



**Statement of Decision with reasons by the First-tier Tribunal for Scotland  
(Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal  
for Scotland Housing and Property Chamber (Procedure) Regulations 2017  
("the Rules") in respect of Applications made under Section 17 of the Property  
Factors (Scotland) Act 2011 ("the Act")**

**Reference number:** FTS/HPC/PF/19/2307 and PF/23/1461 ("the Applications")

**Re:** Property at Flat 4/1, 11 Kent Road, Glasgow G3 7EH ("the Property"), being part of a development of 66 flatted houses and commercial properties ("the Development")

**The Parties:**

Mrs Tolani Hassan of Flat 4/1, 11 Kent Road, Glasgow G3 7E ("the Homeowner")

Miller Property Management Ltd, Suite 2.2, Waverley House, Caird Park, Hamilton ML3 0QA ("the Property Factor")

**Tribunal Members:**

Karen Moore (Legal Member) and Andrew Taylor (Surveyor Member)

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined: -

that with reference to Application FTS/HPC/PF/19/2307, the Property Factor failed to comply with the Section 14 duty in respect of Sections 2.5, 6.1 and 6.4 of the Property Factor Code of Conduct effective until 16 August 2021 ("the 2012 Code"), all as required by Section 14(5) of the Act.

The Tribunal further determined that the Property Factor failed to comply with the Property Factor Duties.

that with reference to Application FTS/HPC/PF/23/1461, the Property Factor failed to comply with the Section 14 duty in respect of compliance with Sections OSP2, OSP11, 2.7, 6.4, 6.6 and 7.2 of the Property Factor Code of Conduct effective after 16 August 2021 (“the 2021 Code”), all as required by Section 14(5) of the Act.

#### Property Factor Code of Conduct 2021

The Tribunal further determined that the Property Factor failed to comply with the Property Factor Duties.

The Tribunal proposed to make a Property Factor Enforcement Order.

#### **Procedural timeline and background.**

1. By application received between 23 July 2019 and 28 August 2019, the Homeowner, Mrs. Hassan, applied to the Tribunal for a determination that the Property Factor had failed to comply with Section 2.5, 6.1, 6.3 and 7.5 of the Property Factor Code of Conduct effective until 16 August 2021 (“the 2012 Code”), all as required by Section 14(5) of the Act. The application also complained of a failure to comply with Property Factor Duties. A bundle of documents being, in the main, copy correspondence between the Parties and copy correspondence with third parties such as insurer and loss adjusters all relating to water ingress at the Property accompanied the Application. Photographs of the internal parts of the Property were also submitted. This application was accepted by the tribunal chamber on 9 September 2019 and was given reference number FTS/PF/19/2307.
2. A Hearing was held on 7 November 2019. No evidence was led and no decision was made at that Hearing session.
3. Following that Hearing session, the then Tribunal issued a Direction requiring the Property Factor to lodge a copy of the Deed of Conditions and a copy of the common buildings insurance policy relating to the Development.

4. A further Hearing session, to be treated as a case management discussion, was fixed for 7 January 2020 and postponed to 25 February 2020. The discussion at that session focused on the actions taken by the Property Factor to address the water ingress and the progress being made with third party insurers and others to resolve matters. The Property Factor was advised by the then Tribunal to take legal advice on the wording of the Deed of Declarations of Conditions with regard to the definition of common parts.
5. Further procedural sessions were postponed by Order of the Chamber President in response to the management of tribunal cases in light of the Covid 19 outbreak.
6. Following relaxation of the Covid 19 protocols, a Hearing by conference call and treated as a case management discussion was held on 16 October 2020. Again, the discussion focused on the actions taken by the Property Factor to address the water ingress and the progress being made with the third party insurers to resolve matters since the date on which the application was lodged. The Property Factor undertook to arrange an investigation by way of a dye test to try to establish the cause and root of the water ingress. The dye test was carried out on 4 November 2020.
7. Following the dye test, the then Tribunal issued the following Direction: "*The Property Factor is required to provide: A response in respect of the recent dye test confirming that the source of the leak to the Property is not from the balcony of Ms McGhee upstairs, which response should indicate what steps the Property Factor is going to take to urgently identify the source of the longstanding water penetration to the Property, what professional consultants it will instruct to undertake any necessary work to do so, and the timescales in which it will take these steps.*"
8. The Property Factor was asked to respond by 4 December 2020 ahead of a further Hearing session fixed for 9 December 2020. The Property Factor did not respond and so the Hearing fixed for 9 December 2020 was postponed.

9. The then Tribunal proposed to carry out a site visit. The ongoing Covid 19 restrictions prevented a Tribunal site visit taking place. Accordingly, the then Tribunal issued a further Direction requiring the Property Factor to provide: “*A response confirming what steps the Property Factor is taking to urgently identify the source of the longstanding water penetration to the Property and what professional consultants it intends to instruct to undertake any necessary work to do so. The said documentation should be lodged with the Chamber no later than close of business on 26th March 2021*”.
10. Correspondence from the Parties indicated that a site visit by contractors on behalf of the Property Factor had taken place in May 2021. The then Tribunal issued another Direction requiring the Property Factor to provide “*A report on the outcome of his site visit with consultants in May 2021, and on his proposals to progress matters. The said documentation should be lodged with the Chamber no later than close of business on 9th July 2021*”.
11. In compliance with that Direction, the Property Factor lodged a Specific Defect Report. The then Tribunal took the view that a Tribunal site visit was not required and issued the following Direction: “*The Property Factor is required to provide: 1. A report on the actions he is taking to progress the required repair work identified in the expert reports obtained by him in May 2021. The said documentation should be lodged with the Chamber no later than close of business on 23rd July 2021.*”
12. A further Hearing session, again treated as a case management discussion, was held on 16 September 2021. Again, the discussion focused on the actions taken by the Property Factor to address the water ingress and on the contents of the technical report obtained in May 2021. Another Direction was issued as follows: “*The Property Factor is required to: 1. Instruct the contractor, Prime Roof Solutions, to carry out exploratory investigation of the balcony at Flat 5/1 and routes of water ingress to Flat 4/1 under direction/supervision of the consultants Mr Craig and Mr Campbell. 2. Thereafter to instruct the consultants, Mr Craig and Mr Campbell, to provide an assessment of their findings and to prepare drawings/specification/tender*

*documentation for required remedial works. 3. Thereafter with Mr Craig and Mr Campbell to select suitable contractors to undertake the required remedial work and invite tenders from them. 4. Thereafter the selected contractors to price the tender documents. 5. Thereafter on receipt of tenders to obtain reports assessing those from Mr Craig and Mr Campbell, and to select a preferred contractor. 6. Thereafter to issue consultation/mandate exercise with development property owners. The said documentation should be lodged with the Chamber no later than close of business on 15th November 2021.”*

13. The then Tribunal issued a follow-up Direction requiring the Property Factor to “*Provide a program of works for the major investigation works to be carried out at the Property, including proposed start and end dates for those works. The said documentation should be lodged with the Chamber no later than close of business on 8th April 2022*”, and, on 25 August 2022, issued a further Direction requiring the Property Factor to: “*1. Provide an explanation as to why its representative advised the Tribunal by email of 27th June 2022 that the Scaffolding Permit had been granted and the Factor had made enquiries to see if they are still working towards a start date of 5th July 2022, but thereafter the Property Factor’s representative advised the Tribunal by e-mail dated 20th July 2022 that the contractor was still not able to obtain the scaffolding permit from Glasgow City Council. 2. Confirm whether or not a scaffolding permit has now been granted, if a permit has not yet been granted the reason for the delay, and the projected start date for the remedial works. The said documentation should be lodged with the Chamber no later than close of business on 9th September 2022.*” The Property Factor’s solicitors replied as follows “*He was led to believe from Mr Craig that consent had been provided – which from his explanation it had subject to payment being made. As Mr Craig explains that payment was not made. 2) A scaffolding permit has not been granted. The reasons for the delay are as set out by Mr Craig. Based on what Mr Craig has indicated and subsequent clarification sought by the Property Factor a further update is awaited from the Main Contractor. We have asked to be kept informed of the application process and shall relay further news to the Tribunal*”

14. A further Hearing session was held on 29 November 2022. The outcome of that Hearing session was that as matters had not resolved, the then Tribunal would inspect the Property to assess the matters complained of for itself. No evidence was heard.
15. A Tribunal site inspection was carried out on 19 January 2023 following which a Hearing was held on 17 April 2023 by conference call. At that Hearing, the Parties agreed that no evidence was required in respect of the history of the application, the previous discussions and the written material submitted by both Parties. The Property Factor asserted that it was their understanding from the title deeds that the substructure of the balcony above the Property did not form part of the flat common parts or the development common parts. The then Tribunal again drew the Property Factor's attention to the definitions of "common parts" and "development common parts" contained in clause 1 "Definitions" of the Deed of Declaration of Conditions, registered 18 Feb 2009, by Logangate Limited, and, in particular, to the final sentence of Clause 3.5.4, which states "*For the avoidance of doubt, the underlying structure of the roof, regardless of any rights or interests in the said balcony, will comprise part of the Development Common Parts*";
16. The then Tribunal's preliminary view of these provisions was that the sub-structure of the balcony appeared to be a common part but invited Mr. Miller for the Property Factor to provide legal representations to the contrary for the Tribunal to consider, as his understanding appeared to be different on that point.
17. At that Hearing session, Mrs. Hassan confirmed that she sought to claim compensation for monetary losses she had sustained and continued to sustain because of the alleged breaches of the 2012 Code. The then Tribunal explained that to consider such a claim, Mrs. Hassan would require to provide the Tribunal with the figure for compensation which she sought, an explanation and calculation of how the sum was comprised and why it was caused by any breaches of the 2012 Code by the Property Factor. The then Tribunal advised Mrs. Hassan that it could only consider potential

compensation for events which took place before 15 August 2021. If she wished to make a complaint for events which occurred after 16 August 2021, and seek compensation from that date, she required to submit an additional application.

18. The outcome of the Hearing on 17 April 2023 was that the then Tribunal issued a Direction to the Parties as follows: *The Homeowner is required to: 1. Provide in a written representation to the Tribunal the figure for compensation which she seeks in respect of any breaches by the Property Factor of the Code of Conduct for Property Factors, together with an explanation and calculation of what that sum is comprised of and why it was caused by any breaches of the Code of Conduct by the Property Factor. The Property Factor is required to: 1. Provide written legal representations concerning whether or not the substructure of the balcony of Flat 5/1, which is located directly above the Property, is a common part or development common part of the block of flats of which both the Property and Flat 5/1 form part. The said documentation should be lodged with the Chamber no later than close of business on 2nd June 2023.* The Parties lodged email responses to the Direction which complied in part.
19. By application received between 10 May 2023 and 2 August 2023, the Homeowner, Mrs. Hassan, applied to the Tribunal for a determination that the Property Factor had failed to comply with Sections OSP2, OSP11, 2.7, 6.4, 6.6 and 7.2 of the Property Factor Code of Conduct effective after 16 August 2021 (“the 2021 Code”), all as required by Section 14(5) of the Act. The application also complained of a failure to comply with Property Factor Duties. A calculation of financial loss accompanied the application. This application was accepted by the tribunal chamber on 2 August 2023 and was given reference number FTS/PF/23/1461. This application was conjoined with application FTS/PF/19/2307.
20. A Hearing on the conjoined Applications was fixed for 18 September 2023 and postponed to 17 January 2024 on which date the then Tribunal heard from both Parties. The then Tribunal took the view that further information was

required before it heard evidence on the matters to be addressed. At the Hearing on 17 January 2024, the Property Factor undertook to arrange regular monitoring of the water ingress and dampness and to report this to the Homeowner and the Tribunal.

21. The Hearing of 17 January 2024 was adjourned and a Direction to assist the Parties to focus on the key points was issued in the following term: "*The Homeowner is required to: 1. Provide in a written representation to the Tribunal the figure for compensation which she seeks in respect of any breaches by the Property Factor of the Code of Conduct for Property Factors, together with an explanation and calculation of what that sum is comprised of and why it was caused by any breaches of the Code of Conduct by the Property Factor. 2. Provide access to the Property upon advance notice being given to her by the Property Factor of the time of such access, for the purposes of monitoring of damp levels in the Property at the site of the water penetration previously identified. The Property Factor is required to: 1. Provide written legal representations concerning whether or not the substructure of the balcony of Flat 5/1, which is located directly above the Property, is a common part or development common part of the block of flats of which both the Property and Flat 5/1 form part. 2. Instruct the contractor who carried out the remedial work to the balcony substructure of Flat 5/1 and/or C&S Architects to attend at the Property at the end of January, February and March 2024 for the purposes of carrying out the monitoring recommended in C&S Architect's report to the Property Factor of 12th December 2023, and to provide to the Tribunal in advance of the continued Hearing date to be set a written report of the findings of that monitoring. The said documentation should be lodged with the Chamber no later than close of business on 10th April 2024.*"
22. The Legal Member of the Tribunal was replaced and a Hearing on the conjoined Applications was fixed for 17 April 2024. That Hearing was postponed to 20 August 2024.

23. A Hearing of evidence was heard in part on 20 August 2024 and adjourned until 21 January 2025. The evidence in respect of the core substantive elements of the conjoined Applications was concluded on 21 January 2025.

24. One of the outcomes sought by Mrs. Hassan is a payment order for compensation of her losses. This was opposed by Mr. Miller. The Tribunal noted that, although Mrs. Hassan had submitted a calculation of losses, the calculation is not fully evidenced. The Tribunal advised that it would adjourn for Mrs. Hassan to detail her claim in full and for Mr. Miller to respond to this. The Tribunal discussed with the Parties the possibility of dealing with the compensation claim by written submissions and in terms of Rule 18 of the Rules. The Parties agreed that this is acceptable to them.

25. The Tribunal issued the following Direction: *the Tribunal directs, Mrs. Hassan to:*

- i) *Provide a written representation to the Tribunal which sets out the Heads of Claim and the amount of compensation which she seeks in respect of any breaches by the Property Factor of the Codes of Conduct for Property Factors.*
- ii) *The representation should explain the direct link between each Head of Claim and the conduct of the Property Factor;*
- iii) *The representation should set out the amount sought in respect of each Head of Claim together with a calculation of what that amount comprises and how it has been calculated;*
- iv) *Each amount sought should be evidenced by the production of receipted invoices or proof of payment or documentary evidence in support of proof of financial loss.*

*The Homeowner should lodge her response with the Tribunal and the Property Factor no later than **1 March 2025**.*

*The Property Factor is **directed** to submit their response, if any, to the Homeowner's compliance with the above Direction no later than **28 March 2025** and should lodge their response with the Tribunal and the Homeowner no later than that date."*

26. The Parties complied with this Direction.

### **Evidence at Hearings**

27. At the Hearing of evidence which took place on 20 August 2024 at 10.00 at the Glasgow Tribunal Centre, York Street, Glasgow, the Homeowner, Mrs. Hassan, was present and unrepresented. The Property Factor was represented by Mr. H. Miller, their director. The Tribunal heard from Mrs. Hassan and her witness, Miss McGhee, in respect of the complaints relating to both Codes and heard from Mr. Miller in response.

28. The adjourned Hearing of evidence took place on 21 January 2025 at 10.00 at the Glasgow Tribunal Centre, York Street, Glasgow. Mrs. Hassan was present and unrepresented. The Property Factor was represented by Mr. H. Miller. The Tribunal heard from Mrs. Hassan and her witness, Miss McGhee, in respect of the complaints relating to the Property Factor Duties and heard from Mr. Miller in response.

### **The Homeowner's Evidence**

29. Mrs. Hassan gave evidence on her own behalf. With reference to the correspondence submitted by her before and during the proceedings, she explained that water had begun to leak into the Property from the flat above in or around December 2015. With regard to the construction of the Property, Mrs. Hassan explained that the balcony of flat 5/1 which is owned by her neighbour, Miss McGhee, is directly above the living room of the Property and is the roof/ceiling of the Property. Mrs. Hassan explained that the water ingress had caused damage to the living room ceiling of the Property and is continuing to do so. She stated that the water ingress is not constant but occurs when there are storms or heavy rain.

30. Mrs. Hassan explained that the water ingress was reported to the Property Factor in or around December 2015 and January 2016, that the Property Factor initially dealt with the matter as a common repair and began to take action, firstly, with the building defects insurers, Premier, and, then, with the buildings' insurers, Liverpool Victoria, later Allianz Insurers, and their respective claims handlers and loss adjusters. The insurance claims did not proceed to claims being accepted and the water ingress being resolved.

31. With regard to insurance claims, Mrs. Hassan confirmed that she had made a claim for decoration of the Property in the early stages of the water ingress issue. She stated that she had made insurance claims herself as far she was able to do so given the nature of the water ingress. One such claim was with MD Insurance who appeared to be willing to deal with the claim on behalf of Mrs. Hassan and her co-owners as a claim in respect of a common part. This claim required the consent of and authorisation from the co-owners in the Development. Mrs. Hassan stated that both she and MD Insurance asked the Property Factor for assistance in organising this but they refused to assist and so the claim did not proceed. Mrs. Hassan stated that MD Insurance would have met the full cost of the water ingress repair and that there would have been no costs or outlays for her and her co-owners. Accordingly, in her view, the whole matter would have been dealt with satisfactorily.

32. With reference to the productions lodged, Mrs. Hassan explained that, since April 2016, various contractors, surveyors and buildings professionals, some of whom were instructed by the insurers, have carried out inspections and have made both observations and recommendations in respect of the cause of the water ingress, with varying results. Jet hosing was carried out to try to pinpoint the source, repairs were carried out to an external drainage pipe, an inspection of the balcony doors and a detailed inspection of the membrane of balcony of Flat 5/1 above were carried out but the problem persisted without an explanation or a remedy being found.

33. With regard to the building professionals' reports and with reference to the reports lodged, Mrs. Hassan stated that the Property Factor refused or failed

to act promptly on the recommendations of the reports. She explained that before the involvement of the tribunal process, the Property Factor had ignored her requests to instruct competent professionals to investigate the water ingress. She stated that the Property Factor had relied on contractors who did not have the required technical knowledge or skill set. Mrs. Hassan stated that the Property Factor either failed to provide updates on work which had been instructed or gave wrong or inaccurate updates. The investigation and report by C&S Architects had been delayed because of issues with road closures and obtaining a permit for scaffolding but the Property Factor did not advise her of this and had, in fact, misled the Tribunal in respect of these delays.

34. Mrs. Hassan stated that her complaint was not just the continued failure of the Property Factor to resolve the water ingress issue but also the lack of information and updates received from the Property Factor throughout the process, with the Property Factor eventually taking the view that the cause of the water ingress was not a common repair issue but was an issue with the balcony of Flat 5/1 above the Property and so refused to deal with the matter. Mrs. Hassan referred the Tribunal to various pieces of correspondence which the Property Factor failed to answer, failed to answer fully or delayed in answering. The correspondence related to both correspondence with Mrs. Hassan herself and correspondence with the insurers and claims handlers.

35. With regard to the tone and content of the Property Factor's communications, Mrs. Hassan drew the Tribunal's attention to inaccurate statements set out in the Property Factor's regular newsletters to the owners of the block. She stated that she found the content to be offensive and slanderous to both her and her neighbour, Miss McGhee. Examples referred to were the way in which the Property Factor changed wording regarding the balconies to suit their own interpretation of the title deeds and comments that she, as the owner of the Property, and Miss McGhee, as the owner of Flat 5/1, had been abusive to contractors.

36. With reference to the definitions and the wording of clause 3.5.4 set out in Deed of Declaration of Conditions by Logangate Limited, Mrs. Hassan noted that it is clear that the substructure of the balcony of Flat 5/1 is a common part and so is within the remit of the Property Factor and within the liability of all of the owners.

37. Mrs. Hassan also pointed out that the Property Factor had not provided her with a WSS within the prescribed timeframe.

38. Mrs. Hassan confirmed that her complaint in respect of property factor duties was non-compliance of the Codes.

39. Miss McGhee gave evidence in support of Mrs. Hassan. She confirmed the lengthy and unsuccessful progress with both insurers and contractors and the lack of communication and updates received from the Property Factor. With reference to a particular site visit by contractor, Jim Hutton, to inspect the `balcony membrane, Miss McGhee stated that she had noticed a workman kneeling down with a Stanley knife in his hand close to the membrane surface, speculating that his actions could have caused damage. Miss McGhee stated that she also found the content of the newsletters issued by the Property Factor to be offensive and slanderous.

40. In response to questions from Mr. Miller, Miss McGhee accepted that she had not carried out maintenance work to the structure or the underlying substructure of the balcony.

### **The Property Factor's Evidence.**

41. Mr. H. Miller gave evidence on behalf of the Property Factor. He accepted that a report of water ingress at the living room ceiling of the Property had been reported at the end of 2015 or beginning of January 2016. He accepted that he had treated this report as part of the factoring duties at that time and had assisted with insurance claims, first, with the building defects insurers, Premier, and, then, with the buildings' insurers, Liverpool Victoria and Allianz

Insurers. He stressed that the Property Factor had not dealt with the Premier claim as a property factor, the Property Factor's view being that the claim was outwith the scope of factoring as it related to the specific ownership of Flat 5/1. He stated that he had simply assisted Miss McGhee with the claim. He accepted that the Property Factor had dealt with matters with the buildings insurers at first but later took the view, that as the issue was not a common repair, it was not the role of a property factor.

42. With regard to the MD Insurance claim, Mr. Miller's position was that, as the claim had been made by Mrs. Hassan, the Property Factor had no remit, regardless of the fact that it was being treated as a common repair. Mr. Miller stated that there had been three insurance claims in all and it had been Mrs. Hassan who cancelled one of the claims. He stated that Mrs. Hassan had had one insurance claim for internal décor settled in her favour.
43. Mr. Miller flatly denied any breaches of the Codes. He stated that he had hand delivered the WSS in 2013 and that he hand delivers all newsletters, accounts and items of correspondence to all of the owners in the Development.
44. Mr. Miller strongly asserted that the balcony of Flat 5/1 was exclusively owned by Miss McGhee and did not accept that any part of the balcony was common with the Property. He repeatedly used the word "exclusive" when referring to the balcony. With reference to the definitions in the Deed of Declaration of Conditions by Logangate Limited, Mr. Miller referred to an email dated 9 August 2023 from the solicitor who, he said, had drafted the Deed of Declarations of Conditions. Mr. Miller stated that this email supports his view that the balcony is "exclusive". Mr. Miller stated that the Tenements (Scotland) Act 2004 and the Title Conditions (Scotland) Act 2003 define "exclusive areas", which definitions are confirmed by Glasgow City Council advice. However, he could not elaborate further as to what he meant by these assertions with reference to the balcony in question and the wording of the Deed of Declaration of Conditions.

45. Mr. Miller stated that there are metal balcony walkways which are common and Juliet balconies which are exclusive to the individual flats which they serve. He referred to the balcony of Flat 5/1 as a terrace balcony.

46. Mr. Miller stated that the failure of Miss McGhee to carry out any maintenance work to the balcony is a contributory factor in the water ingress but could not say in what way this is a contributory factor.

47. Mr. Miller advised the Tribunal that Flat 7/6 at the Development has recently been purchased, that the new owners are happy that their balcony is in their exclusive ownership and that they accept liability and responsibility for the balcony. Mr. Miller did not expand further on this point.

48. With regard to not issuing a final letter in the complaints procedure as required by the Codes, Mr. Miller maintained that as the complaints process had not been completed, there is no obligation to issue a final letter.

#### **Additional Evidence before the Tribunal.**

49. In addition to hearing from the Parties, the Tribunal had a significant amount of written material and productions lodged by both Parties of their own accord or in response to the Directions issued.

50. This additional evidence comprised:

- i) Photographs of the living room ceiling of the Property taken at various stages before the Applications were lodged and as the proceedings progressed;
- ii) Copy of the WSS;
- iii) Copy correspondence between the Parties from before the Applications were lodged and as the proceedings progressed;
- iv) Copy correspondence between the Property Factor and contractors and insurers from before the Applications were lodged and as the proceedings progressed;

- v) Copy correspondence from Mrs. Hassan to the Property Factor's then agents from around October 2020 to April 2021 chasing for replies and updates;
- vi) Written representations in email form from both Parties to the Tribunal setting out their positions in respect of the Applications and commenting on documents lodged;
- vii) Copy correspondence from Jim Hutton of Prime Roofing to the Property Factor regarding site visit and Miss McGhee's comment on Stanley knife refuting that this incident had occurred;
- viii) Copy correspondence from Miss McGhee in respect of the contractors;
- ix) Copies of the Property Factor's newsletters dated 6 April 2019, 10 April 2020, 25 August 2023, 15 September 2023 and 19 September 2023;
- x) Copy correspondence between Mrs. Hassan and MD Insurance and from both Mrs. Hassan and MD Insurance to the Property Factor circa May 2017;
- xi) Copy correspondence between Mrs. Hassan and the insurers and their respective claims handler/loss adjustors;
- xii) Copy partial missives in respect of Miss McGhee's purchase of Flat 5/1;
- xiii) Copy land certificate GLA207381 incorporating Deed of Declaration of Conditions, registered 18 Feb 2009, by Logangate Limited;
- xiv) Allianz insurance policy document;
- xv) Copy Aidan O'Connell Associates (AOCA) Site Inspection Record of 27 January 2018 with photos concluding that water ingressed from a defect in the waterproof membrane of the balcony of Flat 5/1;
- xvi) Copy letter from Vericlaim enclosing the Aidan O'Connell Associates Report, to Mrs. Hassan dated 12 March 2018 advising that a claim would be accepted but that the aggregation of claim excess payments would exceed the cost of the claim;
- xvii) Copy Engineer's Report by Grossart Associates 4 May 2021 regarding dye testing and noting that dye testing was not conclusive;
- xviii) Specific Defect Report by C&S Architects and Bob Craig July 2023 concluding that water ingress is from a failure of the water proof membrane of Flat 5/1 above the Property;

- xix) Copy email from the Brian Dennison dated 9 August 2023 to the Property Factor expressing an opinion on the drafting of the Deed of Declaration of Conditions, registered 18 Feb 2009, by Logangate Limited with reference to Flat 5/1;
- xx) Copy emails from Bob Craig of C&S Architects to Property Factor containing Inspection Reports with photographs dated October 2021 and 5 September 2023 concluding that water was ingressing from Flat 5/1 into Flat 4/1 and recommending further investigation and monitoring;
- xi) Copy Nationwide Roof Leak Detection Report July 2023 noting punctures in the membrane of the balcony of Flat 5/1;
- xxii) Copy Inspection Reports from Bob Craig of C&S Architects to the Property Factor dated January, February, March and April all 2024 noting water ingress to the Property from the balcony membrane of Flat 5/1 and noting that the fabric of the ceiling of Flat 4/1 is dry and not deteriorating;
- xxiii) Miscellaneous documents lodged in response to the Directions, some of which are listed above;
- xxiv) Photocopy of advert for short term let of the Property.

**Tribunal's assessment of the Evidence.**

- 51. The Tribunal found Mrs. Hassan to give evidence in a straightforward manner and found that her evidence mirrored both the content of the Applications and the documents lodged by her. Mrs. Hassan did not dispute or challenge the Property Factor's evidence in respect of the Property being used for letting purposes.
- 52. The Tribunal found Miss McGhee's evidence to be straightforward and truthful. Miss McGhee spoke to the fact of the water ingress from her balcony into the Property and to the site visits and inspections. Her evidence did not add anything new to the technical findings. Miss McGhee's comment in respect of the contractor having a Stanley knife did not go so far as to allege that damage had been caused by that contractor and so the Tribunal placed little weight on it.

53. Neither Mrs. Hassan nor Miss McGhee held out to have any technical or building expertise with regard to the water ingress.
54. The Tribunal found Mr. Miller's evidence to be erratic, lacking cohesion and rarely addressing the complaints raised by Mrs. Hassan or answering the questions posed by the Tribunal. The Tribunal could not find logic in Mr. Miller's conclusion that the water ingress issue was not a common repair. He repeatedly stated that the balcony of Flat 5/1 is "exclusive" despite this statement bearing no foundation in the wording of the Deed of Declaration of Conditions. Mr. Miller's view and interpretation of the Deed of Declaration of Conditions is contrary to that of the Property Factor's then agents on 15 September 2021. That response concluded that, if the consensus was that the water ingress emanated from the membrane of the Flat 5/1 balcony, the repair is common to the Development. Mr. Miller relied heavily on the email from the Mr. Dennison dated 9 August 2023 which Mr. Miller claimed supported his view that the balcony of Flat 5/1 is not a common part. However, that email is not conclusive and states that "maintenance obligations ...could perhaps have been made clearer". It states that the owner of Flat 5/1 has "exclusive use of the balcony" but does not have any regard to the wording of the Deed of Declaration of Conditions, nor does it quote any part or parts of the Deed of Declaration of Conditions. In particular, it does not consider the fact that the Deed of Declaration of Conditions does not equate use with maintenance and so proceeds on the wrong presumption. Accordingly, the Tribunal placed little weight on Mr. Dennison's email.
55. The documentary evidence and technical reports lodged by the Parties were not challenged and so the Tribunal took these at face value and accepted that the general conclusion was that water had ingressed from the balcony of Flat 5/1 into Flat 4/1 and that, although the issue was not resolved, it had not exacerbated.
56. From the Deed of Declaration of Conditions the Tribunal noted the following:

57. Clause 1 Definitions, at “Flat Common Parts” and at “Development Common Parts” does not specifically define balconies;
58. Clause 1, Definitions, at “Flat Common Parts” includes a general definition of “generally any other part of the Development which is used in common by or benefits more than one of the Flats only”;
59. Clause 1 Definitions, at “Development Common Parts” includes a general definition of “all other parts and pertinents ..... so far as used in common with the Proprietors of the Development” ;
60. Clause 3.5.4 imposes an obligation on the owner of a flat which includes a balcony “to maintain” the balcony “a neat and tidy condition”;
61. The Deed of Declaration of Conditions does not impose a repair, improvement or replacement obligation on the owner of the balcony;
62. The final sentence of Clause 3.5.4 states “For the avoidance of doubt, the underlying structure of the roof, regardless of any rights or interests in the said balcony, will comprise part of the Development Common Parts”;
63. The Deed of Declaration of Conditions does not make reference to exclusive use, proprietorship or ownership of the balconies.
64. From the response to the Directions dated 15 September 2021 from Clyde and Co on behalf of the Property Factor, the Tribunal noted that the last page of that response states: *“It is our submission that without these reports, and proposals for remedial works it is premature to consider the question of what is, or is not private property, a Common Part or a Development Common Part. This is because the nature of the repair informs the answer as we set out below: a. if a repair is required to the internal fabric of the balcony (including the superficial surface on the floor) then liability for the repair will lie solely with Ms McGhee. b. Where the repair is required to any fixture which is included in the definition of Development Common Parts (such as the outflow pipe, box gutter and downpipe in this case) then liability for repair is shared amongst all Proprietors. c. Where a repair is required to any part of the roof structure of the property, which could include the floor surface and membrane of the balcony depending on the extent of the damage, then liability for the repair is shared amongst all of the Proprietors of the Development”*.

## **Issues for the Tribunal**

65. The issues for the Tribunal are did the Property Factor breach the 2012 Code and the 2021 Code and did the Property Factor fail to comply with the property factor duties as set out in the Applications.
66. Although the matter of interpretation of the definitions contained in the Deed of Declaration of Conditions by Logangate Limited featured greatly in the proceedings and in the evidence before the Tribunal, it is not the role of, nor within the jurisdiction of, the Tribunal to make a formal determination in respect of interpretation. A Declarator in this respect is a matter for a higher court on petition from the Parties, if they so wish. Therefore, in considering the relevance of the definitions contained in the Deed of Declaration of Conditions, the Tribunal has considered the wording in the context of the Applications, the physical layout and construction of the Property and the actions of the Parties, and, has applied an ordinary English language interpretation to that wording. For the avoidance of doubt, the Tribunal did not review the full Deed of Declaration of Conditions, but considered only the Clauses relating to common parts, being Clauses 1 and 3.5.4.

## **Findings in Fact.**

67. The Tribunal found the following facts established and that on the balance of probability:
  1. The Parties are as set out in the Application;
  2. The Property Factor issued a WSS;
  3. The WSS states that the Property Factor will respond to written enquiries within seven working days or will notify if further time is required;
  4. The WSS states that the Property Factor will reply to complaints within five working days and if not resolved will provide a full response within twenty-one days;
  5. The Property Factor did not always respond to Mrs. Hassan in accordance with the stated timescales;

6. The Property is a flat within a block of 66 flats at 11, Kent Road, Glasgow;
7. Deed of Declaration of Conditions, registered 18 Feb 2009, by Logangate Limited is the relevant title deed for the Development of which the Property and Flat 5/1 form part;
8. Clause 1 of the Deed of Declaration of Conditions, Definitions, at "Flat Common Parts" and at "Development Common Parts" does not specifically define balconies;
9. Clause 1 of the Deed of Declaration of Conditions, Definitions, at "Flat Common Parts" includes a general definition of "generally any other part of the Development which is used in common by or benefits more than one of the Flats only";
10. Clause 1 of the Deed of Declaration of Conditions, Definitions, at "Development Common Parts" includes a general definition of "all other parts and pertinents ..... so far as used in common with the Proprietors of the Development";
11. Clause 3.5.4 of the Deed of Declaration of Conditions regulates use of each balcony and, in its final sentence, states "For the avoidance of doubt, the underlying structure of the roof, regardless of any rights or interests in the said balcony, will comprise part of the Development Common Parts";
12. The Deed of Declaration of Conditions does not make reference to exclusive use, proprietorship or ownership of the balconies;
13. The Deed of Declaration of Conditions imposes a maintenance obligation on the owner of a flat which includes a balcony "to maintain" the balcony in "a neat and tidy condition".
14. The Deed of Declaration of Conditions does not impose a repair, improvement or replacement obligation on the owner of a flat which includes a balcony;
15. The Property does not have a balcony;
16. The Property does not have an external roof;
17. Flat 5/1 has a balcony which is accessed from and used solely by the owner of that flat;
18. The Property sits directly under Flat 5/1;

19. The balcony of Flat 5/1 forms the living room ceiling and the roof of the Property;
20. The balcony which forms part of Flat 5/1 is used in common with the Property to the extent that it forms the ceiling of the Property;
21. The Property benefits from the use of the balcony which forms part of Flat 5/1;
22. The balcony of Flat 5/1 falls within the definitions of "Flat Common Parts" and "Development Common Parts" ;
23. Water has been ingressing from the balcony of Flat 5/1 into the living room of the Property since around December 2015;
24. The water ingress is intermittent and occurs during heavy rain;
25. The WSS states that the Property Factor expects homeowners to notify them promptly of any common property requiring maintenance, repair or attention;
26. The WSS states that the Property Factor will organise and administer the maintenance and repair of communal property;
27. The WSS states that the Property Factor will administer claims relating to common property;
28. Mrs. Hassan reported the water ingress in or around December 2015 or January 2016;
29. The Property Factor accepted notification of the water ingress issue;
30. The Property Factor dealt with organising and administering the water ingress repair with the owner of Flat 5/1;
31. The Property Factor assisted with insurance claims relating to the water ingress repair;
32. The Property Factor arranged site visits and attempts at resolving the water ingress by instructing contractors;
33. Mrs. Hassan made separate insurance claims in respect of the water ingress issue and damage to the Property;
34. Mrs. Hassan made a claim with MD Insurance in or around May 2017;
35. MD Insurance and Mrs. Hassan asked the Property Factor for assistance in organising this but the Property Factor refused to assist and so the claim did not proceed;

- 36. The likely outcome of the MD Insurance claim, had it succeeded, would have been a repair at no cost to Mrs. Hassan and her co-owners;
- 37. There have been no successful insurance claims in respect of remedying the water ingress;
- 38. At or round the time of the MD Insurance claim, the Property Factor took the view that the water ingress issue was not a common repair but a repair issue between the owners of Flat 5/1 and the Property;
- 39. The Property Factor cannot support this change of view with reference to either their WSS or the Deed of Declaration of Conditions;
- 40. The Property Factor has refused to organise and administer the water ingress repair of their own accord since that time;
- 41. Numerous buildings professionals have carried out inspections of and proffered reports on the balcony of Flat 5/1 and the ceiling and roof of the Property;
- 42. None of the inspections or reports have been conclusive in identifying the precise cause of the water ingress;
- 43. All of the inspections and reports conclude that the water is ingressing from or via the balcony of Flat 5/1;
- 44. The Property Factor issues newsletters to the various owners of the individual properties at the Development;
- 45. One such newsletter was inaccurate in respect of reporting the progress of the Applications through the tribunal process;
- 46. Mrs. Hassan and her neighbour, Miss McGhee, are aggrieved at the content of the newsletters;
- 47. Mrs. Hassan has suffered stress, frustration and expense as a result of the Property Factor's conduct in failing to deal with the water ingress on her behalf.

#### **Decision of the Tribunal and Reasons for the Decision.**

- 68. In reaching its decision, the Tribunal noted that the water ingress into the Property is not disputed and that the dispute centred on the way in which the

Property Factor has acted in line with their Written Statement of Services and the Deed of Declaration of Conditions. Setting aside the lengthy procedural progress of the Applications themselves and the technical reports submitted, the complaints raised are relatively narrow in scope.

69. The Tribunal noted that duration of the complaints was such that the same broad complaints fall under both Codes and the property factor duties. The Parties' evidence dealt with both Codes together and so the Tribunal has taken the same approach in reaching its decision.

### **Complaint in respect of correspondence response times**

2012 Code - Section 2.5

*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.*

2021 Code – OSP11

*You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*

2021 Code - Section 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 Mrs. Hassan(s) informed if they are not able to respond within the agreed timescale.*

70. Mrs. Hassan's complaints are that the Property Factor did not respond to enquiries and complaints within prompt timescales. The Tribunal noted from the copy correspondence submitted that there were several incidences during March to April 2016, April to July 2017, March and April 2019 November to

December 2019, January to February 2021, April 2021, of delays in the Property Factor responding to Mrs. Hassan and providing her with updates. There were further incidences at the beginning of 2020 and in January to March 2022 where there were delays with replies from the Property Factor's then solicitors. Accordingly, the Tribunal found that the Property Factor had failed to comply with these parts of the Codes.

## **Repairs and Maintenance**

2012 Code - 6.1

*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.*

2021 Code - Section 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.*

71. The Tribunal accepted that the Property Factor has a procedure and arrangements for homeowners to report repairs. However, the Tribunal noted from the copy correspondence submitted that the Property Factor did not keep Mrs. Hassan informed of progress and, from mid-2017, the Property Factor has refused to deal with the water ingress repair. Accordingly, the Tribunal found that the Property Factor has failed to comply with these parts of the Codes.

2012 - Section 6.3

*On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.*

#### 2021 Code - Section 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.*

72. No evidence was led in respect of these specific parts of the Codes.

Accordingly, the Tribunal found that the Property Factor has not failed to comply with these parts of the Codes.

#### 2012 Code - Section 7.5

*You must comply with any request from the homeowner housing panel to provide information relating to an application from a homeowner.*

73. Mrs. Hassan stated that this complaint related to incorrect information given by the Property Factor to the Tribunal in response to the Direction of 22 June 2022 in respect of wrong information given to the Tribunal about the erection of scaffolding. This occurred after the expiry of the 2012 Code and so the 2012 Code does not apply. No further evidence was led in respect of this part of the complaint. Accordingly, the Tribunal found that the Property Factor has not failed to comply with this part of the Code.

#### 2021 Code - OSP 2

*You must be honest, open, transparent and fair in your dealings with homeowners.*

Having found that the Property Factor has refused to deal with Homeowner's water ingress repair from mid-2017, Mrs. Hassan, the Tribunal found that the Property Factor had not been fair in their dealings with Mrs. Hassan and so found that they had failed to comply with this part of the Code to that extent.

Mrs. Hassan stated that this complaint related also to incorrect given by the Property Factor to the Tribunal in response to the Direction of 22 June 2022 in respect of wrong information given to the Tribunal about the erection of scaffolding. The Tribunal had regard to the explanation given by the Property Factor's then agents that contractors were involved in the arrangement of the scaffolding and accepted that there could have been genuine misunderstanding rather than deliberate misleading or dishonesty. Accordingly, the Tribunal found that the Property Factor has not failed to comply with this part of the Code in this regard.

74. With regard to the inaccuracy in the Property Factor's newsletters, the Tribunal noted that the 19 September 2023 newsletter contained inaccurate information in respect of the Development owners' liability for the water ingress. The Tribunal found that the Property Factor has failed to comply with this part of the Code to this extent.

#### 2021 Code Section 7.2

*When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.*

75. Having found that the Property Factor refused to deal with Homeowner's water ingress repair from mid-2017 and did not correspond further with her in any meaningful way, the Tribunal found that the Property Factor ought to have issued a final letter advising that their role was at an end and signposting Mrs. Hassan to the Housing and Property Chamber. Accordingly, the Tribunal found that the Property Factor had failed to comply with this part of the Code.

### **Property Factor's Duties.**

76. Mrs. Hassan's complaint is that the Property Factor failed to comply with the property factor duties by failing to comply with the Codes. The Property Factor's reason for not complying with the Codes and for not dealing with the water ingress issue was that they did not consider the water ingress to be a common repair and so did not consider that it fell within the remit of the Property Factor.
77. The Tribunal could find no logic in or factual basis for the Property Factor's approach and conclusion that the water ingress issue was not a common repair. In his evidence, Mr. Miller repeatedly stated that the balcony of Flat 5/1 is "exclusive" despite this statement bearing no relation to the irrefutable fact that the under part of the balcony is the roof/ceiling of the Property. He steadfastly refused to recognise that the plain English wording of the Deed of Declaration of Conditions is conclusive in defining the balcony as both a Development Common Part and a Flat Common Part, the latter being specifically worded to avoid doubt. His reference to the Tenements (Scotland) Act 2004, the Title Conditions (Scotland) Act 2003 and a definition confirmed by Glasgow City Council were not substantiated by him in any way by him and so made no sense to the Tribunal. He failed, on behalf of the Property Factor, to do as the Tribunal directed and obtain a legal opinion in support of his view. The email from Mr. Dennison which he produced did not assist him. Accordingly, the Tribunal found that the Property Factor failed in their duty to apply the terms of the title deeds properly and in respect of complying with the Codes.
78. The Tribunal took the view that the obtuse and obstinate approach taken by Mr. Miller had seeped into the Property Factor's handling of the potential MD Insurance claim. By refusing to assist Mrs. Hassan with her claim on the basis that it was not the Property Factor's role, the Property Factor stymied any financial redress and assistance which Mrs. Hassan might have obtained. The Property Factor did not act in good faith as an agent for Mrs. Hassan but acted against her interests. Accordingly, the Tribunal found that the Property Factor failed in their duty in this respect.

### **Property Factor Enforcement Order (PFOE)**

79. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and had failed to comply with the property factors duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states “*(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.*”
80. The Tribunal’s view is that the Property Factor’s breaches of the Codes and duties were continual and could easily have been avoided if the Property Factor had simply accepted that the water ingress issue was one which the Property Factor should deal with and had dealt with it as such. The Tribunal found the Property Factor’s failure in respect of property factor duties to be significant, serious and of greater harm and consequence to Mrs. Hassan.
81. Accordingly, the Tribunal decided that it should make a Property Factor Enforcement Order.

### **PFOE sought by Mrs. Hassan.**

82. The Tribunal noted that the outcome which Mrs. Hassan seeks for the root cause to be identified and the issue fixed. She also seeks is substantial compensation for financial losses which she says are a direct result of the Property Factor’s conduct.
83. With regard to the repairs outcome sought, the Tribunal considers it reasonable to order the Property Factor to treat the water ingress issue from flat 5/1 into the Property as a Development common repair and a) ascertain that works carried out to date have been an effective solution to the problem and b) if the works carried out to date have not proven to be an effective solution, to take forward the carrying out of the repair with the Development owners in terms of the Deed of Declaration of Conditions.

### **Compensation element of the PFEO.**

84. Having found that Mrs. Hassan had suffered loss at the actions of the Property Factor, the Tribunal considered it reasonable to make an award for compensation.
85. The then Tribunal, in its Note of 17 January 2024, discussed Mrs. Hassan's claim for compensation. The then Tribunal observed that the sum sought was for the entire cost incurred by Mrs. Hassan in respect of Property including mortgage payments, council tax, and other costs for the period during which she alleged the Property Factor was in breach of its duties. The then Tribunal expressed the view that such a claim might only be made if the Property was rendered effectively uninhabitable as a result of the water damage and stated that although the Property was unsightly, the damage did not render the Property uninhabitable. Mrs. Hassan confirmed that she had rented the Property out to students occasionally on a short-term basis. The then Tribunal advised Mrs. Hassan to seek legal advice on a more appropriate basis for a claim for compensation. At the end of the substantive Hearing on 21 January 2025, the now Tribunal advised Mrs. Hassan in a similar vein.
86. Mr. Miller for the Property Factor objected to an Order for compensation.
87. With reference to online short term lettings advert for the Property, Mr. Miller advised the Tribunal that Mrs. Hassan had been letting the Property out as a short term or holiday let for around £3,360.00 per month.
88. Therefore, the Tribunal issued the following Direction:
- "The Tribunal having concluded the Hearing and evidence in respect of the core substantive matters of the above Applications, and, in the event that the Tribunal finds in her favour and proposes a Property Factor Enforcement Order, the outcome sought by Mrs. Hassan, Mrs. Hassan, is an order for payment of compensation. Therefore, the Tribunal directs, Mrs. Hassan to:*

- i) *Provide a written representation to the Tribunal which sets out the Heads of Claim and the amount of compensation which she seeks in respect of any breaches by the Property Factor of the Codes of Conduct for Property Factors.*
  - ii) *The representation should explain the direct link between each Head of Claim and the conduct of the Property Factor;*
  - iii) *The representation should set out the amount sought in respect of each Head of Claim together with a calculation of what that amount comprises and how it has been calculated;*
  - iv) *Each amount sought should be evidenced by the production of receipted invoices or proof of payment or documentary evidence in support of proof of financial loss.*
- Mrs. Hassan should lodge her response with the Tribunal and the Property Factor no later than 1 March 2025.*
- The Property Factor is directed to submit their response, if any, to Mrs. Hassan's compliance with the above Direction no later than 28 March"*

#### **Homeowner's response to Direction and claim for compensation.**

89. By email dated 1 March 2025, Mrs. Hassan set out a claim amounting to £23,410.00.

90. The claim was broken down as follows:

1. Additional Dwelling Supplement (ADS) Tax of £14,880 incurred in the purchase of a new home.  
Mrs. Hassan stated that the Property was not saleable due to its condition, which condition had been caused by the Property Factor's failings.
2. Factor Fees and other fees from May 2017 – May 2023 of £7,200.  
Mrs. Hassan stated that the Property Factor had failed to provide a satisfactory service. She did not provide proof of payment or an exact amount but explained that a sum of £4,000.00 had been "rounded off" for the period to May 2017 and £3,000.00 had been "rounded off" for the period from May 2017 to May 2023.
3. Hatch Installation to Investigate Water Damage at £350.  
Mrs. Hassan stated that she had had to install a hatch in the ceiling to

investigate the water ingress at a cost of £350. No proof of payment was provided.

4. Ceiling Redecoration Costs at £980.

Mrs. Hassan stated that has incurred a cost of £980. She submitted a quote for this sum but did not submitted proof of payment or a photograph of the redecorated ceiling.

91. Mrs. Hassan did not appear to have taken advice in respect of preparing an appropriate claim.

**Property Factor's response to Direction and Homeowner's claim for compensation.**

92. By email dated 25 March 2025, the Property Factor set out reasons to reject Mrs. Hassan's claim.

93. The Property Factor addressed each Head of Claim as follows:

1. Additional Dwelling Supplement (ADS) Tax of £14,880.

The Property Factor disputed outright that this part of the claim could be attributed to the Property Factor. They disputed that the Property was in an unsaleable condition. The Property Factor stated that it was Mrs. Hassan who caused delays in the process and who had cancelled an insurance claim.

2. Factor and other Fees of £7,200.

The Property Factor disputed the amount claimed and explained that the fee element was around £700.00. They stated that the other costs possibly relate to development expenditure and, in any event, are excessive.

3. Hatch Installation at £350.

The Property Factor's position is that hatch was installed by an insurance company who bore the cost of it.

4. Ceiling Redecoration Costs of £980.

The Property Factor's position is that a claim for redecoration had already been settled and that the damage was minimal.

## **Issues for the Tribunal in respect of Homeowner's claim for compensation and PFEO**

94. The issues for the Tribunal is: has Mrs. Hassan established a valid claim for compensation and has she evidenced loss to the value of the amount of compensation claimed?

## **Decision of the Tribunal in respect of Homeowner's claim for compensation and Reasons for the Decision.**

95. The Tribunal accepts that Mrs. Hassan has been frustrated and inconvenienced by the failings of the Property Factor and so has a potential claim for *solatium*, being hurt feelings.

96. With regard to the specific Heads of Claim, the Tribunal determined as follows:

1. Additional Dwelling Supplement (ADS) Tax of £14,880.

The Tribunal's view is that no evidence had been presented to it that the Property could not be sold. The Tribunal had no evidence of failed attempts to sell nor had it evidence of offers to purchase at below market value. From the Tribunal's site inspection there was no evidence that the Property was uninhabitable or not fit for sale. The Tribunal had no evidence as to why Mrs. Hassan required to purchase the specific new home which she did and so no evidence that she was bound to incur the level of ADS claimed by her. The Tribunal noted the short term lettings adverts submitted by the Property Factor and to Mrs. Hassan's own admission to the earlier Tribunal that Property was used for short term lets and so the Tribunal had no evidence that the Property had been Mrs. Hassan's main or principal home and that her failure to sell it induced ADS.

The Tribunal had no evidence that Mrs. Hassan took steps, as she have done at common law, to mitigate her losses and minimise her claim.

For these reasons, the Tribunal determined that Mrs. Hassan had not proved an entitlement to this part of her claim.

**2. Factor and other Fees of £7,200.**

The Tribunal accepted the Property Factor's position that a significant amount of this part of the claim most probably relates to development expenditure.

Although Mrs. Hassan has a valid argument in respect of waiving or discounting factoring fees, the Tribunal had no evidence as to why she should not be liable for development expenditure. Accordingly, the Tribunal considered that £700.00 is a reasonable award for this part of the claim.

**3. Hatch Installation at £350.**

The Tribunal had no evidence that Mrs. Hassan had made payment of this sum and so Tribunal determined that Mrs. Hassan had not proved an entitlement to this part of her claim.

**4 Ceiling Redecoration Costs of £980.**

The Tribunal had no evidence that Mrs. Hassan had made payment of this sum and so Tribunal determined that Mrs. Hassan had not proved an entitlement to this part of her claim.

97. Accordingly, the Tribunal determines that a reasonable and appropriate sum in compensation is £1,000.00, being £300.00 in compensation for solatium and £700.00 in refund of factoring fees.

98. Section 19(2)(a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2)(a) of the Act, the Tribunal issues separate Notice to the Parties.

99. This decision is unanimous

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

---

Legal Member/Chair

27 June 2025

Date

