

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, in an application made to the Tribunal under Section 17 of the Act**

**Chamber reference: FTS/HPC/PF/20/0085**

**The Parties:**

**Ms Victoria Jane Golding, represented by Mr John Golding, Upper Gartinstarry, Buchlyvie, Stirlingshire FK8 3PB (“the homeowner”)**

**and**

**Speirs Gumley Property Management, 194 Bath Street, Glasgow G2 4LE (“the property factors”)**

**Property: Flat 3/1, 436 St Vincent Street, Glasgow G3 8EH (“the Property”)**

**Tribunal Members – George Clark (Legal Member/Chairman) and Sara Hesp (Ordinary Member)**

**Decision by the Housing and Property Chamber of the First-tier Tribunal for Scotland in an application under section 17 of the Property Factors (Scotland) Act 2011 ('the Act')**

**The Tribunal has jurisdiction to deal with the application.**

**The property factors have not failed to comply with their duties in terms Section 6.1 of the Code of Conduct made under Section 14 of the Property Factors (Scotland) Act 2011 (“the Act”). The property factors have not failed to carry out the Property Factor’s duties.**

**The Tribunal does not propose to make a Property Factor Enforcement Order.**

**The Decision is unanimous.**

## **Introduction**

In this decision, the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code of Conduct” or “the Code”; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as “the Tribunal”.

The property factors became a Registered Property Factor on 1 November 2012 and their duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it and gave consideration to the application by the homeowner received on 10 January 2020, with supporting documentation, namely a copy of the property factors’ Written Statement of Service. The homeowner later provided the Tribunal with further information on 11, 16, 17 and 23 February 2020, including copies of email correspondence between the Parties between 26 November 2019 and 11 February 2020 and a copy of the Land Certificate which sets out the burdens contained in the Deed of Conditions for the development of which the Property forms part. On 29 April 2020, the homeowner provided the Tribunal with a copy of the property factors’ written response, dated 10 April 2020, to the homeowner’s complaint. The Tribunal also considered the written representations from the property factors, dated 31 August 2020 and 10 September 2020 and further written submissions by the homeowner dated 20 August and 13 September 2020.

On 5 February 2020, the Tribunal advised the homeowner that, under Section 17(1) of the 2011 Act (*per incuriam* in that communication described as the Property Factors (Scotland) Act 2012) the application could not be made unless the homeowner had notified the property factors in writing as to why she believed they had failed to carry out the property factor’s duties or, as the case may be, to comply with the Section 14 duty to comply with the Code of Conduct. The homeowner’s representative sent the necessary notification to the property factors on 10 February, stating that the homeowner believed they had not complied with Sections 6 and 7 of the Code.

## **Summary of Written Representations**

### **(a) By the homeowner**

The following is a summary of the content of the homeowner’s application to the Tribunal and the further written representations which followed it:

In 2014, the homeowner had water ingress into the Property caused by a crack in the lead on the roof. The crack had been temporarily sealed by the Glasgow Roofing Company. This had stopped the leak until quotes could be obtained from three companies to replace the cracked lead. The property factors had reported to the owners that GDN Contracts Ltd (“GDN”) and Hugh Scott Builders & Slaters Ltd had both quoted, that both contractors had submitted similar specifications and that, as GDN had provided the most competitive quote, the property factors recommended that they were instructed to proceed in accordance with a specification to supply and

fit new Code 5 lead apron at the front parapet, lift and reseal copper and fully seal the apron with lead mastic on completion of the works. Owners had been asked to provide their shares of the cost, namely £114, inclusive of VAT.

The contract for the work had then been awarded to GDN. They had quoted for replacing the lead apron flashing and had replaced a small section, but this had not been the issue that had led to the ingress of water, so their minor repair, which had cost the owners £1,140, had been unnecessary. The Property had been tenanted until 31 May 2019 and at that time, further ingress of water had been discovered, at the same location in the Property. The leak had been reported to the property factors at the beginning of June. It had taken nearly four months for the property factors to organise roofing companies to inspect, quote for and carry out the necessary work to stop the leak, which the homeowner had been advised had been caused by a blocked gutter downpipe. Thomas McMaster & Son Ltd ("McMasters") had carried out work to realign the downpipe, but this had not solved the problem. That firm had then attended the Property again and had discovered that it was caused by the crack in the original lead at exactly the same spot at which the temporary repair had been carried out in 2014. The consequence of the delay in fixing the problem had been that the homeowner had been unable to re-let the Property, as the work had still not been carried out.

The property factors had organised the quotes for the replacement of the temporarily sealed lead in 2014 but had then authorised GDN to carry out a different unnecessary very minor repair. The property factors seemed to be defending the actions of GDN and their own actions, when they had made no check on the relevance of the GDN quote or any check on the specification or materials to be used, before or after any work was carried out, and had totally ignored the need for the replacement of the cracked lead which was the cause of the leak. The property factors were instructing companies to carry out work without making any checks that the work was necessary or, if needed, was completed. There was no scrutiny of the cost or questioning of possible overcharging by these companies, with particular reference to the work carried out by GDN in 2014, the homeowner's view being that they had not replaced the lead apron, but had merely fitted a small section some 40-50mm long. This had been confirmed from a photograph taken by McMasters when they attended the Property again, after work on the downpipe had failed to solve the issue of water ingress.

The homeowner also complained in the application about the property factors' complaints process. Their Associate Director, Michelle Madden, had stated in an email on 13 December 2019 that "This is my final position on the matter". They had failed to take proper and timely action to resolve the homeowner's complaint.

The homeowner's complaint was that the property factors had failed to comply with Sections 6 and 7 of the Code of Conduct and had failed to carry out the property factor's duties. They had failed to properly manage the repairs to defective leadwork on the building's roof in 2014 and 2019, to have necessary repairs carried out in a timely manner, which had resulted in serious financial losses and had failed to

pursue the contractors who carried out unnecessary or inadequate work and had failed to take proper and timely action to resolve the homeowner's complaint.

The homeowner wished "to have the leadwork on the roof replaced as was required in 2014 with no additional costs to the property owners, Recompense for now approaching eight months of loss of rent and internal repair and redecoration costs."

On 20 August 2020, the homeowner, through her father as her representative, provided the Tribunal with copies of a letter from the property factors of 5 June 2014, which referred to GDN and Hugh Scott Builders and Slaters Ltd having submitted "similar specifications" and recommending that, as GDN had provided the most competitive quote, they should be instructed to proceed in accordance with the specification of work to "Supply and fit new Code 5 lead apron at the front parapet...lift and seal copper...fully seal apron with mastic upon completion." The documents included copies of factoring account statements dated 14 May 2013, 11 February 2014, 14 August 2014, 13 August 2019, 12 November 2019 and 11 February 2020, along with 10 photographs of the roof taken on 18 August 2020, a photograph of the roof supplied by the property factors on 13 December 2019 and 2 photographs of the interior wall at the Property taken on 13 August 2020.

On 13 September 2020, the homeowner's representative responded to the information provided by the property factors on 10 September. He provided a summary of the circumstances, namely a timeline from 7 February 2013 to 13 September 2019. On 7 February 2013, Hugh Scott Builders had repaired, redressed and mastic sealed the lead apron on the front parapet roof. On 21 February 2014, Glasgow Roofing Company had identified the cause of water ingress to the Property as being a crack in the lead gutter and had applied sealant. They had also stated that they had attended the same fault at different places on the roof of the flat complex, so he would expect that the property factors would have been well aware of the problem. On 5 June 2014, Hugh Scott Builders had quoted to repair the crack to the leadwork and for a new lead expansion joint as none had been fitted during the building's construction, as had been identified by the Glasgow Roofing Company on 21 February. GDN had quoted to replace the lead apron, not repair it or replace part of it. This was not the cause of the water ingress and was obviously not replaced by them.

The homeowner's representative had not been aware at the time that quotes had been received for different work with GDN quoting not to repair the crack but to replace the apron. The property factors' letter of 5 June 2014 had described the reports as having similar specifications.

On 11 June 2019, Northwest Roofing had attended to a report of ingress of water to the same place in the Property as had been reported in 2014. This had been ongoing for some time but had not been reported to the homeowner by the occupant of the Property. Between 11 June and 29 July, three quotes had been received to unblock the rainwater downpipe. Torrance Roofing and McMasters had not accessed the roof but had concurred with Northwest Roofing that the leak was due to the blocked downpipe. The work to the downpipe was carried out on 5 September, but McMasters reattended on 13 September, as the water ingress persisted. This time

they went on to the roof and found that the water leak was coming from the same crack in the lead as was identified, but not repaired, in 2014. They applied more sealant at this time.

The property factors had stated that two separate independent building firms had confirmed that GDN had carried out the work specified in 2014, and the water ingress had stopped for a period of five years. The homeowner's representative contended that the water ingress had not been visible for approximately three years due to the sealant applied by the Glasgow Roofing Company and not due to any leadwork repairs. He also questioned whether one of the companies was "independent", as its directors were a director and manager of GDN in 2014. McMasters had wrongly diagnosed the leak as being caused by a blocked rainwater downpipe and had carried out unnecessary work as a result. When they did go on to the roof and discovered the crack causing the leak, they had also found that a very minor repair had been carried out but could not say when or by whom. They had, however, said that "this is a very minor section of the works which has not resulted in repairing the defect", namely the crack in the lead which was found in 2014 and is still there.

The homeowner's representative added that the Property had been unoccupied and unable to be let since the beginning of June 2019. An electrical heater had fallen from the wall below the water ingress as the wall structure has started to disintegrate and crumble due to the water damage. He did not know what other damage or rot may have occurred within the wall structure which cannot be seen.

### **(b) By the Property Factors**

The property factors provided the Tribunal with written representations on 31 August 2020, their letter being signed by Associate Director, Joanne Knox. They stated that the photograph provided by the homeowner showed the apron flashing that had been installed by GDN in 2014. Their submissions included copies of job orders to Glasgow Roofing & Building Co Ltd on 13 January 2014 in respect of water ingress to the Property, and to GDN on 27 May 2014 to investigate a report of water penetration into the Property and to submit costs if excessive. They also provided a copy of the letter to the homeowner dated 5 June 2019, which referred to GDN and Hugh Scott Builders & Slaters Ltd having submitted similar specifications and seeking approval and funding at a cost to the homeowner of £140. The specification from GDN was set out, the relevant portion being "Supply & fit new Code 5 lead apron at the front parapet".

The documents in the representations also included a copy of a Repair Order instruction to Northwest Roofing & Building Maintenance Ltd dated 7 June 2019 to attend and repair if minor, following the homeowner having reported ingress to the Property which appeared to be an ongoing issue, and copies of requests dated 14 June to McMasters and to Torrance Roofing and Building Services to attend and quote for repairs. The latter firm's quote was dated 21 June and estimated for supplying and fitting a new 45-degree offset bend and altering the existing pipework

to stop any potential blockages to the pipe. The report and quote from McMasters was dated 29 July and stated that they had attended and observed the front downpipes and observed ingress within the Property. They recommended the same work as Torrance Roofing and Building Services, namely altering the bend in the downpipe. They also commented “We have been advised by others that the parapet lining is in inadequate (sic) condition and no works are required”. Northwest Roofing & Building Maintenance Ltd also quoted on 14 June to strip off the downpipe, remove all blockages and refit it. The property factors also provided a copy of an invoice from McMasters dated 13 September, stating they had “Arranged access with occupant, identified area of water ingress, accessed roof slope and applied brush applied fiberous selant (sic) solution to existing lead gutter within area.” They added that the leadwork would require to be renewed within the near future and that their repair was a temporary one. The property factors provided one further invoice from McMasters, dated 20 September 2019, which stated “Re-attended above property after being advised that the ingress was continuing from the front parapet. We had been previously advised others had addressed this are prior to our downpipe works. This appears to have been incorrect as the lead was torn.”

The property factors provide a copy of correspondence beginning on 13 February 2020, in response to an email from the homeowner on 10 February, referencing the homeowner’s initial contact with the Tribunal. They stated that the homeowner had not specified the points under Sections 6 and 7 of the Code of Conduct on which she relied, and they enclosed their Complaints Form for completion. The homeowner’s representative replied on 25 February that he had already been through their complete complaints procedure. On 3 March, Ms Joanne Knox, an Associate Director of Speirs Gumley, emailed the homeowner’s representative. She referred to her colleague, Ms Michelle Madden’s email of 13 December 2019, when she had said that this was her final position on the matter. Ms Madden had, on 9 December, furnished the homeowner’s representative with details of their Written Statement and Complaints Procedure. The comment in her email of 13 December did not, however, relate to a final decision on the homeowner’s complaint, as at that stage, no complaint had been formally raised, merely a request to provide details of their procedures. Ms Knox referred to the fact that the Tribunal had correctly referred the homeowner to them, as only once their complaints procedure had been exhausted could the homeowner lodge an application with the Tribunal. She said that as per their complaints process, the homeowner’s complaint would now be reviewed and responded to within 28 days.

The property factors’ written representations included a copy of their response to the complaint. It was signed by Ms Knox. She stated that for a period of 5 years there had been no reports of water ingress. Based on statements from McMasters and from Cairn Roofing Solutions, the property factors were of the opinion that the works specified by GDN had been carried out. Ms Knox disagreed, therefore, with the claim under Section 6 of the Code of Conduct that the property factors had failed to manage these repairs, or to pursue the contractor for either unnecessary works or inadequate works.

The property factors provided quotations from the statements to which they had referred. Thomas McMasters stated “Our operatives were advised by your client that the parapets had been renewed previously and that the owners had paid “thousands” and my operatives advised him it had not been renewed, the client thought a larger repair had been carried out...They were advised by your client on site that he had paid large sums of money to Speirs Gumley to get a full new parapet gutter lining so he could not understand why there would be any issues. Our operatives then when pressed/asked advise (sic) your client that there was not a full parapet lining and only a small section of lead had been replaced to the apron (as per the below specification by GDN). There appears to be a mix up between what your client believes he paid for and what work was being carried out. The above noted work appears to have been carried out, this is a very minor section of the works which has not resulted in repairing the defect. I believe the client thought that an extensive piece of work had been carried out to renew the lead and all we advised him was that the lead parapet had not been renewed.”

The statement from Cairns Building Solutions said “We carried out an inspection of the wall-head gutter at the front elevation, and we identified the following defects: the existing lead gutter has been installed incorrectly as it has not been fitted with any form of movement joint. This has resulted in the lead splitting due to expansion and contraction in extreme temperatures. Also, we noted a couple of broken roof tiles which may be causing water ingress. In addition, we inspected the work which was carried out by the previous contractor, namely the replacement of the lead apron flashing and we noted that it was in a reasonable order. I do not believe that Speirs Gumley will have any recourse with regards to the quality of the works which have been carried out, however, it may be possible that the contractor has misdiagnosed the problem during their initial inspection.”

The property factors pointed out that the reference to “the existing lead gutter” was to an historic job, not to work instructed by them and contended that the homeowner’s representative had misinterpreted comments on site from a contractor recently which had wrongly led him to believe that the whole gutter was replaced in 2014 when this was not the case. The work had been a relatively minor apron flashing job, not the complete gutter base lead lining. The homeowner’ s representative had not provided any evidence to support his statement that GDN had charged owners for work not carried out, and the property factors could not uphold his complaint.

The property factors added that water ingress can be difficult to diagnose, particularly if the signs are not openly visible. It was for GDN to diagnose and propose a remedy. The property factors’ remit, as the homeowner’s managing agents, did not include their inspecting works of this nature once completed, as they were not trained or qualified within this field, nor were they insured to work at height.

The initial visit by Northwest Roofing, on 11 June 2019, involved a temporary repair to the front downpipe, believed to be the cause of the ingress. Having received a price from Northwest Roofing for a permanent repair, the property factors had requested two further contractors to investigate and report. At no point had they shared or led those firms on what works Northwest Roofing had proposed. The

specification of works recommended by all three contractors were similar, as were the costs and the contract had been awarded to McMasters, whose quote was the most competitive. They had been slow to submit their quotation, but a temporary repair had been carried out and the works were completed within four weeks of the date on which they were instructed.

Referring to the homeowner's representative's argument that they seemed to put a great deal of trust in the competency, professionalism and integrity of the roofing companies without any checks, the property factors repeated that they could not reasonably be expected to monitor and supervise work at height and that they were not experts in roofing or lead working, so were not in a position to directly challenge a professional contractor's competency, other than to raise complaints on behalf of owners that repairs had not succeeded or of obvious poor workmanship reported by others, such as a surveyor. The property factors added that to enable any contractor to be registered on their approved contractors list, they must be registered with "Safe Contractor", confirming they had all the correct credentials in place, such as insurance, health and safety and risk assessments. Many of their contractors were longstanding companies with whom they had worked for many years and whose reputation preceded them. The property factors put their trust in those companies' competency, professionalism and integrity, as they are the experts in their field.

The property factors then referred to the homeowner's representative's arguments regarding the handling of his complaint. All complaints raised by homeowners must, in terms of the Written Statement of services, be addressed the Head of Residential, in Rutherglen. The homeowner's representative had first requested that his concerns be escalated as a formal complaint on 24 September 2019. Ms Madden was the first line of response to try and resolve matters amicably and she had fully responded to the issues raised and had continued to assist the homeowner's representative over the next three months, advising that if he was not satisfied, he could escalate matters in terms of the Written Statement. On 4 December 2019, the homeowner's representative had advised that he wished to escalate the complaint and the property factors had, on 9 December, acknowledged his email and had enclosed a copy of their Written Statement and complaints procedure. On 10 January 2020, the homeowner's representative had notified the property factors that he had applied to the Tribunal, which rejected the application based on the internal complaints process not having been fully adhered to. On 11 February, the homeowner's representative had provided the property factors with a copy of the application, which they had acknowledged on 17 February. On 25 February, the homeowner's representative had stated that in his opinion he had fully exhausted the complaints process based on a comment made by Ms Madden, within an email of 13 December 2019 that "This is my final position on the matter." That email, however, had also made clear that he should "refer to our complaints procedure should you wish to take the matter further", but the homeowner's representative had not then written to the property factors' Head of Residential with a formal complaint, as required under the terms of the Written Statement of services.

The property factors stated that their Decision on the complaint was that there was no evidence from the homeowner or any other party that GDN had failed to complete

the repair they were instructed to do. The property factors had taken the necessary steps that any reasonable factor would do in the same circumstances to mitigate water ingress to the homeowner's property, by way of temporary repairs, obtaining quotes for permanent repairs. The costs incurred by the repairs carried out by Northwest Roofing and McMasters were separate from and distinct from the GDN repair in 2014 and the property factors did not agree they warranted reimbursement. From the timeline of events, the property factors were satisfied that the management of all repairs had been actioned timeously by them and they did not agree that these repairs were mismanaged, causing any form of personal financial loss to the homeowner. The property factors also did not agree that they had failed, under Section 7 of the Code of Conduct, to resolve the homeowner's complaint within a timely manner. The letter of 10 April 2020 confirmed that it concluded the property factors' handling of the complaint and signposted the homeowner to the Tribunal, if she was not satisfied with this final response.

On 10 September 2020, the property factors responded to the documentation provided by the homeowner on 20 August. They pointed out that the 2013 payment to Hugh Scott Builders & Slaters Ltd, shown in the factoring account statement dated 14 May 2013 did not suggest they had installed the new section of lead apron shown in the photographs provided to the Tribunal. Two independent building firms had subsequently been provided with a copy of the costs and specification and both had concluded that the work quoted for by GDN had in fact been carried out, in line with their specification. After GDN submitted their invoice in 2014, the water ingress had stopped for a period of 5 years, until it was reported again in 2019.

The property factors added that, when arranging major repairs, they often suggest that owners consider employing a building surveyor to oversee and sign off the work on completion, but the repairs in 2014 and 2019 would not have been considered major due to their nature and value. They had made owners aware of their intention to instruct the contractor to proceed and no concerns were raised at the time in relation to their approach to that exercise.

When they had been notified in 2019 that there had been further water ingress, the property factors had acted quickly to identify the source, and repairs were carried out to a downpipe, which 3 separate contractors had identified to be the source of that particular issue. Further repairs, involving replacing the entire lead gutter, are now required to the roof and, due to the costs, the property factors require funding in advance from the owners. Despite proposing this in December 2019, the owners, the homeowner included, have not been forthcoming with payment.

The property factors restated that they had not been presented with sufficient evidence to suggest that they had failed to pursue contractors, who had carried out unnecessary or insufficient work and, in relation to the claim that they had failed to take proper and timely action to resolve the complaint, they said that the client's correspondence had been responded to within the timeframes set out in their written statement of services and that the client had been encouraged on multiple occasions to exhaust their formal complaints procedure , after not being satisfied with the responses given , but continued to pursue the matter via other routes.

The property factors noted that the homeowner was seeking to have all leadwork on the roof replaced at no cost to the owners, as he believed this should have been done in 2014, and that he was also seeking recompense for eight months loss of rent and internal redecoration costs. Their contention was that, regardless of whether there was a requirement to replace all leadwork on the roof in 2014, that was not what the proposal put forward by the contractor was. That proposal had been accepted by the owners at the time, their agreement being shown by their submitting the necessary funding. The owners did not pay to have the leadwork on the roof replaced, only a section of lead apron, which was a relatively minor repair.

The property factors did not consider they were responsible for the delays in progressing the repairs to alleviate the water ingress reported in 2019. The initial proposal to replace the lead gutter was issued on 13 December 2019. Payments from 4 owners had been received in January 2020 and a fifth one on 9 September. Five payments/agreements remained outstanding, so majority agreement had not yet been reached for this work. They added that the homeowner would be fully covered for internal reinstatement of the Property under the common buildings insurance policy.

## **The Hearing**

A Hearing took place by way of a telephone conference call on the morning of 30 September 2020. The homeowner was represented by her father, Mr John Golding. The property factors were neither present nor represented.

## **Summary of Oral Evidence**

The chairman told Mr Golding that he could assume that the Tribunal members had read and were completely familiar with all the written submissions and the documents which accompanied them.

The Tribunal Chair began by asking Mr Golding to clarify the specific parts of Sections 6 and 7 of the Code of Conduct that formed the basis of the complaint. He confirmed that it was Section 6.9 and Section 7.1 and also advised the Tribunal that the work to replace the gutter had still not been carried out. He confirmed, however, that the homeowner's share of the cost had not been paid and he understood that there were five owners out of the ten who had not put the property factors in funds. He said that, whilst the temporary repair appears to be holding, depending on the weather, there is some staining on the living room wall of the Property and the plasterboard is crumbling.

With reference to the complaint under Section 6.9 of the Code of Conduct, Mr Golding stated that in 2014, the owners were not given details of the quotes obtained by the property factors. They were merely told that the quote from GDN was the most competitive. It had since transpired that the quote from Hugh Scott Builders and Slaters Ltd was for repairing the crack in the lead, whereas the one from GDN was for replacing the lead apron. Mr Golding stated his belief that GDN had not in fact carried out a repair in 2014 and that the small replacement section of lead apron was the repair carried out in 2013. He advised that the owners had each paid one-tenth (£114)

towards the bill from GDN in 2014. The homeowner had not paid her share of the bills submitted by Northwest Roofing on 11 June 2019 (£9.12) and McMasters, dated 23 August 2019 (£83.76). Mr Golding's view was that the latter bill was excessive, as the work took less than an hour and, when it rained during the week following the work being carried out, it became apparent that the leak was still there. It was only then that McMasters had come back and identified the crack in the lead. That was the point at which Mr Golding discovered that the crack was the one identified in 2014. The repairs carried out to the downpipe were nothing to do with that leak.

Mr Golding told the Tribunal that the sealant applied in 2014 had worked quite well, but not until 2019, as the property factors were arguing, as the homeowner's tenant said that the ingress of water had been happening on and off for some time. He advised the Tribunal again that it had now come to light that the two quotes in 2014 had not been based on "similar specifications", as the property factors had indicated in their letter of 5 June 2014. It was two quotes for two different types of work, one for repairing the crack already identified, the other for replacing a lead apron.

In relation to the homeowner's complaint under Section 7.1 of the Code of Conduct, Mr Golding said that he thought he had already gone through the complaints procedure in his correspondence with Ms Madden, which had ended with her saying it was her "final position" on the matter. He took it that his next step was to apply to the Tribunal. The property factors seemed to be defending their contractors and their own procedures rather than representing the interests of the owners. That was one of the reasons for withholding payment for the proposed repair. He repeated that the work to the downpipe had been unnecessary. When they looked at the 2014 quotes, the property factors should have spotted that they were for different things.

Mr Golding then addressed the Tribunal on the question of actual loss which had been incurred as a consequence of the property factors' alleged breaches of the Code of Conduct. The Property had been let out until the end of May 2019 at a rent of £900 per month, producing a loss of £14,400. The homeowner had also had to pay £607.32 for Council Tax for the current year and there were, in addition, standing charges for electricity, which he estimated at £90 per annum.

Mr Golding then left the Hearing, and the Tribunal members considered all the evidence, written and oral, which had been provided by the Parties.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The homeowner is the owner of the Property which forms a third (top) floor flat in the block of which it forms part.
- The property factors, in the course of their business, managed the common parts of the development. 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").

- 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.
- The date of Registration of the property factors was 1 November 2012.
- 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.
- The homeowner made an application to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) received on 10 January 2020 under Section 17(1) of the Act.
- The concerns set out in the application have not been addressed to the homeowner’s satisfaction.
- On 22 July 2020, the Housing and Property Chamber intimated to the parties a decision by the President of the Chamber to refer the application to a tribunal for determination.
- A section of the lead apron on the front parapet gutter of the block of which the Property forms part was replaced by GDN Contracts Ltd in June 2014. This was not the repair carried out by Hugh Scott Builders & Slaters Ltd in 2013.

## **Reasons for Decision**

**Section 6.9 of the Code of Conduct provides that property factors “must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.”**

**The Tribunal did not uphold the homeowner’s complaint under this Section.**

The homeowner’s complaint under this Section was that the property factors had failed to manage properly the repairs to defective leadwork on the building’s roof in 2014 and 2019 and had failed to have necessary repairs carried out in a timely manner. They had also failed to pursue the contractors who carried out unnecessary or inadequate work. Her contention was that the quotes received in 2014 had not, as the property factors had stated, been for similar specifications of work. It was the temporary repair carried out prior to these quotes being obtained that had, for a period, stopped the ingress of water, not the replacement of a small section of the lead apron, which was the work intended to be the permanent repair.

The Tribunal considered the representations of the Parties in relation to the work which GDN were instructed to carry out in 2014. The homeowner’s representative told the Tribunal that he was of the view that GDN had not replaced the lead apron in 2014 and that the new section of apron had been fitted by another company in 2013. The homeowner provided no evidence that supported that view and the Tribunal found, on the balance of probabilities, that the work to replace a section of the lead apron was carried out by GDN in 2014.

The background was that Glasgow Roofing Company had effected a temporary repair and the property factors had obtained estimates from two companies who had been asked to investigate the cause of the water ingress and to make recommendations for repairs. When reporting back to the owners, the property factors had stated that the two companies had submitted similar specifications. The Tribunal did not have sight of the reports and specifications, but the homeowner contended that they were not for similar work. The Tribunal could not, on the basis of the evidence before it, make a finding as to whether the property factors were correct in stating that the specifications were similar.

The property factors argued that they were not experts in property construction, repair and maintenance, and were neither trained nor insured to work at height. They had to rely on their approved contractors to provide the technical input and to carry out the work satisfactorily, and they were unable to inspect work carried out at height. They told the Tribunal that, if repairs were extensive, they would suggest to owners that they have the work inspected by a building surveyor, but in this case, the repair works recommended by contractors in 2014 had not been major.

The Tribunal accepted the evidence of the property factors in relation to their responsibility for assessing the quality of work carried out at roof level by their approved contractors. Property factors are not deemed to be experts in building construction and maintenance. They act as agents for homeowners in terms of the Written Statement of services that they provide. They are required to take appropriate action when an item of disrepair is reported to them and to manage the process of obtaining reports, specifications and estimates. They are entitled to rely on the companies that they instruct, provided they are satisfied that the companies have the necessary credentials with regard to liability insurance and health and safety compliance.

The property factors stated that they only instructed firms who were on their approved list of contractors, all of whom were on the SafeContractor register, and the Tribunal determined that the property factors had not failed to manage properly the repairs carried out in 2014. They had received a report of water ingress, had instructed a temporary repair and had obtained estimates from firms that were on their approved list of contractors. Both firms had access to the affected area and would have been in a position to see that a temporary repair had already been carried out. The property factors were entitled to rely on the professional judgment of those firms as to the further work that was required to remedy the problem of water ingress to the Property. The Tribunal was not in a position to determine whether scrutiny of the specifications provided by the two firms should have resulted in the property factors seeking further clarification, but the view of the Tribunal was that they were entitled to rely on the advice from their contractors, even if, in hindsight, that advice was incorrect. The repair carried out in 2014 appeared to everyone to have resolved the problem and if, as now seems to be the case, it was the temporary repair to a crack in the lead rather than the replacement of the lead apron that had stopped the water ingress, the property factors could not have been expected to have any reason to believe that the repairs in 2014 had not addressed the problem that the homeowner had reported to them.

The homeowner reported a further ingress of water in June 2019. Her representative contended that this had been happening for some time and suggested that the repair carried out in 2014 had only lasted for 3 years. That assertion was based on the homeowner's representative's report to the Tribunal of comments made to the homeowner when a tenant vacated the Property on 31 May 2019. The homeowner did not, however, provide evidence, such as a copy email or text message from the outgoing tenant, to support that position. The property factors stated that the repair in 2014 had held good for 5 years, as the leak had only been reported in June 2019.

The Tribunal was unable to make a finding as to when the water ingress had begun again, but determined that, as it had not been reported to the property factors until June 2019, they could not be held to have been at fault in this regard.

The homeowner reported the issue of further water ingress in early June 2019. On 7 June, the property factors instructed Northwest Roofing & Building Maintenance Ltd to attend and carry out a repair if it was minor and to advise them, if it was major. That firm provided its specification and quote on 14 June 2020, their recommended work being to remove all blockages in the downpipe. On the same day, the property factors instructed two firms of contractors to attend and quote for the repair required following on a report of water ingress. They did not, in their Repair Orders to those companies, give any view as to the possible reason for the water ingress.

Specifically, they did not mention the possibility that it might have been caused by a blocked downpipe. One of the firms, Torrance Roofing and Building Services ("Torrance"), provided a specification and quote on 21 June. The other firm, McMasters, provided their specification and quote on 29 July. All three companies concluded that the issue lay with the downpipe and McMasters confirmed in their report that they had "observed the front downpipe and observed ingress within the upper property." Their quotation was accepted on 6 August and the contractors were instructed to call the homeowner's father with a start date. In their written representations, the property factors accepted that the contractors had been slow to submit their quotation but, as a temporary repair had been carried out on 14 June, the delay would have had no detrimental effect and the repairs were completed within 4 weeks from the date on which they instructed McMasters. The work had been completed on 5 September.

When, during the following week, the homeowner reported to the property factors that, despite the repair work, the problem of water ingress had not been resolved, they instructed McMasters to return to the Property. On 13 September, McMasters provided the property factors with a further Invoice, stating that they had arranged access with the occupant (Mr Golding), identified the area of water ingress, accessed the roof slope and applied fibrous sealant solution to the existing lead gutter. They added that the leadwork would require to be renewed within the near future, as they had only carried out a temporary repair. McMasters further reported on 20 September, "We had been previously advised others had addressed this area prior to our downpipe works. This appears to have been incorrect as the lead was torn."

On 13 December 2019, the property factors wrote to the owners to confirm that the contractors had highlighted that there was a tear in the front parapet gutter and that, whilst a temporary repair had been carried out, it would need to be replaced in its entirety. They had provided a quote for this work and the property factors had then obtained a competing quote from Cairn Building Solutions, which the property factors were recommending for acceptance. They recommended that the work be carried out as soon as possible, in order to avoid further deterioration to the fabric of the building. In order to proceed, they required the owners' agreement and funding in advance, and they asked owners to provide their shares of the cost (£207 each). The evidence presented to the Tribunal indicated that, as at the date of the Hearing, a majority had still not been secured, so the property factors had been unable to instruct the contractors to proceed.

The Tribunal considered carefully all the evidence before it in relation to the 2019 repair. The Tribunal determined that it had not been the property factors who had told McMasters that others had addressed the leadwork prior to the downpipe repair. In the written representations, Mr Golding stated that neither McMasters nor Torrance had gone up on the roof when preparing their specifications and estimates, the implication being that, had they done so, they would have seen the issue with the defective leadwork and would have concluded that this, rather than a blocked downpipe, was the cause of the water ingress. The Tribunal was not able to make a finding of fact in relation to the nature and extent of the contractors' inspections, but determined that, as all three companies had quoted for downpipe work and as Torrance and McMasters had not been prompted by the property factors that the issue might lie with the downpipe, the property factors were entitled to rely on the professional judgement of the contractors who quoted for the work. All of them had been asked to quote for repairs to remedy ongoing ingress of water to the Property and all had reported that there was a problem with the downpipe. The Tribunal did not, therefore, uphold the complaint that the property factors had failed to pursue contractors who had carried out unnecessary work. The property factors acted properly and reasonably by following the recommendations of three firms of approved contractors that work be carried out on the downpipe.

The Tribunal looked at the timeline and concluded that the property factors had properly managed the 2019 repairs. There had been an unexplained delay in obtaining the McMasters quote in June/July, but the property factors knew that a temporary repair had been carried out and the length of delay was not unreasonable. In any event, the work had been completed by 5 September. They had acted quickly when the ongoing problem was reported in mid-September and could not be held responsible for the fact that they still did not have the owners' agreement and funding to enable the works to proceed.

Accordingly, the Tribunal did not uphold the homeowner's complaint under Section 6.9 of the Code of Conduct that the property factors had failed in their duty to manage properly the repairs to defective leadwork on the building's roof in 2014 and 2019 and to have necessary repairs carried out in a timely manner, or that they had failed to pursue the contractors who carried out unnecessary or inadequate work.

**Section 7.1 of the Code of Conduct states that property factors must have a clear written complaints procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which they will follow. This procedure must include how they will handle complaints against contractors.**

**The Tribunal did not uphold the homeowner's complaint under this Section.**

The homeowner's complaint in relation to Section 7.1 was that the property factors had not taken proper and timely action to resolve the complaint. Mr Golding had thought the property factors' complaints process had been exhausted when Ms Madden wrote to him by email on 13 December 2019, saying "This is my final position on the matter". The view of the Tribunal was that Ms Madden was trying to bring to an end a lengthy series of emails which both Parties recognised were "going round in circles" and in the same sentence, she advised Mr Golding to refer to the complaints procedure should he wish to take the matter further. Ms Madden had already, in an email to Mr Golding on 9 December, attached a copy of the written statement of services "which details our complaints procedure, should you wish to take the matter further". This was in response to Mr Golding having stated in an email on 4 December that he wished to escalate his complaint further. On 16 December 2019, Ms Madden again requested that Mr Golding revert to the formal complaints procedure in order to escalate the matter.

The Complaints Procedure in the Written Statement sets out that complaints must be addressed in writing to the property factors' Customer Services and, if a homeowner is dissatisfied with the response, they have the right to escalate the complaint to the Head of Residential Management of the company. It goes on to say that once the final position has been confirmed, the homeowner may have the right to apply to the Tribunal.

The Tribunal determined that the property factors had complied fully with the Complaints Procedure requirements set out in Section 7.1 of the Code of Conduct. Ms Madden had attempted to resolve issues raised by the homeowner and when, following a significant number of emails between the Parties, she took the view that it had not succeeded, she had signposted the homeowner to the Complaints Procedure on 9 December 2019 and had sent a copy of the Written Statement, including the Complaints Procedure, to Mr Golding on 13 December. Under the misapprehension that he had already exhausted that procedure, Mr Golding applied to the Tribunal, by application received on 10 January 2020. The Tribunal, on 5 February, required him to provide evidence that he had notified the property factors in writing as to why the homeowner believed they had failed to comply with the Code of Conduct and had failed to carry out the property factors' duties, and provided a template notification letter that the homeowner might use. On 11 February, Mr Golding confirmed that he had emailed a completed notification letter to Ms Madden and on 13 February, the property factors asked him to complete their complaints form. On 20 February, the Tribunal asked Mr Golding to resend the form, specifying

the particular paragraphs of Sections 6 and 7 of the Code of Conduct that he believed had not been complied with.

The view of the Tribunal was that the homeowner did not escalate the complaint until 10 February 2020, which was the date on the notification letter to the property factors. Further emails passed between the Parties between 13 February and 3 March, on which date the property factors advised that a formal response would be issued within 28 days. On 10 April, the property factors wrote to Mr Golding with a detailed response, explaining that the coronavirus outbreak had resulted in their being unable to respond within the 28-day period. They did not uphold any of the homeowner's complaints and stated that this concluded their handling of the complaint. They provided the address and contact details for the Tribunal, should the homeowner not be satisfied with this final response.

The Tribunal considered carefully all the correspondence that had passed between the Parties and noted Mr Golding's stated belief that he had already exhausted the complaints procedure before the application to the Tribunal was made. The Tribunal could not accept this assertion, as Ms Madden had clearly directed the homeowner to the complaints procedure on at least three occasions, 9, 13 and 16 December 2019 and had attached a copy of it to her email to him of 9 December. The Tribunal was satisfied that, after the complaint was escalated on 10 February 2020, the property factors complied with the procedure. The failure to meet the 28-day target was excusable, given the lockdown measures put in place in response to the COVID-19 outbreak.

Having considered all the evidence, written and oral, before it, the Tribunal did not uphold the homeowner's complaint under Section 7.1 of the Code of Conduct. The Tribunal also determined, for completeness, that the property factors had not failed to comply with Section 7.2 of the Code of Conduct, as the final decision on the complaint had been notified in writing to the homeowner's representative on 10 April 2020, and that letter had also provided details of how the homeowner might apply to the Tribunal.

### **Failure to Comply with the Property factor's Duties.**

#### **The Tribunal did not uphold the homeowner's complaint under this heading.**

The homeowner made no specific averments under this heading and, as the Tribunal was satisfied that the substance of the complaint had been fully considered under Sections 6 and 7 of the Code of Conduct. The Tribunal did not uphold the complaint that the property factors had failed to carry out the Property Factor's Duties as defined in Section 17 of the Act.

Having decided not to uphold any part of the homeowner's complaint, the Tribunal does not propose making a Property Factors Enforcement Order.

## **Right of 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.**



George Clark (Legal Member/Chair)

9 October 2020