or to re-let to tenants prepared to pay an increased rent.
18. Mr Bodden accepted that there had been delays on the part of the property factors, but felt that the compensation offered was reasonable and he would wish the opportunity to address the Tribunal again, should the Tribunal be minded to award a significant compensation figure. He did not agree that the problem was the same as in 2020 and was of the view that if the homeowner's insurers had done a proper job from day one, the present proceedings would be taking place.
19. The Parties then disconnected from the conference call and the Tribunal Members considered all the evidence, written and oral, that had been presented to them. The view of the Tribunal was that in order to fully understand the issues, it would be necessary to visit the Property. Accordingly, the Tribunal's Decision would be deferred until an inspection could take place.
20. The Tribunal inspected the Property on 29 August 2023 and were admitted by the tenants. The property factors and the homeowner's letting agents were represented at the inspection.

21. The Tribunal noted that the Property comprises accommodation at both ground and basement levels, with an interconnecting staircase. A portion of the basement lies beneath the entrance platt which gives access at ground floor level. A grey plastic conduit pipe runs along the underside of the entrance platt and, through the stonework, into a bedroom in the basement of the Property. The pipe is not securely attached along its length and is “bowed” in the middle. At street level it can be observed within a manhole and it is possible that, if that manhole were full of rainwater, it would run along the inside of the grey pipe and enter the Property. The Tribunal could not determine whether the pipe, which hold BT cables, serves only the Property, as it is possible, and in the view of the Tribunal highly likely, that it is a communal service pipe.

### **Findings of Fact**

1. The homeowner is the proprietor of the property, which comprises part of a tenement of 17 properties 29-35 Lothian Street.
2. The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
3. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
4. The date of registration of the property factors was 23 November 2012 and the date of their current registration is 17 May 2019.
5. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
6. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, dated 4 March 2023, under Section 17(1) of the Act.
7. The concerns set out in the application have not been addressed to the homeowner’s satisfaction.

### **Reasons for Decision**

22. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it



had before it sufficient information and documentation to enable it to decide the application without a Hearing.

23. The Tribunal noted that the initial report from Rainbow to the homeowner's insurers, following an inspection on 5 May 2022, indicated that the grey pipe was the source of the problem. Their further report, following removal of skirting board and plaster on 24 May 2022, stated that they believed the ingress of water was coming from wind-driven rainwater saturating the external eroded sandstone. This view was confirmed on 31 May 2022, after salt tests established that historical moisture was present, together with a significant amount of nitrates which, they said, confirmed that it was rainwater that was causing the damp. The property factors relied on an assertion that it subsequently transpired that the original report, stating the grey pipe to be the issue, had been correct and that it was, therefore, not a communal repair matter. The Tribunal did not accept the property factors' view that they had been justified in taking no action. The revised opinion of 24 May 2022 should have triggered further investigations on their part, as it would then have appeared that it was a communal and not a private matter. They had been advised of the problem on 13 February 2022 and on 15 February, they told the homeowner that they would contact the company that carried out the repairs in 2020, to discuss their previous work and a plan of action for the current issue from outside the Property and would keep the homeowner updated on progress. This indicates that they also regarded the problem as a communal matter at that stage. The fact that it may not have been does not excuse their failure to act whenever the issue was reported to them.
24. It appears that the property factors took no action until they received an email from the homeowner on 27 October 2022, pointing out that the internal repairs could not be carried out until the external issues were resolved. On 12 November, they advised her that they were liaising with her letting agents, were awaiting a comparative quotation for the external works and, once that was received, works would be actioned and hopefully the internal repairs could be done shortly afterwards. The homeowner intimated her formal complaint later on that day. This was acknowledged by the property factors on 17 November 2022, and she was advised that she would receive a response by 8 December.
25. On 16 November 2022, the property factors updated the homeowner to say that a company had been instructed to proceed with the external repairs as a matter of urgency and added "After these works are complete we would hope to have approval for the internal insurance reinstatement repairs to also go ahead without any further delay".
26. The property factors, in their written representations, appear to have relied on the fact that the internal work was carried out by the homeowner's insurers as an indication that the problem was a private matter and not a communal repair. This conclusion was false. The loss adjusters had told the homeowner that she was not covered for the external repairs but that

she was covered for the consequential internal damage to the Property, as it was a common repair. This is normal insurance practice.

27. The view of the Tribunal was that the property factors regarded the matter as a communal repair from the time it was reported to them until the time that the external repair works were carried out. Ingress of water through the grey pipe was stated as the cause in the initial report from Rainbow, but they revised that opinion when they did investigative works. At no point prior to her application to the Tribunal did the property factors indicate to the homeowner that they did not regard the problem as other than a communal repair. It took them many months to arrange for external works to be carried out and, as this element was clearly a communal repair, they failed to comply with their duties in terms of the Code and their WSS and attempted retrospectively to justify their lack of action on the basis of the possibility that the damage to the Property had been caused by water ingress along the grey conduit pipe.
28. The Tribunal's view was that there may have been two separate issues, one of which caused rainwater penetration through external stonework of the Property and the other of which caused water ingress via the grey pipe. The Tribunal could not determine whether the grey pipe was private to the Property or whether it also led BT cables into the other flats within the building, but it is clear that there was a communal element to the problems encountered by the homeowner and the property factors did not take prompt action to investigate the cause and remedy the defect. The Rainbow Report of 31 May 2022, following salt testing, was unequivocal.
29. There is more than one pipe entering the building in the problem area and the Tribunal is concerned that the property factors were unaware of what they are and whether or not they are common to the building, and little appears to have been done to try and ensure that the issue of rainwater penetration does not happen again, particularly when there is an obvious danger to life because of the proximity of electricity to the worst affected area.
30. **OSP6 of the Code** states "You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective." The Tribunal did not uphold the homeowner's complaint under OSP6, the intention of which is to ensure that the personnel delivering the service to homeowners are suitably skilled and trained. There was no evidence that this was not the case.
31. **OSP11 of the Code** states "You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure."
32. **Section 2.7 of the Code** can be read alongside OSP11. It provides that a property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall, a

property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

33. The property factors accepted in their written representations that they had failed to comply with OSP11 and Section 2.7 of the Code and the Tribunal upheld the homeowner's complaints. The homeowner's formal complaint was dated 27 October 2022, but she had advised the property factors in February of a matter that could potentially have put occupants of the Property and others in the building in great danger and they had failed to act upon her concerns or to undertake appropriate investigations.
34. The relevant portions of **Sections 6.1 and 6.4 of the Code** provide that a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard, that where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of the work, including estimated timescales for completion.
35. The Tribunal upheld the complaints under Sections 6.1 and 6.4 of the Code. The property factors had failed in their duty to seek to make prompt repairs and to arrange for repairs to be done in an appropriate timescale. It appears that they did not even instruct contractors to provide quotations until November 2022 and, in their email to the homeowner of 12 November, they apologised for the delays and confirmed they were awaiting a comparative quotation. The homeowner made it quite clear from the outset that this was an emergency repair.
36. **Section 7.1 of the Code** provides that a property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. The Section then sets out various matters that must be included in the procedure.
37. The Tribunal upheld the complaint under Section 7.1 of the Code. The homeowner's complaint was not that the property factors did not have a written complaints procedure or that its contents did not meet the requirements set out in Section 7.1 of the Code. Her complaint was that they had not followed that procedure. The property factors in their written representations accepted that they had failed to comply with Section 7.1 and the Tribunal upheld the complaint and noted that the substance of the homeowner's application regarding the way in which her complaint was handled was dealt with by the Tribunal under OSP11 and Section 2.7. The complaint was made on 27 October 2022, but was not acknowledged until the property factors' letter of 17 November. The WSS states that a complaint will be acknowledged within 10 working days of receipt, so that target was missed. In that letter, they advised the homeowner that she would receive a response by 8 December, but the property factors did not respond by that date or confirm that they required further time to investigate the complaint. Their WSS (Paragraph 7.4) provides that the investigation process should be completed within 25 working days from

receipt of the complaint being acknowledged and that a homeowner will be advised in writing if it is likely to take longer than that. There was correspondence passing between the Parties during that period, but it related to the practical aspects of the work to be carried out, not to the homeowner's complaint.

38. On 27 February 2023, the homeowner advised the property factors that, as they had not yet provided their response to her complaint, she felt that she had exhausted their complaints procedure. The property factors decided that this was, in effect, an escalation to Stage 2 of their complaints process, and, on 1 March, they apologised again for their formal response having fallen outwith their expected timeframes and said that they were working on a full response to be with the homeowner by 10 March, but they did not provide their Stage 2 response until 9 May 2023. On the assumption that their email of 10 March was, in effect, an acknowledgment of the Stage 2 complaint, the property factors also failed to meet the 25 working days response time set out in Paragraph 7.5 of their WSS.
39. The homeowner also complained that the property factors had failed to comply with the Property Factor's Duties. The Tribunal held that the failure to comply with OSP11 and Section 2.7 also constituted failures to comply with Paragraphs 6.1.1, in relation to general communication, and 7.4 and 7.5 of the WSS, in relation to complaints. The Tribunal also found that the property factors had failed to comply with Paragraph 4.7.2 of their WSS, in that, having been advised that the matter was an emergency, they did not advise the homeowner until a letter of 23 April of their intention to instruct contractors to attend to what they acknowledged in that letter they considered to be an urgent repair. The Tribunal did not uphold the homeowner's complaints under Paragraphs 4.3.1, 4.3.4, 4.4.8 or 7.6 of the WSS, as they do not impose specific duties on property factors.
40. Having decided that the property factors had failed to comply with OSP11 and Sections 2.7, 6.1, 6.4 and 7.1 of the Code of Conduct and had failed to comply with the property factor's duties, the Tribunal then considered whether to make a Property Factor Enforcement Order. The Tribunal's view was that the failures on the part of the property factors had been serious and had caused the homeowner considerable distress and inconvenience. The Tribunal decided that it would be appropriate to make a Property Factor Enforcement Order and to order that the property factors make a payment to the homeowner by way of compensation. The property factors had offered £500.
41. The homeowner was seeking reimbursement of loss of rent, having agreed a 30% reduction in May 2022. The Tribunal had ascertained at the Case Management Discussion that the homeowner's tenants had only been unable to occupy the Property for one night and that, whilst there was one room that they could not use until repair works were carried out, the tenants each had a bedroom, and the living, kitchen and bathroom areas were unaffected. The Tribunal accepted that the tenants had to put up with considerable inconvenience over a number of months, but noted

that the property factors had not been given an opportunity to challenge the level of rent reduction. Accordingly, the Tribunal did not make an award in respect of loss of rent.

42. The homeowner also wished reimbursement of the cost of electricity for running a dehumidifier to dry out the affected area. The view of the Tribunal was that this was an expense which would more appropriately have been included in the homeowner's insurance claim and was not directly attributable to the property factors' failings.
43. The homeowner contended that she had been denied the opportunity to increase the rent or to find tenants prepared to pay a higher rent during the period from February 2022 until the internal repairs were completed. The Tribunal regarded this as speculation, as any proposal to increase the rent would have been subject to the right of the tenants to refer the question of rent to the Tribunal and the homeowner would not have had the right to remove the tenants and replace them without an Order from the Tribunal, who would have to have regarded an application for an Eviction Order as reasonable, if one or other of the Grounds for such an Order could be established.
44. The homeowner wanted all her factoring fees since March 2022 to be refunded (£587.16). The Tribunal decided that, whilst some factoring had been undertaken, the lack of attention given by the property factors was such that some reimbursement of the factoring fees is appropriate.
45. The homeowner also claimed £250 per month as compensation for notional loss of value of the Property from March 2022 until the date they were told they could start the interior repairs. The view of the Tribunal was that any loss of value due to the Property being in a state of disrepair would have been recovered as soon as the works were completed. No evidence was presented to indicate that the Property value was lower at the date of the application than it was before the problem of water ingress occurred, and the suggested figure of £250 per month was entirely speculative.
46. The Tribunal recognised that the failures on the part of the property factors have caused the homeowner very considerable inconvenience and distress. The Tribunal considers that some compensation for this should be added to the reimbursement of some of the factoring fees. The Tribunal proposes, therefore, to make a Property Factor Enforcement Order in terms of the accompanying Section 19(2)(a) Notice requiring the property factors to pay the homeowner the sum of £750 as reasonable compensation for the reimbursement of factoring fees and the inconvenience and distress caused by the property factors' failures to comply with the Code of Conduct and the property factor's duties.
47. The decision of the Tribunal was unanimous.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**



Signed

George Clark (Legal Member/Chair)

Date: 15 September 2023