

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 (‘the Act’)

Case Reference Number: FTC/PF/19/0322

Re: Flat 3/2, 22 Roxburgh Street, Glasgow G12 9AP (the property)

The Parties:

Dr Kevin Owusu-Agyemang, residing at the property (the homeowner)

Speirs Gumley, Red Tree Magenta, 270 Glasgow Road, Glasgow G73 1UZ (the property factor)

Tribunal members: Sarah O’Neill (Chairperson), Andrew Taylor (Ordinary (surveyor) member)

Decision of the tribunal

The tribunal determines that the property factor has failed to comply with its duties under section 14 of the Act in respect of sections 2.5; 5.5; and 6.4 of the code of conduct for property factors (‘the code’). It determines, however, that the property factor has not failed to comply with its duties under sections 1; 4.8; 5.3; 6.1; or 7.2 of the code.

The tribunal’s decision is unanimous.

Background

1. By application received on 1 February 2019, the homeowner applied to the tribunal to determine whether the property factor had failed to comply with its duties under the Act. In his application form, the homeowner complained that the property factor had failed to comply with its duties under section 14 of the Act in respect of the following sections of the code: 1.1; 2.5; 4.2; 4.8; 5.5; 6.1; 6.4; and 7.2. He also complained that the property factor had failed to carry out the property factor’s duties as defined in section 17(5) of the Act.

2. In email correspondence dated 2 March 2019, the homeowner confirmed that he also wished the tribunal to consider a complaint under section 5.3 of the code, which had been included in his original notification letter to the property factor on 27 August 2018. In the same email, he confirmed that his complaints about a failure to carry out the property factor's duties were covered by his complaints under the code. In a further email of 13 April 2019, the homeowner confirmed that he no longer wished to pursue his complaint under section 4.2 of the code. He also indicated in this email that he wished the tribunal to consider an additional complaint under section 6.4 of the code, which he had notified in writing to the property factor on the same date.
3. On 19 June 2019, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President under section 96 of the Housing (Scotland). On 26 June 2019, the tribunal administration issued a notice of referral and hearing to both parties, advising that a hearing would be held on 15 August 2019, and requesting written representations by 17 July 2019. Written representations were received from the property factor on 17 July 2019. A completed form was received from the homeowner on the same date, indicating that he did not wish to send written representations.
3. On 19 July 2019, the tribunal issued a direction to the parties. This stated that the tribunal intended to consider only the complaints made by the homeowner under sections 1.1; 2.5; 4.8; 5.3; 5.5; 6.1; 6.4; and 7.2 of the code, and invited the parties, should they consider this to be an inaccurate / incomplete list of complaints, to confirm the reasons for this. The direction also required the property factor to submit further written representations setting out its response to each of the homeowner's specific complaints, indicating the evidence which they intended to reply on to support their responses, by 8 August 2019. No response was received from the homeowner. A response was received from the property factor on 8 August 2019.

The initial hearing

4. A hearing took place before the tribunal on 15 August 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The homeowner represented himself and gave evidence on his own behalf. The property factor was represented by Mr Bryan McManus, Director and Ms Joanne Knox, Associate Director, who gave evidence on its behalf. Neither party called any other witnesses to give evidence on their behalf.
5. At the hearing, the tribunal heard evidence from both parties on the homeowner's complaints under sections 1.1; 2.5; 4.2; 4.8; 5.3; and 5.5 of the code. With the agreement of the parties, the tribunal then decided to adjourn the proceedings in order to give the parties an opportunity to resolve their

dispute by agreement. The tribunal chairperson suggested that if the parties were unable to resolve matters by themselves, they may wish to consider involving an independent third party. Mediation letters were issued to both parties at the hearing.

6. On 19 August 2019, the tribunal issued a direction to the parties requiring them to report on their discussions by 10 September. On 11 September an email was received from the property factor requesting a further two weeks to attempt to resolve matters. The homeowner confirmed on 12 September that he was agreeable to this. On 26 September, an email was received from the homeowner requesting a further two weeks to try to resolve matters. The following day, a letter was received from Mr McManus advising that the property factor had tried to resolve matters, but that he now considered that the matter should go back to the tribunal for a determination. The homeowner confirmed by email on 14 October that the matter had not been resolved and asked that a date be fixed for the adjourned hearing.
7. The adjourned hearing took place on 16 December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The homeowner represented himself and gave evidence on his own behalf. The property factor was again represented by Mr Bryan McManus, Director and Ms Joanne Knox, Associate Director, who gave evidence on its behalf. Neither party called any other witnesses to give evidence on their behalf. At the adjourned hearing, the tribunal heard evidence on the homeowner's remaining complaints under sections 6.1; 6.4; and 7.2 of the code.
8. Following the adjourned hearing, the tribunal was made aware of further email correspondence received from the homeowner on 15 December 2019, the day before the hearing. The tribunal noted that the bulk of this evidence was either email correspondence which was already before it, or made points which the homeowner had raised at the adjourned hearing. It therefore determined that there was no prejudice to the property factor in allowing this to be lodged late.

The evidence

9. The evidence before the tribunal consisted of the following:
 - The application form completed by the homeowner, together with several accompanying pages setting out his complaint in detail.
 - Copy notification letter from the homeowner to the property factor sent on 27 August 2018, together with a further complaint form submitted on 11 September 2018.

- First and second stage formal complaint responses from the property factor to the homeowner's notification letter, dated 10 October and 20 December 2018.
- Further notification letter from the homeowner to the property factor regarding his section 6.4 complaint dated 13 April 2019.
- First and second stage formal complaint responses from the property factor to the homeowner's further notification letter dated 7 May and 5 June 2019.
- Copy written statement of services issued by the property factor.
- Emails from the homeowner to the tribunal administration dated 2 March and 13 April 2019.
- The property factor's written representations received on 17 July 2019, including substantial correspondence between the parties regarding the homeowner's complaints all dated between August 2017 and June 2019.
- The property factor's response to the tribunal's direction received on 8 August 2019.
- Email correspondence received from the homeowner on 26 September 2019.
- Email correspondence received from the property factor on 27 September 2019.
- Email correspondence from the property factor received on 4 December in response to a direction issued by the tribunal on 3 December 2019.
- The land certificate for the property (title number GLA112008).
- The oral representations of both parties at the initial and adjourned hearings.
- Email correspondence received from the homeowner on 15 December 2019.

Findings in fact

10. The tribunal makes the following findings in fact:

- a) The homeowner is the owner of the property. He originally bought the property jointly with his former partner in 2013. In January 2017, his former partner had transferred her share of the property to him. At that point therefore, he had become the sole owner of the property.
- b) The property is a top floor flat within a Victorian tenement block comprising 8 flats at numbers 20, 22 and 24 Roxburgh Street, Glasgow.
- c) Speirs Gumley became a registered property factor on 1 November 2012. Its duty to comply with the code therefore took effect from that date. It is the property factor responsible for the management and maintenance of common areas in the block within which the homeowner's property is situated.

- d) The property factor's contractual duties regarding the management and maintenance of common areas in the block within which the homeowner's property is situated are set out in:
 - i. the title deeds for the property - in particular, the Deed of Conditions for the tenement block recorded in the General Register of Sasines for Glasgow by the Trustees of John Binnie on 25 February 1920.
 - ii. The property factor's written statement of services.
- e) The homeowner had reported the following matters to the property factor:
 - i. that his kitchen ceiling had collapsed due to water ingress from the roof, in or around October 2016
 - ii. possible dry/wet rot in the joists above his kitchen ceiling, in November 2016
 - iii. that there was a leak through the ceiling of the study, next door to the kitchen, in May and June 2017
 - iv. water ingress to windows in the property, in September 2017
- f) The kitchen ceiling had been reinstated in February 2018. The property factor had instructed this work, which was paid for by the common insurer.
- g) Repairs to the roof tiles had been carried out in May and June 2017, following the notification of the leak in the study ceiling.
- h) The homeowner's insurance claim in respect of water ingress through the windows had been repudiated, as being due to wear and tear.
- i) A specialist timber survey had been carried out in January 2018, and timber treatment works recommended
- j) A further insurance claim had been made in respect of the dry rot works, and this had been approved by the insurer at that time of the adjourned hearing.
- k) The dry rot works had not been carried out at the time of the adjourned hearing.
- l) The homeowner had not paid his invoices from the property factor since March 2017, and at the time of the adjourned hearing owed a total of £3960.15 in unpaid charges.

The homeowner's complaints

- 11. The homeowner's complaints largely stemmed from alleged delays by the property factor in instructing various repairs to his property which resulted from water ingress into the building. The homeowner believed that all of these issues were related and had not been addressed promptly by the property factor, which had led to further deterioration of his property.
- 12. He said that at the time of the initial water ingress in October 2016, a timber investigation had been carried out, and the contractor, Bromac Ltd, had advised that a further dry rot survey should be carried out. That survey had not been

carried out however until more than a year later, and the work recommended by that survey report had still not been carried out. By the time of the adjourned hearing, the insurer had authorised the homeowner to proceed with the dry rot works, but these had not yet been carried out. The homeowner said he had been having difficulty in contacting the contractor. Each of the homeowner's specific complaints are set out in turn below.

13. Section 1 - the homeowner had three separate complaints under this section, which states that a property factor must provide each with homeowner with a written statement of services (WSS) and sets out the content which should be included in that written statement.

14. The first complaint related to the following paragraph of section 1:

You must provide the written statement:

- *to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage.*

15. The homeowner had originally bought the property jointly with his former partner in 2013. In January 2017, she had transferred her share of the property to him. At that point therefore, he had become the sole owner of the property. He complained that the property factor did not provide him with a copy of the WSS when he became the sole owner.

16. He told the tribunal that his former partner had been responsible for dealings with the property factor. He argued that as he was now a sole owner, this was an entirely new entity from the former joint ownership, and that a new relationship therefore existed between him as sole owner and the property factor. He therefore believed that the property factor had a duty to provide him with a further copy of the WSS when the ownership transferred into his sole name. He argued that because he had not received this, he was unaware of the details of the property factor's authority to act and the services provided.

17. The homeowner also made two other complaints in his application under Section 1.1a. This sets out the various items which should be included in a written statement of services (for situations, such as this one, where the land is owned by the group of homeowners).

18. The tribunal was unclear as to the exact nature of the complaints the homeowner was making. The tribunal chairperson asked him to clarify this and explained that section 1 simply sets out a description of what should be in the WSS, rather than setting out any specific duties.

19. The homeowner said that both of his complaints were under s1.1a A, which states:
- A. *Authority to Act*
 - a. *a statement of the basis of any authority you have to act on behalf of all the homeowners in the group*
 - b. *where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation*
20. With regard to his first complaint, the homeowner indicated that he was now satisfied that the property factor had authority to act in terms of the deeds. The tribunal did not therefore consider this further. He said that his second complaint under this section was that the property factor had not stated the applicable financial threshold for instructing works. It was therefore difficult for him to understand how the property factor determined what were 'major' or 'minor' works. He said this became significant when works were instructed.
21. **Section 2.5** - the homeowner complained that the property factor had failed to comply with this section of the code, which states: *You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).*
22. He told the tribunal that he was complaining about the entire manner in which his complaints had been dealt with, and in particular the time taken by the property factor to respond to these. He said that he had first raised concerns about water ingress by telephone in autumn 2016, but that he had received no correspondence about proposed works to address this until the end of that year. The property factor had said they would pursue the insurers and respond to him, but failed to do this within the timescale advised, and required further prompting. He said that there had been a delay of two years in instructing the works recommended by the timber survey report, which had resulted in additional damage to his property and a loss of rental income.
23. He pointed out that he had first complained to the property factor in various emails dated 10 November 2017, which clearly stated that he was making a complaint. His complaint was not dealt with, however, until he submitted a formal complaint form on 11 September 2018. He said that he had sent a number of emails to the property factor about his complaints because he had failed to elicit a response from them over a period of months. It was only when he sent a complaint to the complaints department that he was told how long the works would take. He said that his emails of 10 November 2017 should have

been dealt with as a complaint, and that if this had been done, he would not have escalated the matter to the tribunal.

24. He also had a specific complaint that the property factor had not advised him that his insurance claim relating to damage to the windows in the property had been rejected on 19 October 2017. In an email to the homeowner dated 20 November 2017, Mr McManus had admitted that the property factor had been slow to advise him about the rejection and had apologised for this.

25. **Section 4.8:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.*

26. The homeowner complained that the property factor had unreasonably commenced court proceedings against him for non-payment of his invoices. The property factor had sent him a notice of intended action in June 2017. He said that he had disputed some of the charges on the invoice at that point, and that the dispute was unresolved. He said he had offered to pay the undisputed charges if the property factor would provide a separate invoice for these, but it had refused to do so. He said he was awaiting the outcome of an insurance claim which he believed would provide money to pay the outstanding sums, and he did not see why he should have to pay the money upfront and then receive it back once the claim had been settled. He was unhappy at the outcome of his formal complaint and had advised the property factor that he wished to raise the matter with the tribunal.

27. The property factor had however gone ahead and raised a simple procedure action against him in the sheriff court without issuing a further notice of intent, and before its own internal complaints procedure was exhausted in December 2018. He complained that the property factor had not given him the opportunity to have the disputed amount referred to the tribunal before commencing court action, and that it had not given him sufficient notice of the intended court action. The action had first called in court shortly after he received the property factor's final response on his complaint. The court had paused the action pending the outcome of the present tribunal application.

28. **Section 5.3:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance provider. You must disclose any other charge you make for providing the insurance.*

29. The homeowner told the tribunal that his complaint was that he did not know exactly what he was being billed for when he paid for the common insurance policy, or how much of this goes to the property factor. He said that the property factor only has a generic statement in its WSS regarding commission paid to it. He also said that he was not provided with sufficient information about the current insurance provider in order to be unable to make a sensible decision about whether to stay with that provider, in light of the property factor's current intention to consider a new provider.
30. **Section 5.5:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.*
31. The homeowner had made three insurance claims relating to repairs issues within the property. The first of these was for repairs following the collapse of his kitchen ceiling caused by a leaking water tank in around October 2016. The ceiling repairs had been authorised by the common insurer and completed in February 2017.
32. The second claim related to damage to his windows which he believed had occurred due to overflowing gutters. The latter claim, which was notified to the property factor in September 2017, was repudiated by the insurer on the basis that the damage was due to wear and tear. Part of the homeowner's complaint related specifically to the one-month delay in the property factor informing him about the repudiation of this claim, as discussed above in relation to his section 2.5 complaint.
33. The third claim related to the dry rot works. It was not clear to the tribunal exactly when this claim had been made, although it seemed to have been made by the homeowner. The homeowner complained that the property factor had failed to progress this claim, and was treating it differently from the first claim, saying that this was a secondary incident.
34. He indicated that he had a more general complaint that the property factor had not kept him informed about the progress of, and timescales for, the various insurance claims, particularly prior to Mr McManus becoming involved. He said that, following his initial complaint in November 2017, Mr McManus said he would pursue the insurers and get back to him, but that he had failed to do so within the timescale indicated, and he had had to prompt him about this.
35. He felt that the property factor had treated his various insurance complaints differently and said he could not understand why this was the case. He said that the property factor had sorted the first claim out without difficulty, but with

the third claim it was pushing the responsibility for dealing with the claim onto him. He was unhappy that he was required to pay insurance premiums (which PF said he hadn't been paying) when the work hadn't been done.

36. **Section 6.1:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*
37. On the basis of the evidence presented to it, the tribunal found it difficult to ascertain exactly what the homeowner's complaint was under this section. There appeared to be two aspects to his complaint. Firstly, he complained in his application that the property factor had failed to provide updates on repairs issues which were first reported in 2016, with the timber survey not having been carried out until a year later, during which time further damage had occurred in the adjacent rooms. He said that he had to appoint his own contractors to remove mould spores so that he could rent out the property. He complained that it had taken the property factor too long to send out a contractor to assess the damage, which had resulted in further damage, spreading to the room next door.
38. Secondly, he told the tribunal that he also wished to complain that the property factor had carried out some minor works which involved replacing a few roof tiles following his initial complaints about water ingress, rather than waiting until other more comprehensive planned roof works were due to take place and doing all of the work at the same time.
39. **Section 6.4:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.*
40. The homeowner's complaint was that the property factor had not prepared a programme of works with regard to gutter cleaning services. He pointed out that the property factor's written statement of services stated that a visual inspection of tenements would be carried out annually. He believed that there had been a failure to maintain the gutters, which had led to these becoming severely overgrown, contributing to the water ingress into the building.

41. **Section 7.2:** the homeowner complained that the property factor had failed to comply with this section of the code, which states: *When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the applicant is notified in writing. The letter should also provide details of how the homeowner may apply to the homeowner housing panel* [note: this should now be read as referring to the tribunal].

42. The homeowner said that his complaint under this section was that the property factor had not responded to his initial complaint, and that he had not received a final response until after he had submitted a formal complaint. He felt that the property factor should not have raised court proceedings against him for payment before it had issued its final response to his complaint.

Summary of the issues

43. The issue to be determined was whether the property factor had failed to comply with its duties under the various sections of the code under which the homeowner had complained.

Statement of reasons for decision

44. The tribunal found it difficult at times to follow exactly what the homeowner's specific complaints were about. There was also at times a lack of clarity from both parties about what had or had not occurred, and as to the timeline of events. While the tribunal has made every effort to carefully consider each of the homeowner's complaints, it could only determine these on the basis of the evidence which the parties put before it. The tribunal's findings in relation to each of the homeowner's specific complaints are set out below.

Section 1

45. Regarding the homeowner's first complaint under this section, Mr McManus told the tribunal that the property factor had not considered that the transfer into his sole name constituted new ownership. He said that he was not aware of this particular issue having arisen previously. He said that the property factor had issued the homeowner and his former partner with a WSS when they bought the property.

46. The property factor had produced a letter which it had sent on 9 August 2013 to the homeowner and his former partner, enclosing a copy of the WSS. The homeowner did not dispute that the WSS had been sent to them at the time. He also acknowledged that as joint owners, he and his former partner had been jointly responsible for being aware of the services provided by the factor.

47. The tribunal determines that the homeowner was not a new owner at the time he became sole owner. There was therefore no responsibility on the property factor to issue him with a further copy of the WSS on the change of ownership. While the tribunal accepted his evidence that his former partner had taken responsibility for dealing with the property factor prior to the change of ownership, this was an internal matter between them as joint owners. While the tribunal notes that it may be advisable for a property factor to consider reissuing the WSS to a new sole owner in this situation for the avoidance of doubt, it does not consider that this is a requirement under the code.
48. Regarding the homeowner's complaint under s1.1a A about the provision of information on financial thresholds in the WSS, the tribunal notes that there is only a requirement on the property factor to include this *where there is an agreed level of delegated authority*. Mr McManus confirmed that the property factor has one standard WSS which is provided to all homeowners it acts on behalf of. In some instances, there may be additional information which is block specific, which is included in the introductory letter sent to new homeowners with the WSS.
49. He said that while in practice, the property factor operated an internal repairs threshold of £350 which it asked contractors to adhere to, there was no agreed level of delegated authority between the property factor and homeowners within the tenement within which the homeowner's property is situated. No such delegated authority level was included in the Deed of Conditions; Mr McManus pointed out that such provision is not generally found within older tenement deeds.
50. The tribunal has some sympathy with the homeowner on this issue, as it would be helpful for homeowners to be given some indication as to the level at which works are continued to be major or minor works. However, section 1.1a A.b clearly states that information on financial thresholds should be included '*where applicable, a statement of any level of delegated authority.*' This is therefore not a requirement where there is no such agreed level, and the tribunal accepted the property factor's evidence that this was the case in relation to the tenement within which the property is situated.
51. For the reasons set out above, the tribunal therefore determines that the property factor has not breached its duties under section 1 of the code.

Section 2.5

52. Mr McManus told the tribunal that he believed the property factor had responded to all of the homeowner's complaints. He said, however, that because so many emails had been received from him, it was possible that something may have been missed. Regarding the specific instance of a delay

in notifying the homeowner that his insurance claim had been repudiated, he had already admitted and apologised for it. He told the tribunal that the property factor only considered a matter to be a formal complaint when the homeowner initiated the complaints process. The homeowner's formal complaint was received in September 2018 and had been dealt with according to the property factor's complaints procedure.

53. The tribunal agrees with the homeowner that his original complaint made on 10 November 2017 should have been recognised as a complaint and should therefore have been dealt with as such when it was first raised. There had been an exchange of several emails between the parties on 10 November 2017. In his first email to Mr McManus, the homeowner clearly stated that he believed that the property factor had breached sections 1.1; 2; and 5 of the code of conduct. In later email correspondence between them sent on the same day, both parties used the word 'complaint', and the homeowner stated in one of these; *'Bryan...I will allow you more time to parse through the history of the complaints in order that a fully considered response be arrived at.'*
54. In his final complaint response of 20 December 2018, Iain Friel, the property factor's Managing Director, stated: *'I accept that you first used the word complain in November 2017 but we were endeavouring to deal with that over many months and the detailed basis of your complaint was not fully described until 27 August 2018'.*
55. While the tribunal accepts that the property factor did make attempts to address the homeowner's concerns, it considers that the homeowner's email of 10 November 2017 should have been recognised as a complaint and dealt with as such by the property factor at that stage. It considers that had this been done and the issues addressed sooner, much of the later email correspondence, and possibly also some of the later complaints included in the homeowner's application, may have been avoided.
56. The tribunal determines that the property factor failed to deal with the homeowner's initial complaint as quickly and fully as possible, and therefore failed to comply with its duties under section 2.5 of the code.

Section 4.8

57. Mr McManus confirmed that the homeowner had asked for a separate invoice for the undisputed charges, but that the property factor had refused to provide this on the basis that this was not justified. The property factor sent out common charges invoices quarterly to homeowners, and there was no requirement on it to send out separate invoices for undisputed charges. He said that the property factor had to consider the interests of other homeowners, where someone was not paying. As the homeowner had refused to pay the undisputed charges, the

property factor had escalated the matter to court action in line with its procedures when it was not resolved.

58. He said that he had agreed to keep the disputed issues under dispute, and not to pursue these through legal action meantime, and this was borne out by the email correspondence before the tribunal. He told the tribunal that there were three invoices which were disputed by the homeowner. There were two invoices from Hugh Scott Builders totalling £42, and 1 from Kerr Baxter Surveyors for £112. The homeowner confirmed that this was correct.
59. Mr McManus told the tribunal that the homeowner had made no payments at all to his account since March 2017, and his outstanding bill at the time of the adjourned hearing was £3960.15. A notice of intended action had been sent to the homeowner on 19 June 2017 (which then showed an outstanding balance of £365.03 relating to an invoice dated 28 May 2017). The property factor had later sent emails to the homeowner on 11, 18 and 25 June 2018, notifying him that it would commence formal debt recovery proceedings for the debt owed. No payment had been made by the homeowner, however, and the property factor had therefore instructed court proceedings on 27 June 2018. At that point, the outstanding balance due was £1679.59.
60. The property factor provided a copy of its debt recovery process/policy to the tribunal following the initial hearing. This process has four stages, the first of which is the production of the common charges account. Stage 2 involves the sending of a final notice 16 days after the account is rendered. At stage 3, after 35 days, a Notice of Intended Action is sent to the homeowner. Stage 4, which occurs after 45 days, depends on the outstanding balance. Where there is a balance exceeding £200, as was the case here, the account is referred to a solicitor for legal action, and the policy states that the property factor will seek to obtain a court decree for payment. The policy makes clear that *'the undisputed proportion of an account should be payable at all times and cannot be unreasonably withheld.'*
61. While it seems that the property factor waited considerably longer than the 45 days required by its debt recovery process before taking legal action, it otherwise appears to have followed its debt recovery process. The homeowner was actually given several further opportunities, over and above those provided for by the process, to pay the outstanding undisputed balance before initiating legal action.
62. The tribunal is satisfied on the basis of the evidence before it that the property factor took reasonable steps to resolve the matter before taking legal action against the homeowner, and that it gave him adequate notice of its intention to

do so. It therefore determines that the property factor has not failed to comply with its duties under section 4.8 of the code.

Section 5.3

63. Mr McManus told the tribunal that while the information on insurance commission included in the WSS was generic, there was a separate insurance schedule for each individual tenement block. He said that this would have been sent to the homeowner initially with the WSS in 2013. A further copy of this had been sent to the homeowner by the property factor with its formal complaint response of 10 October 2018, which was before the tribunal. This set out the details of the common insurance policy for the block. Mr McManus confirmed that this was also published online. The rates of commission paid to the property factor by the insurer were clearly stated on the 'Q and A' document which had been sent with the insurance schedule.

64. The homeowner accepted that the issue he had raised regarding the property factor's intention to consider a new provider was not part of his application. The tribunal was therefore unable to consider this issue.

65. The tribunal accepted the property factor's evidence regarding the insurance schedule and was satisfied that the homeowner had been provided with information about commission paid to the property factor for arranging insurance, and other charges made for providing the insurance. It therefore determines that the property factor has not failed to comply with section 5.3 of the code.

Section 5.5

66. Mr McManus told the tribunal that the property factor had been in constant communication with the homeowner regarding his various insurance claims. The original insurance claim for the water tank leak had been dealt with and the work carried out within six months, which included the Christmas period. The claim in respect of the windows had been repudiated, and (as discussed above in relation to the 2.5 complaint) he had already apologised to the homeowner for the delay in informing him of this.

67. The homeowner's complaint seemed to relate primarily to the third claim, which was the secondary claim in respect of the dry rot work. This was a separate claim to the initial water ingress claim. Mr McManus said that because the homeowner had already instructed works to remove spores, this had a potential impact on the claim. Given the nature of the works, this was being treated as a private claim and it was for the homeowner to instruct the works once the insurer had approved these.

68. He said that the property factor had on several occasions requested further information from the homeowner about costs which he wished to include as part of his claims. He had not provided this, however, and the insurance claims had not been progressed as a result.
69. He confirmed at the adjourned hearing that the homeowner had now provided the required information, and that the insurance company had now approved the quote for the work. The homeowner was now in a position to go ahead and instruct the work himself.
70. There was no clear evidence before the tribunal that the property factor had failed to keep the homeowner updated on his first insurance claim. There was email correspondence before the tribunal which showed that there had been a delay in the homeowner being refunded for a redecoration claim, which appeared to be primarily because he had not provided invoices which the property factor had requested on several occasions. With regard to the claim regarding the windows, the property factor had already admitted that there had been a delay in updating the homeowner on the repudiation of that claim. With regard to the third claim for the dry rot works, again there was email correspondence before the tribunal which showed that the homeowner had been asked for information to support his claim several times going back to at least August 2018.
71. On the basis of the evidence before it, the tribunal determined that the property factor had failed to comply with section 5.5 of the code, but only in respect of the delay in informing the homeowner of the repudiation of one of his insurance claims, which the property factor had admitted. With regard to the other claims, it appeared that any delays could at least to some extent be attributed to the homeowner's failure to provide information required by the insurer promptly.

Section 6.1

72. Regarding the homeowner's complaint about the property factor's alleged failure to keep him updated on the issues arising from the water ingress first reported in October 2016, this appeared to rest partly on his contention that the two incidents of water ingress were related. The property factor's position was that these were in fact two separate matters. Mr McManus told the tribunal that the initial water ingress into the kitchen had come from the water tank in the attic, whereas the second incident in the study had resulted from issues with the roof. He said that it was not possible to tell whether the dry rot had resulted from the water tank leak.
73. With regard to the initial water tank leak, the necessary repairs had been carried out relatively quickly, and the homeowner acknowledged this. His primary concern appeared to be the length of time which it had taken to instruct the dry

rot survey, and to carry out the works recommended. While as discussed above in relation to section 5.5, some of the delay in the works being carried out was due to the homeowner failing to provide information required by the insurer, it was not clear to the tribunal why the survey had not been carried out until January 2018. Given the lack of clarity as to the exact nature of the homeowner's complaint, and also the lack of clarity in the evidence put forward by both parties, the tribunal determined that there was not sufficient evidence before it to support a finding that the property factor had failed to comply with section 6.1.

74. With regard to the homeowner's second complaint about the replacement of the roof tiles, the tribunal did not consider that this complaint was actually covered by section 6.1, and therefore found that there had been no breach of that section in respect of this.

Section 6.4

75. Mr McManus told the tribunal that the property factor had no programme of works in relation to the tenement. He said it could not provide a programme of works in relation to the building, as the only works which would be required regularly would be the gutter cleaning. He said that subsequent to the homeowner's application, it had now been agreed with homeowners that the gutters would be cleaned annually late in the year, after leaf fall. This was confirmed in email correspondence between the parties dated 25 September 2019 which was before the tribunal.
76. The homeowner said that this was not specific enough and queried what 'late in the year' meant. He also said that the information provided by the property factor was not a schedule and did not refer to the gutter inspections being carried out after the leaves had fallen.
77. The tribunal determines that, as the property factor is required in terms of its WSS to carry out periodic (annual) inspections, it is therefore required in terms of section 6.4 to provide a programme of works. While in this instance, it appears that the programme of works would in this case only include the gutter cleaning, the property factor should prepare such a programme of works and send this to homeowners.
78. The tribunal therefore determines that the property factor had failed to comply with section 6.4 as at the time the homeowner's application was made.

Section 7.2

79. Ms Knox pointed out to the tribunal that the property factor's final response to the homeowner's complaint dated 20 December 2018 had been sent by Iain Friel, the property factor's Managing Director, and provided details of the

tribunal. She therefore submitted that the property factor had complied with section 7.2. The homeowner accepted that the final response was compliant but said that his complaint was that as a result of the property factor's failure to signpost him to the tribunal, he had ended up being taken to court for non-payment of common charges.

80. Given the nature of the homeowner's complaints, and the relatively small proportion of the common charges which he disputed, the tribunal does not accept his argument that the property factor would not have taken legal action against him had he been directed to the tribunal sooner. The homeowner had a responsibility to pay the undisputed proportion of his common charges but had not done so.
81. The tribunal considers that the property factor did not recognise the homeowner's complaints, or respond adequately to them, at an early enough stage, and has found that it therefore breached section 2.5 of the code. Once the complaint was recognised, however, it was clear that the property factor had followed the correct process. The tribunal determines that the property factor did not fail to comply with section 7.2 of the code.

Observations by the tribunal

82. The tribunal observes that the homeowner appeared to believe that because he had disputed three invoices totalling £154, he was not under an obligation to continue paying his invoices until his complaints had been considered by the tribunal. He had not paid his common charges, including his insurance premiums, since March 2017, and had an outstanding balance of nearly £4000 as at the date of the adjourned hearing. He appeared to expect that any insurance money would go towards paying his outstanding charges, rather than his having to pay the charges first. Although he had not paid his common insurance premiums for some time, he expected the insurance company to pay for the works.
83. The simple procedure action against the homeowner for recovery of common charges and fees had been paused in the sheriff court pending the tribunal's decision, apparently because there were some disputed charges on his account. The property factor had not, however, pursued the disputed charges, which accounted for a very small proportion of the outstanding sums.
84. All homeowners within a tenement have a responsibility to pay for their share of common charges. If they do not do so, the property factor is unable to carry out maintenance and repairs to the building. The Deed of Conditions here clearly states that proprietors within the tenement must pay the property factor for works undertaken or services performed. It also states that the property

factor has the right to take legal action against homeowners where they fail to pay these charges.

Proposed Property Factor Enforcement Order

85. The tribunal proposes to make a Property Factor Enforcement Order (PFE0) as detailed in the accompanying Section 19(2) (a) notice.

Right of appeal

86. 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.

Signed..... Date 22/1/20

Sarah O'Neill, Chairperson