



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

**Decision on Homeowner's application : Property Factor (Scotland) Act 2011
Section 19 (1)(a)**

Chamber Ref: FTS/HPC/Property Factor/22/1049

Re: Property at 32 Millford Drive, Linwood, PA3 3EJ ("the Property")

The Parties:

**Catherine Stevenson, formerly residing at 32 Millford Drive, Linwood, PA3 3EJ
and Flat 16, 53 Glasgow Road, Paisley, ("the Homeowner")**

**Walker Sandford, St George's Buildings, 5 St Vincent Place, Glasgow, G1 2DH
("the Respondent")**

Tribunal Member:

**Melanie Barbour (Legal Member)
Andrew Taylor (Ordinary Member)**

DECISION

The Tribunal finds that the Property Factor failed to comply with sections 2.7 and 6.4 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors 2021; but did not fail to comply with sections 6.1, 6.6 and 7.1 of the said Code of Conduct. The decision is unanimous.

INTRODUCTION

1. 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 2021 is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules".

2. By application dated 8 April 2022 the Homeowner complained to the Tribunal that the Property Factor was in breach of the Property Factors Code of Conduct 2021 in relation to:
 - a. Section 2 communication and consultation (2.7);
 - b. Section 6 carrying out repairs and maintenance (6.1, 6.4, 6.6); and
 - c. Section 7 complaints resolution (7.1).
3. The Homeowner also complained that the Property Factor had failed to carry out their duties, however the Homeowner only referred to the same sections of the Code. The Tribunal is not therefore in a position to consider any alleged breaches of the Property Factor's duties.
4. The Homeowner attached a detailed chronology of their complaint. In summary the Homeowner complained that :-
 - a. the Property Factor had not maintained communication throughout the process of repairing roof leaks from around November 2021 to around March 2022;
 - b. had failed to prevent further damage; and
 - c. had not responded to the Homeowner's complaint.
5. The Homeowner advised that the Property Factor had failed to resolve their complaint of 25 March 2022.
6. The Homeowner's representative advised that the matter had affected the Homeowner and her wider family, as the property was deemed unsafe by the Homeowner's family for the elderly Homeowner to live in from 22 December 2022. The situation had a financial impact, stress and anxiety on the Homeowner and wider family.
7. The Homeowner advised that what would resolve the problem would be for the Property Factor to apologise; to pay compensation; and for the Tribunal to make a Property Factor Enforcement Order.

8. A case management hearing took place by telephone conference on 4 August 2022. The Homeowner's representative and daughter, Ms Fiona Stevenson appeared. There was no appearance by the Property Factor on that date. Reference is made to the Case Management Discussion Note and Direction which was issued following that Discussion. As part of the Direction the Property Factor was requested to provide written submissions to the complaint.
9. The Property Factor submitted a written response by email on 24 August 2022. They advised that they had previously submitted their response in writing on 30 June 2022 requesting that the matter be dealt with by written submissions. Their written response attached various papers, including the Property Factor's written statement of services; complaints procedure; written response; photographic evidence of annual roof check dated 10 August 2022; copy of letter of 21 December 2021 confirming that they intended to instruct contractors to do roof repairs (negative mandate); copy invoices for roof repairs; email seeking clarification about aspects of the Homeowner's complaint; various copies of correspondence to the Homeowner from 6 May 2016 about roof repairs with associated invoices; and a copy of a maintenance authority mandate dated 3 November 2011 which appeared to show that the Homeowner's late husband did not consent to having the full roof recovered.
10. The Homeowner made further written submissions in response to the terms of the Direction on 18 August 2022 providing a copy of the title deeds; evidence of alleged losses; written explanation as to why the Homeowner considered they were entitled to compensation; information about the roof condition; insurance reports; and repair mandate letter.
11. The hearing took place on 13 January 2023. The Homeowner's representative, Fiona Stevenson appeared. Mr Brown from the Property Factor appeared. The Homeowner confirmed that the response from the Property Factor did not resolve the Homeowner's complaint.

HEARING

2.7 *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.*

12. The Homeowner advised that she was making a complaint under this section as there had been a failure to communicate by the Property Factor. She referred to her chronology which set out the dates when they had contacted the Property Factor. They contacted the Property Factor about a leak in the roof in November 2021, it had been affecting the Homeowner's property. The Property Factor did not call them to update them about what was happening. There was no phone calls or follow up from the Property Factor. They had to chase the Property Factor. The Property Factor did not contact the Homeowner to find out when the leak was first noticed.
13. When the Property Factor sent out their Complaints Procedure, it did not provide any timescales for responding to a complaint. The Homeowner had emailed on 7 March 2022 to make their complaint. The only call they received from the Property Factor was about the fact that there was now a leak to the downstairs property.
14. She was asked about the letter regarding the mandatory work. She advised they had received one, but the Property Factor had not thereafter kept them advised of progress. She had not been advised that there had been an objection to the proposed work and that would delay progress. She said that the Property Factor did not tell us this. The Homeowner had to call the Property Factor to find out about this delay.
15. Further, no one called the Homeowner or her family to check on the Homeowner, who is a vulnerable, elderly lady. She was concerned that there was no contact from the Property Factor to find out about the Homeowner's

situation.

16. Mr Brown for the Property Factor advised that the Homeowner was complaining about the lack of response within the timescales, however he pointed out that the timescales are set out in the Written Statement of Services (and not the Complaints Procedure). The Complaints Procedure is part of the Written Statement of Services and it sets out mechanism for the Property Factor to deal with complaints. The Complaints Procedure sets out who you send your complaint to.
17. The Homeowner advised that they had sent an email on 4 March 2022 to advise that they wanted to make a complaint. They sent a follow up response to the Property Factor on 13 March 2022. She advised that no one made any reference of the Written Statement of Services. The only papers that the Homeowner was given was the Complaints Procedure.
18. The Property Factor advised that they have provided multiple copies of the Written Statement of Services as and when legislation has been amended and updated. It is sent out to Homeowners by the email or post. The Property Factor works on the assumption that a homeowner will be aware of the Written Statement of Services. The complaint was received on 4 March 2022 and was responded to on 15 March 2022 and this was within the timescales set out in the Written Statement of Services.. He advised that the last update of the Written Statement of Services was in August 2022 and it was sent out at that time to homeowners. Prior to that an updated Written Statement of Services. was issued in 2019.
19. The Property Factor advised that their response to notice of the roof leak was to send contractors out to first assess the matter. It would be for the contractors (who were on site) to update the homeowners when they met them on site. It was easier for contractors to speak to homeowners direct, rather than have the contractors relay matters to the Property Factor and then for the Property Factor to relay matters onto homeowners. If there are any subsequent issues arising

then they can be discussed directly with the contractors.

20. The Property Factor advised that in terms of the original enquiry, they had sent out the contractors and this was acknowledged on 23 November 2021 to the Homeowner, and the contractors details would be provided at that time.
21. The Homeowner advised that when she had phoned the Property Factor's office she had not been given the contractors details. They had been told that the Property Factor's office would tell us what would happen. The contractors told the Homeowner that they had to run matters past the Property Factor; and the Property Factor said they needed to wait to hear from the Contactors. The Homeowner's representative advised that they had to move their mother, Homeowner, out on 22 December 2022.
22. She also referred to her email of 4 March 2022, and she advised that she had called the Property Factor on 15 March 2022 chasing them for a response.
23. The Homeowner advised that they had originally contacted the Property Factor on 22 November 2022, and there was a gap of one month before they contacted the Property Factor again. They had been advised that the issue raised on 22 November had been dealt with.
24. The Property Factor advised the first small repair in November had not been successful. They sent the Contractor out again in December 2021. The assessment was that there needed to be repairs to a larger section of the flat roof; there had been a cycle of repairs to the roof at the property; it was no longer possible to do patch repairs and there needed to be a larger repair over a larger area of the roof. The Contractor attended to see if they could do a repair for the immediate leak, but advised that this was not an option. They would need to repair a larger area. By letter this repair was mandated to owners given the cost. The owners were notified in December 2021 about this repair.
25. The Homeowner said that the roofer told them that they had told the Property

Factor for a long time that he could not keep patching up and needed that a larger roof repair was required.

26. The Property Factor advised that they had mandated the owners some time before for full renewal of the roof. He referred to the letter submitted in 2011. He noted that the Homeowner's husband had stated at that time that he would not agree to full repair of the whole roof.
27. The Homeowner advised that her father had died 7 years ago; she was not sure if he had refused the repair. She could not comment on this issue. Further, she confirmed that her complaint related to matters in 2021 and she could not speak for what her father may have done in 2011.
28. The Tribunal asked the Property Factor if there had been any other attempts since 2011 to renew roof. The Property Factor advised that since 2011, they had not re-asked the owners if they wished to have the full roof recovered. They had been instructing similar jobs, such as the December repair, for the roof with similar scope of works. He advised that when getting these works done, they needed to get mandate approval from the homeowners. They felt it may be possible to get a section of the roof done, but to try and get the whole roof renewed would be difficult to get homeowner consent and payment. Therefore, the Property Factor targeted repairs to deal with issues as they arose.
29. The Homeowner advised that this situation had caused stress and anxiety for the Homeowner and it had not been an easy time for them.

6.1 *This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.*

6.4 *Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work,*

including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

30. The Homeowner advised that because there was water coming into the property it made the property unsafe. She referred to photographs that she had submitted in support of her position. They were concerned that the roof would cave in. She advised that on 23 December 2022 the Property Factor refused to send someone out to do the repair work. She advised that she told them about her mother's situation and vulnerability and the Property Factor eventually agreed to send someone out. She said that the property was not safe for her elderly mother to remain living in. Further, due to the time taken to get the repairs completed the property ended up in a very poor condition and the costs of reinstatement were over £3000.

31. The Property Factor queried whether the costs of the repairs and the ceiling needing to come down was due to water ingress or because of the presence of asbestos.

32. The Homeowner advised that the ceiling was taken down due to asbestos, but the water damage had been substantial. The Homeowner advised that she had called the Property Factor on 22 December 2022 about the water coming in, she was upset because the Property Factor was refusing to send someone out and the situation was unsafe for her mother. She advised that she had spoken

to the Contactors and they had advised her they would not do anything to repair the leaks due to the weather.

33. The Property Factor confirmed that the repairs could only be carried out when it was dry. They were unable to apply new felt and do the repairs when it is raining. The weather condition at the time of the leak meant that the repair could not be undertaken immediately. He also advised that a quote was obtained for £1625. The Property Factor had sent out Contractors to see if they could do temporary repair, with the actual repair needing to be mandated to the owners due to the cost of the work. It was not possible to do a temporary repair. The Property Factor advised that they would like to be able to do every repair as soon as possible, but if they were to action all works to properties regardless of cost the Property Factor would expose themselves to other complaints. He advised in this case the two repairs were reactive repairs. The timing of the repairs was dependant on weather conditions. He advised that even if the Property Factor had instructed the contractors to go ahead and do the works on 22 December 2022 it was likely they would not have been able to do them anyway given the weather conditions. The Property Factor further advised that they had issued negative mandate letters to hasten the process for getting the repairs done (i.e., where owners had to formally confirm objection to the works being done. No response was taken as consent). The Property Factor advised that they had not been paid in full for works which had been done and this was a year after the works had been mandated. He confirmed that they had mandated other work of similar scope.
34. The Property Factor said that when they were carrying out the negative mandating process they received objections with other owners wanting other works carried out to the roof at the same time. He advised that this caused additional delay in getting an updated quote to do the additional works. He advised that it have unreasonable to have the works done separately, as it may have taken longer to do two separate repairs and also, it would have been more costly.

35. The Property Factor advised the Homeowner on 19 January 2022 that the work would be done depending on weather conditions. Thereafter the works were carried out on 24 January 2022.
36. The Property Factor advised that they then received a call that there was further water ingress at the Homeowner's property.
37. The Property Factor was asked about health and safety of Homeowners. He advised that the Written Statement of Services sets out authority to act (at page 26). He advised that the terms of that section reinforces that the limit for instructing repairs without consent is £1000 plus VAT, and "*WSPM will instruct repairs beyond this financial limit on behalf of the co-proprietors in situations of emergency. This will be where it is considered that there is a serious health and safety risk or there is a defect threatening the building fabric that would lead to increased costs if not attended immediately.*" The Property Factor did not think that the current issue to the ceiling was a matter where there was a serious health and safety risk. There needs to be a greater risk to justify the Property Factor taking action without owners' mandate. They would need to be able to justify why they instructed works immediately, as opposed to other works, particularly where similar damage may have been caused to other properties. Examples of emergency works would be a burst water main and water at pressure pouring out.
38. The Tribunal asked if anyone assessed whether there was a health and safety risk. The Property Factor advised that the Contractors who attended did not report any immediate risk of collapse. Had there been such an assessment they would bring the ceiling down; however, the Contractors did not think there was such a risk.
39. The Homeowner advised that it was her understanding that the Contractors did not get into the house in December but did get in in January 2022. She queried whether this was a sufficient assessment where there is an elderly homeowner. The Homeowner submitted that the Property Factor could have agreed to have

the repair carried out without the mandates to avoid further costs and further damage of the property. She submitted that there were other options which should have been considered. It was not appropriate to agree to do the repairs in January 2022, when the mandate was sent before Christmas 2021, and from that period the condition of the property was getting worse.

40. The Property Factor advised that the original defect was repaired in 24 January 2022. A second leak was reported on 16 February 2022. The second leak was repaired on 8 March 2023. The second repair was found to be in a completely different area of the roof, in the gutter section.
41. The Tribunal asked whether it was explained to the Homeowner that these repairs were needed to a different part of the roof? The Property Factor said no, he advised that although there was a leak at the gutter, when the Contractor first told the Property Factor, they advised that it was a continuation of the same matter. The Contractor did not know why it was still leaking at first but later advised that it was from the gutters.
42. The Tribunal asked the Homeowner when the water ingress was reported to the Homeowner's insurance. The Homeowner advised it was reported on 10 January 2022. She advised that the insurers would not do any internal repairs until the roof was repaired. She had continued reporting this to the Property Factor that the roof continued to leak. When the works commenced in repairing the internal water damage it was at this point that asbestos was encountered. The repair works to the internal of the house started work in March 2022 and continued until May 2022.

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

43. The Homeowner advised that the Complaints Procedure she was provided with did not set out a timeframe in which a complaint would be dealt with. She had called in March 2022. She said the person she spoken to, had to take her query to someone else. She said that the Complaints Procedure was such a small document, she would have expected it to be sent out to them without any difficulty. She thought the person in the Property Factor's office did not seem to know anything about the Complaints Procedure.

44. The Property Factor advised that the Homeowner raised complaint in writing, and the Homeowner only asked for a copy of Complaints Procedure. This was provided.

Remedies sought.

45. The Homeowner sought compensation. She advised that the Homeowner had to move out of the property and find her a new property to live in. The damage to the property meant that they could not sell the property for some time. The Homeowner had to pay additional tax on two properties for over a year. The Homeowner had just sold the property in November 2022. The Homeowner moved into another property earlier in 2022. The Homeowner had not been able to sell the property and had to incur costs for two properties for some time: council tax, insurance, heating, all continuing due to the state of the repairs. The Property Factor had nothing to add in terms of the costs

46. The Homeowner's representative advised that the Homeowner and her family had experienced stress. It was an emotional time caused by the stress of the repairs. It had been difficult time supporting the Homeowner, continually having to phone the Property Factor and going to the property. It had a huge impact on them all and failing to get the roof repairs carried out more quickly had been very frustrating.

47. The Property Factor advised that the circumstances had not been ideal. They would have liked to be able to do the work as soon as possible, but the costs of the work and the weather prevented that. The works were however

completed in a timely manner for the time of the year and the Property Factor have had to expose its business to risk by effecting the repairs when they did not have full payment in from all owners. The Property Factor had covered one share of the costs and several other owners had taken some time to pay their share. The Property Factor had tried to speed the process up and get the works completed as quickly as possible. He pointed out that they were entitled to wait for all of the money to come in before proceeding to get the works done. The Property Factor was in fact still dealing with the financial repercussions of the delay and non-payment for some of the works.

48. The Property Factor acknowledged that notwithstanding this, it had not been an ideal situation for an elderly homeowner to deal with, but he submitted that the Property Factor had acted in a consistent and timely manner in undertaking these repairs.
49. The Homeowner submitted that being a Property Factor meant that they had to accept that there was a risk in that business, she did not agree that they were entitled to collect money first as the Homeowner's life was being affected and she submitted that it was the Property Factor's job to take risks.
50. The Property Factor advised that they had to mitigate the risk. Had they instructed the works on 23 December 2021 there was every chance that the repairs would have failed due to the bad weather; and they are required to follow a process for works. There are authority thresholds to follow. Had they done the works they would have exposed themselves to complaints from other owners that they had acted out with the terms of their authority. Their job is to instruct maintenance works for the property and to do factoring work to the homeowners benefit but not at a financial loss to the Property Factor.

FINDINGS IN FACT

The tribunal find the following findings in facts:-

- a. The homeowner is Catherine Stevenson.
- b. The property factor is Walker Sandford.
- c. The property is 32 Millford Drive, Linwood, PA3 3EJ.
- d. A leak in the flat roof at the building had been intimated in around November 2021. A repair was carried out sometime between 23 November and 20 December 2022. That repair did not appear to have been successful.
- e. The leak was again intimated to the Property Factor on 20 December 2022.
- f. The Property Factor sent contractors out to look at the repair on 21 December 2021.
- g. On around 21 December 2022 the contractors advised that they could not carry out a temporary repair to the leak and provided a quote for repair to a larger area of the roof.
- h. The Property Factor sent out negative mandate letters for the repairs on 21 December 2021.
- i. In around January 2022 another owner in the building sought further roof repairs in response to the mandate letter. The further repairs were quoted for by the roof Contractor and both sets of repairs were carried out as part of the roof repairs work on 24 January 2022.
- j. A second leak was reported by the Homeowner on 16 February 2022
- k. Repairs to the second leak were carried out in around March 2022.
- l. In 2011 the Property Factor had asked owners to consent to a full roof recover. There was no agreement to this work and the work was not undertaken.
- m. On 15 March 2022 there was a response by the Property Factor to a complaint by the Homeowner sent on 4 March 2022.
- n. The Homeowner made a further complaint to the Property Factor on 25 March 2022..

DECISION

51. This complaint relates to repairs to a flat roof, the time taken to carry out the repairs, and the communication by the Property Factor to the Homeowner and her family. It also relates to dealing with the subsequent complaint made by the Homeowner. The complainant is an elderly lady, who resided in the property until 22 December 2021 when her family removed her due to their concerns for her safety. The Homeowner had the support of concerned family members who acted diligently to ensure that their mother had somewhere to live while her property was affected by a roof leak, and also thereafter took action to chase up the roof repairs and organise an insurance claim for internal repair work. This complaint relates to matters arising from November 2021. The Homeowner's family removed the homeowner from the property two days after reporting the roof leak in December 2021. The Homeowner asserts that the Property Factor had opportunity to override the Written Statement of Services and carryout repair work more quickly and should have done so given the impact of the leak on the Homeowner's property and her health and safety.
- 2.7 *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.*
52. We find that there has been a breach of this section of the code. We consider that the Property Factor could have been more communicative to keep the Homeowner and her family up to date with the progress of the repair work. We do not consider that it is sufficient for the Property Factor to rely on their Contractors to keep the Homeowner informed.
53. We consider that the Property Factor accepted that there was a roof leak to be repaired, there was contact from the Homeowner's family raising the matter, and when the Property Factor became aware that a temporary repair could not

be done, they should have advised the Homeowner of this fact. While we consider that the mandate letter which was sent out on 21 December 2021 shows that the Property Factor acted promptly, we consider that letter could have explained that a temporary repair was not possible, or separately the Property Factor could have contacted the Homeowner to advise them.

54. Further, after the Property Factor received an objection to the mandate letter and a request to carry out a further repairs, they should have advised the Homeowner about what was happening, and that the repairs would be delayed until the amended quote had been obtained. We do not consider that the actions taken by the Property Factor were unreasonable, but they failed to tell the Homeowner what was happening.

55. Further, it also appeared to us that the Homeowner did not understand that the repairs could only be carried out when the weather condition was dry. While this may have been a matter of common knowledge to the Property Factor we are not convinced that it is one that ordinary members of the public would be aware of, and again therefore we consider that the Property Factor failed to keep the Homeowner informed about the repair.

56. While we accept that a Contractor on site can be involved in providing information to Homeowners about the repair works, we do not consider that it was the Contractors responsibility to do so, and further the Homeowner had not been advised that the Contractor should be contacted about the repair works. We also did not consider that the Contractor, could in any event, have provided all the relevant information for example, we would not have expected the Contractor to have provided information to the Homeowner that there had been an objection to the mandatory letter.

57. We also consider that given the particular age of the Homeowner and her vulnerability, it was would have been reasonable for the Property Factor to ensure that the Homeowner was kept fully informed about progress of the repair works.

58. We find therefore that this section of the code of conduct has been breached.

6.1 *This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.*

59. We did not consider that there had been a breach of 6.1 of the code. We consider that the Property Factor had acted promptly and diligently in getting the repair works instructed and carried out. We note that there had been an attempt to repair the leak in November 2021. In December 2021 the Property Factor appeared to us to have again acted promptly to have the Contractor out to assess the leak first to ascertain if a temporary repair could be undertaken; and then to obtain the cost for a longer term repair. We note that the negative mandatory letter was sent out on 21 December 2021 with the leak only being reported on 20 December 2021. We consider that the Property Factor acted reasonably when obtaining the additional quote for the additional works, as we did not think it would have led to any more than a short delay at most, and it seems sensible to have both works done at the same time. We also considered that the Property Factor was entitled to wait for all payments to have been received before instructing the roof repairs, and they did expose them themselves to some risk by instructing the works prior to all payments being made. We do not consider that it would be reasonable for the Property Factor to have to take the risk of instructing works without prior payments being received from homeowners. We consider that the Factor was entitled to act in accordance with the terms of the Written Statement of Services and to fail to do so would have led them open to complaints from homeowners.

60. We considered that the Property Factor had a good deal of knowledge about the roof and associated repairs. We note that they had in fact tried to be proactive in minimising future roof repairs in 2011 however owners did not consent to such works. The Property Factor is therefore limited to more reactive work on the roof, and it appeared to us and they acted professionally and promptly in discharging their duties in this regard.

6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

61. We find that there has been a breach under 6.4 in respect of the duty to ensure that the Property Factor keeps the Homeowner informed of progress.

62. While we find that the Property Factor did arrange the inspection and repair in an appropriate timescale, we do not think that they kept the Homeowner properly informed about progress. They could have provided better and more timely information to the Homeowner about the timescales for doing the works and in particular, that there would be a delay to the completion of the works due to the need to obtain a further quote for a further repair. They should also have advised the Homeowner that the works could only be done when the weather conditions were sufficiently dry. Had the homeowner been made aware of these matters it may have alleviated at least some of the Homeowner's anxiety and stress.

6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

63. We do not consider that there has been a breach under this section of the code. While we note that the homeowner considered that there were a range of options which could have been explored to undertake the repairs, we do not

agree. We agree with the Property Factor that the range of options in this case would relate to different ways in which the repairs could have been effected. The crux of this case however, relates to how soon the repair could be undertaken. We do not think that the Property Factor could have acted any more promptly to have the works carried out. They sought a negative mandate from owners to have the work instructed as soon as possible. We do not consider that there were a “range of options” available which would have allowed works to be carried out to the roof more quickly. While we accept that the leaking roof was concerning for the Homeowner, we agree that the Property Factor had duties towards the other homeowners, and they were required to adhere to the Written Statement of Services and work within the extent of their authority to act. We note that the Property Factor instructed the repair works without all payments being received from all of the homeowners. The Factor accepted the risk that this entailed. We also consider that the weather conditions would have been relevant in when the repairs could have been carried out. We do not find any breach under this section.

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

64. We do not find any breach under section 7.1. The Property Factor had a written Complaints Procedure. We also consider that the Property Factor had a comprehensive Written Statement of Services. We consider that because it was the Homeowner’s family who were dealing with the Property Factor, they may not have been aware of the Written Statement of Service. We agree that the Homeowner would have been issued with copies of the Written Statement of Services.

REMEDY

65. As set out above we find that there have been two breaches of the Property Factors Code of Conduct. We consider that these breaches relate to a failure to ensure that there is appropriate communication with the Homeowner. While we consider that there have been breaches of the Code, we do not consider that those breaches led to any loss to the Homeowner in terms of the condition of the property. We do however consider that the failure to ensure that the progress of the repair work was promptly reported to the Homeowner and her family would have caused the Homeowner stress and anxiety. We also consider that the Property Factor could have been more sympathetic and alert to the fact that the Homeowner was an elderly lady and may have been more vulnerable to the water leak in her property.
66. The Property Factor has been factor for the property for a number of years and has a lot of knowledge about the roof. The Property Factor knows that the roof needs to be replaced. They sought authority to do this work in 2011 but did not get consent to undertake the work,. We consider that this fact leaves the Property Factor in a very difficult position. This roof will require ongoing and annual repair work. Homeowners will not pay for preventative works (namely a full re-roofing) and therefore the Property Factor can only be reactive, dealing with repair works as and when they are reported.
67. In terms of remedy for the failure to keep the Homeowner properly informed of progress, we consider that appropriate remedy would be for the Property Factor to apologise to the Homeowner and to pay compensation of £150.00 for the stress and anxiety that this failure caused. .

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

68. The Tribunal proposes to make a Property Factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A Homeowner or Property Factor 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.

Melanie Barbour Legal Member and Chair

Date 21 March 2023