

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/23/0692

Property: 19 Dean Park Street, Edinburgh EH4 1JS (“the Property”)

The Parties:-

Miss Katie Nicol, 19 Dean Park Street, Edinburgh EH4 1JS (“the homeowner”)

Charles White Limited, registered in Scotland under the Companies’ Acts (SC212674), having their registered office at 14 New Mart Street, Edinburgh EH14 1RL (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Andrew Murray (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided that the property factors had not failed to comply with OSPs 4, 6 and 11 and Sections 1, 2.1, 6.1, 6.4, 6.6 and 6.12 of the Property Factors Code of Conduct effective from 1 October 2012 and had not failed to carry out the property factor’s duties.

Background

1. By application, dated 3 March 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with various paragraphs of the Overarching Standards of Practice (“OSP”) and various Sections of the Property Factors Code of Conduct

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

2. The application was accompanied by a copy of a letter of complaint to the property factors sent by solicitors acting for the homeowner on 3 May 2022. It set out the OSP complaints under various numbered headings, which the homeowner followed in her application. These numbered headings did not correspond with the OSP numbering in the Code of Conduct, but the Tribunal was able to identify that the OSP complaints related to OSPs 4, 6 and 11. The references in the application to Sections of the Code were correct, namely Sections 1, 2.1, 6.1, 6.4, 6.6 and 6.12.
3. The background to the application is that in October 2018, the owners of the tenement decided to replace lead water pipes with copper. The property factors were instructed to carry out a tendering process, with a view to obtaining 3 estimates. A Tender Report was sent to the owners on 21 April 2021, recommending acceptance of an estimate from Advance Gas Services ("AGS"). The estimated cost was £46,800, with the property factors charging a management fee of 10% plus VAT (£5,616). The owners opted to proceed with this estimate, and the contractors thereafter sub-contracted the work to Mr S.
4. The homeowner complained that the owners had originally been informed that Mr S would not require access to individual flats. The property factors had, however, then confirmed by letter of 30 November 2021 that such access would be required. The property factors had also stated by letter of 27 September 2021 that the work would take 6-8 weeks, but it took 14 months. The property factors had also written to all owners on 18 February 2022 to advise that all of the newly installed copper pipes were live, but that was incorrect in respect of the top floor flats. These incidents constituted a failure to comply with OSP4.
5. The homeowner further stated that she had first complained on 4 October 2021, when Mr S had failed to start the work on the agreed date. He did not do so until 19 October. On 24 November 2021, the homeowner told the property factors that she, along with some other owners, did not feel comfortable with him carrying out the works following alleged abusive and unprofessional conduct towards them. She requested a breakdown of costs and enquired whether another contractor from AGS could take the place of Mr S. The property factors replied on the same day to say that there were no other contractors available and suggested that he complete the connection of the pipes and making them "live" (Stage 1 of the works), with the owners

arranging themselves the internal works to their individual flats. The homeowner responded on the following day to say she and the other owners wished AGS to see the works through to the end. She repeated her request for a breakdown of costs.

6. The homeowner referred to a meeting on 19 January 2022, when she asked that the property factors refund their management fee. The property factors advised that they were not prepared to discuss this matter until the works were completed. They also responded to the query about internal works to individual flats, which they had previously said would not be required. Their response was that they did not think this should be an issue and that the owners should see as a bonus the fact that the internal works were included. The property factors told the meeting that, in advising that the cost of Stage 1 would be £9,000 (£562.50 per flat), they had been incorrect and that this was a charge of £5,000 made by Scottish Water and £4,000 to AGS for time and labour. Mr S was offering a reduction in costs of £250 per flat if he was not asked to complete the internal works. At the meeting, the homeowner asked about progress on her initial complaint of 4 October 2021 and, without explanation, was asked to re-submit it. The homeowner had two plumbers attend the Development when Stage 1 work was completed. They advised the new pipes were not finished to a watertight standard, but the property factors said that this would be a snagging issue. A surveyor appointed by the homeowner had disagreed with that assessment, stating that the pipes should be made watertight before being connected to the mains water supply. The homeowner also made her own enquiries of Scottish Water and was advised that they would not charge for connecting the new pipes to the mains supply. She reported this to the property factors, who replied on 16 February 2022 that they had spoken to Scottish Water, and it seemed unlikely that they would charge, but the property factors would investigate further with Mr S.
7. The homeowner's complaint was progressed to Stage 2 of the property factors' complaints process on 4 March 2022, the homeowner having rejected the property factors' suggestion that it be dealt with once the works were finished. On 14 March 2022, the property factors asked the homeowner for further information as to how they had failed to communicate. The homeowner referred them to their failure to provide a breakdown of costs and the failure to carry out proper vetting when instructing AGS. The property factors responded on 19 March 2022 to say that as their internal complaints procedure had been exhausted, the next step for the homeowner would be to make an application to the Tribunal.

8. The homeowner contended that the matters set out in paragraphs 5-7 above constituted a failure to comply with OSP6.
9. The homeowner referred to the fact that her initial complaint of 4 October 2021 was not dealt with within the timescales detailed within the property factors' Written Statement of Services ("WSS"). The homeowner had been asked at the meeting on 19 January 2022 to re-submit it. At Stage 2, the property factors advised that they were unable to resolve the issues in the complaint and signposted her to the Tribunal. This constituted a failure to comply with OSP11.
10. With regard to Section 1 of the Code, the homeowner's complaint was that the WSS stated that they are the managing agents appointed to "deal with the upkeep, maintenance and insurance of the common areas which are co-owned by all of the proprietors" within the development. The works comprised repairs to both common areas and to internal areas in the Development and the property factors had no authority to instruct works to internal areas and, in any event, had failed to explore with AGS prior to accepting the tender what these works fully entailed.
11. The WSS provides that the Owners' Association will be assigned a dedicated, trained and experienced property manager to provide an efficient service. The view of the homeowner was that she had not been assigned such a person and did not receive an efficient service. They had also failed to provide a "smooth management service", as provided for in the WSS and had failed to answer the homeowner's queries in relation to the breakdown of costs.
12. The complaint under Section 2.1 of the Code related to the provision of misleading information and the failure to provide information requested by the homeowner, as set out above in relation to the OSPs and the WSS.
13. In relation to Sections 6.1, 6.4, 6.6 and 6.12 of the Code, the homeowner's complaint was that, whilst the property factors had provided the owners with updates of the works, the estimated timescale for completion, given at the outset, was wrong. It was clear that the property factors did not understand what the works entailed and they did not obtain an appropriate breakdown of costs, as requested by the homeowner. As a result, the cost of repair and maintenance could not be balanced with other factors such as likely quality and longevity, as the property factors had not carried out an appropriate vetting exercise

against AGS. They had failed to provide a suitable alternative contractor, thus failing to consider a range of options for repair and had failed to liaise with the appointed contractor to remedy the defects in any inadequate work or service. There was also a failure to investigate an issue raised with the property factors by the homeowner on 17 February 2022 regarding damage to her property door, which she suspected had been deliberate. This incident had been reported to the Police.

14. The homeowner's summary was that the work had taken 14 months rather than 8 weeks. The property factors had not read the tender properly or advised the owners properly. They had allowed a contractor to intimidate women in the block and had not checked the quote and what money was going where. Meetings were called 4 weeks into the job and it was agreed that a new contractor would be found, but the property factors decided to disregard the owners' wishes and allowed the contractor to continue for a further 13 months. The homeowner had been left £1,000 out of pocket due to the contractor/property factors not reading the tender and obtaining quotes for individual properties. She had had months of stress and hassle dealing with constant complaints about the contractor and trying to get the property factors to deal with him. Many of the owners engaged their own plumbers to carry out the works within their own flats but were only refunded £250. The property factors should have obtained individual quotes for this work, having told owners at the start that access to their flats would not be required. The homeowner wished to be refunded the difference between the £250 and the actual cost to her of having her own plumber carry out the internal work, together with compensation for the harassment and stress involved. There were numerous emails and meeting mandates of the owners trying to remove the contractor and there were also solicitors' fees.
15. The homeowner provided, with the application, a copy of the property factors' Written Statement of Services for the Development, effective from November 2013 and screenshots of various email messages. In one of these messages, dated 22 December 2021, the homeowner stated that, when the contractor had arrived on 19 October, she had been subjected to 45 minutes of his shouting at her and complaining about the fact that she had contacted the property factors when he did not turn up sooner. Over the next 4 weeks, he did very little work, most of it between 3 and 6pm. Crunch time came when he arrived at 4pm on a Saturday and about 7.10pm was asked to stop drilling through the concrete flooring. Mr S told the homeowner at that point that it was her fault that he was not on schedule. It was clear that he had been doing

other work at the same time as the contract for Dean Park Street and that he had not fully committed to the contract. The Owners' Association then called a meeting with the property factors and after a long discussion about the professionalism of Mr S, it was agreed that he would be removed from the job after Stage 1. The homeowner could understand up to a point why it would be easier from the point of view of the property factors to keep the contractor, but it was definitely not in the best interests of the owners, who had been made to feel very uncomfortable by the behaviour of Mr S. In addition, the owners still did not have written clarification of what work was needed in each property.

16. The property factors' written representations of 9 June 2023 to the Tribunal comprised a timeline of events from June 2019 to December 2022, along with 20 supporting documents. Their position was that they acknowledged the delays and frustrations and apologised to the owners for this, but that they believed they had fully managed the project within their remit, managing the contractor to the best of their ability, attending the site a minimum of once every two weeks to inspect the project and that they had provided regular updates by letter. They did not feel it was their place as a property factor to involve in behaviour disputes between the residents and the contractor and would not be commenting on this in their submissions.
17. The timeline indicated that in June 2019, contractors carrying out a repair to a burst pipe recommended upgrading from lead to copper piping. At a meeting on 27 August 2019, it was agreed to proceed to tender. The property factors' surveyor produced a tender document, which was issued to the Residents' Committee on 7 January 2020. Various different questions were asked by the Committee and were answered by the property factors, but in March the COVID-19 pandemic hit and communication fell silent. In March 2021, the property factors asked the Committee to confirm if they were in a position to authorise the work. On 21 April 2022, the property factors shared the tender report with all owners and requested each of them to provide their share of the costs, as provided for in the WSS. On 5 May 2021, at a further meeting, an arithmetical error was reported and amended invoices were issued on the following day.
18. In August 2021, the property factors vetted the Public Liability Insurance of the recommended contractors. One of the owners also vouched for the contractors' work. On 27 September 2021, all funds having been ingathered, the property factors instructed the work, advising owners by letter that the works would be scheduled to start on 4 October. All the information in this letter was provided to the property factors by AGS.

19. The property factors issued updates to owners on 2 November 2021 and 30 November 2021. In the second letter, they advised of delays the contractor was having with Scottish Water. He required them to complete external works to enable the water to be moved from the lead mains to the new copper mains.
20. On 21 November 2021, due to concerns expressed by the Committee about the contractor, the property factors asked the next most competitive tenderer if they would consider taking over the job, but no response was received. It was then agreed on 25 November, in an email exchange with the homeowner, in her capacity as Committee Chair of the Owners' Association, that AGS would continue to carry out the works.
21. On 22 December 2021, the property factors issued a further update and asked owners to vote on whether they wished AGS to complete their internal property works or would prefer to instruct their own contractors. On 21 January 2022, they reported back on the outcome of the vote and confirmed that those instructing their own contractors would receive £250 refunds, this being the amount that AGS had budgeted to complete the internal works in each flat.
22. On 2 February 2022, the homeowner having raised a First Stage Complaint, the property factors responded in full.
23. On 7 June 2022, the property factors updated the owners to confirm that AGS had completed the works within the properties instructed and that they awaited completion of works for those who had chosen to instruct their own contractors, before works could continue.
24. On 22 September 2022, the property factors issued an apology to the owners for the delays which had been incurred and, as a gesture of goodwill, reduced their project management fee by 60%, refunding owners accordingly.
25. On 9 November 2022, the property factors advised that the works by AGS were complete and that, following inspections by the property factors, AGS would be attending to complete some snagging. The property factors' Completion Report was completed in December 2022.
26. In their response of 2 February 2022 to the First Stage Complaint, Ms Rae, on behalf of the property factors, stated that she was taking the date of complaint as 28 January, that being the date on which she had received it from the homeowner. She said that she was sorry that the

homeowner had felt the need to seek legal advice and confirmed that the property factors accepted the homeowner's objection to having AGS carry out work in her home. The property factors confirmed that AGS had quoted £250 for the works in each property and that the homeowner's account would be credited with that sum. They added that there were no individual flat by flat specific costs. With regard to the project management fee, they were sincerely sorry that the works had caused so much upset, stress and concern for the homeowner. They did not condone the behaviour that had been displayed by the contractor and apologised profusely for the upset this had caused. They could not control this but had on each occasion raised it with the contractor and had explained how unacceptable it was. The start delay had been fully outwith their control. They had provided AGS with keys for access on 4 October 2021, as it had been agreed they would start at 12 noon on that day, but it appeared that a delay had been caused by access issues in respect of the bottom two flats. The contractors had not, however, informed the property factors that access would be required. They had also not advised that they had vehicle issues. They then confirmed to the property factors that access was agreed from 19 October. The contractors dropped off their tools on that day and started the work on the following day.

27. The property factors stated that they were sincerely empathetic in relation to everything that had happened since the works started, from the behaviour of the contractor whilst on site, the misleading information he had given to the property factors and to residents, and the unacceptable communication levels. They stated their wish to get this sorted and finished to an acceptable standard as soon as possible. They suggested, however, that, as the project works were not yet complete, the discussion on their project management fee should be delayed until then.
28. The documents which accompanied the property factors' written representations included a copy of a Public Liability Insurance Schedule for the contractor Mr S, valid from 31 August 2021 to 31 August 2022, a letter from the property factors to owners of 27 September 2021, advising that if there were any access requirements, the property factors would be in touch with the relevant owners to arrange it, a letter from the property factors to owners of 30 November 2021 in which they stated that access would be required for each property to be piped to the new copper pipe and apologising for any previous miscommunication on this point, a copy email to another contractor who had been unsuccessful at the tender stage, asking if they would be interested in completing the project beyond Stage 1, and a letter to the

owners of 22 December 2021, strongly recommending that the current contractor should continue to complete the works, but confirming that he had agreed that he was prepared to further sub-contract the work in respect of 4 flats to another contractor instructed by him, at no additional cost and with the work still being covered by his warranty. That letter told owners that if they wished to instruct their own plumbers, whatever the cost allowance was provided in the contract for that work would be deducted from final invoices.

Case Management Discussion

29. A Case Management Discussion was held by means of a telephone conference call on the morning of 28 June 2023. The homeowner was present. The property factors were represented by Ms Robyn Rae, Associate Director.
30. The homeowner told the Tribunal that she felt the owners had been forced into letting Mr S finish the work. They had previously agreed that he should not continue beyond Stage 1. A vote had been taken, but all but 2 of the flats are rented out and 10 owners did not respond at all. Of the 16 owners, 7 had then used Mr S to complete the work. The homeowner agreed that the work he had done was of an acceptable quality. The issues were his behaviour (he would only deal with men) and the fact that he was usually only there for a few hours at the end of the working day. The Owners' Committee employed the property factors to look after their property without hassle, but they had ended up with 15 months of hassle. She contended that, if individual owners had ended up paying more through instructing their own plumbers, that cost should be borne by the contractor, rather than just deducting an allowance of £250.
31. The homeowner confirmed that the property factors' contract has since been terminated and new factors are in place.
32. The property factors were content that the Tribunal rely on their written submissions. The parties then disconnected from the conference call and the Tribunal Members considered all the evidence, written and oral, that had been presented to them.

Findings of Fact

1. The homeowner is the proprietor of the property, which comprises a second floor flat above the street or ground floor of the tenement 19 Dean Park Street, Edinburgh. The tenement contains 16 flats.

2. The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
3. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
4. The date of Registration of the property factors was 7 December 2012 and the date of their current registration is 18 April 2016.
5. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
6. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, dated 3 March 2023, under Section 17(1) of the Act.
7. The concerns set out in the application have not been addressed to the homeowner’s satisfaction.

Reasons for Decision

33. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
34. **OSP4 of the Code** states “You must not provide information that is deliberately or negligently misleading or false.” The complaint was that the owners had originally been informed that Mr S would not require access to individual flats. The property factors had, however, confirmed by letter of 30 November 2021 that such access would be required. The property factors had also stated by letter of 27 September 2021 that the work would take 6-8 weeks, but it took 14 months. The property factors had also written to all owners on 18 February 2022 to advise that all of the newly installed copper pipes were live, but that was incorrect in respect of the top floor flats.
35. The Tribunal noted that the property factors had accepted that there had been miscommunication on the question of the need for access and apologised for that in their letter to owners of 30 November 2021. They had indicated to owners on 27 September 2021, that if there were any access requirements, they would be in touch with the relevant owners to arrange it. They did not state that no access would be required at any

time. The Schedule of Proposed Work states “Each dwelling will now require to be piped to a central or appropriate mains connection within each property.” The view of the Tribunal was that, whilst the homeowner may have been misled into thinking no access to her flat would be required, the property factors’ communication was not deliberately or negligently misleading or false.

36. The Tribunal accepted that the information given by the property factors in relation to the start date and likely duration of the works had been based on estimates provided by the contractors, so was not deliberately or negligently misleading or false. In relation to the letter of 18 February 2022 stating that all of the copper pipes were now “live”, any breach of OSP4 applied only to the owners of the top floor flats and not to the homeowner.
37. The Tribunal did not uphold the complaint in relation to OSP4.
38. **OSP6 of the Code** states “You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.”
39. The Tribunal found no evidence to indicate that the property factors’ staff did not have the training and information they needed to be effective. Property factors are not expected to have expert knowledge of how long work will take and they are entitled to rely on their appointed contractors for such information. It is clear that the work took a great deal longer than it should have done and that this might be largely attributable to the contractor not having fully committed to the project, but this was not a matter within the control of the property factors, who appear to have done all that they could to manage the relationship with the contractor and to keep the owners informed through regular update letters. Accordingly, the Tribunal did not uphold the complaint under OSP6.
40. **OSP11 of the Code** states “You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.”
41. The homeowner stated that she had first lodged her complaint on 4 October 2021 and that she had been asked at a meeting on 19 January 2022 to re-submit it. The Tribunal did not have a copy of the complaint of 4 October 2021, but it appears from the letter sent by her solicitors to the property factors on 3 May 2023 that it was made because Mr S did not start the works on the agreed date. The Tribunal’s view was that this was not a complaint related to the services provided by the property

factors. The property factors were unable to resolve the issues raised at Stage 2 and the fact that they then signposted the homeowner to the Tribunal indicates that they had dealt with the complaint in line with their complaints handling procedure. Accordingly, the Tribunal did not uphold the complaint under OSP11.

42. Section 1 of the Code relates to the Written Statement of Services.

The homeowner's complaint was that the WSS stated that they are the managing agents appointed to "deal with the upkeep, maintenance and insurance of the common areas which are co-owned by all of the proprietors" within the development. The works comprised repairs to both common areas and to internal areas in the Development and the property factors had no authority to instruct works to internal areas and, in any event, had failed to explore with AGS prior to accepting the tender what these works fully entailed.

43. The Tribunal did not uphold this head of complaint. The property factors did not, in terms of the WSS, have the right to instruct repairs within individual flats, but the project of replacing lead piping entailed work within each flat. They made the owners aware of this and gave them the option of using the appointed contractor or of instructing their own plumbers. It would have been impossible to ascertain exactly what work was required within each flat unless the companies tendering for the project had prior access. The internal plumbing would vary from flat to flat and AGS appear to have made a cost allowance of £250 per flat for this work, accepting that they would bear the loss if they could not carry out the internal work within this estimated cost. It would have been completely unrealistic to have expected them to prepare individual estimates for this element of the project, and impossible without them having inspected the existing arrangements within each flat before tendering for the project.

44. The WSS provides that the Owners' Association will be assigned a dedicated, trained and experienced property manager to provide an efficient service. The view of the homeowner was that she had not been assigned such a person and did not receive an efficient service. They had also failed to provide a "smooth management service", as provided for in the WSS and had failed to answer the homeowner's queries in relation to the breakdown of costs.

45. The Tribunal saw no evidence to suggest that the property factors' personnel involved with the project were not adequately trained and experienced in managing contracts on behalf of homeowners. It appeared to the Tribunal that the property factors did the best they

could in the very challenging circumstances that resulted from the COVID-19 pandemic lockdown. There was a delay in starting the work, which was outwith their control, there were complaints about the individual contractor, which were taken up with him and, when the Owners' Association stated that the owners did not want Mr S to continued beyond Stage 1, they asked one of the unsuccessful bidders for the contract if they would be interested in completing it. Having received no response, the property factors then presented the owners with options. They recommended continuing with the existing contractor to avoid potential additional expense and further delay and the homeowner told them on 25 November 2021 that it was not ideal to use Mr S, but that someone had to do the work and that she might be able to arrange for someone to be in the property with her at the relevant time. The property factors had also offered to have one of their staff present as well. In the event, the Tribunal's understanding is that the homeowner instructed her own plumber.

46. The complaints under Section 1 were deemed by the Tribunal to encompass the homeowner's contention that the property factors had failed to carry out the property factor's duties, as these duties are set out in the WSS.
47. The complaint under **Section 2.1 of the Code** related to the provision of misleading information and the failure to provide information requested by the homeowner. Section 2.1 does not impose any specific obligations on property factors, but states general principles, including the need for homeowners to be consulted appropriately in decision making and to have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations. The Tribunal had already held that the property factors had not failed to comply with OSP4 in relation to misleading information. The property factors were unable to provide the information requested by the homeowner, namely a detailed specification and costing of the work required within individual flats and the Tribunal had dealt with this in relation to the complaint under Section 1 of the Code. Accordingly, the Tribunal did not uphold the homeowner's complaint under Section 2.1 of the Code.
48. The relevant portions of **Sections 6.1, 6.4, 6.6 and 6.12 of the Code** provide that a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard, that where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of the work, including estimated timescales for completion,

and that a property factor must have arrangements in place to ensure that a range of options on repair are considered. The cost of the repair 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. If requested by homeowners, a property factor must continue to liaise with contractors in order to remedy the defects in any inadequate work that they have organised on behalf of homeowners.

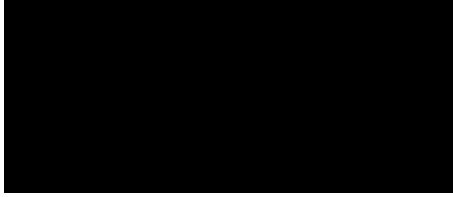
49. The homeowner's complaint was that, whilst the property factors had provided the owners with updates of the works, the estimated timescale for completion, given at the outset, was wrong. It was clear that the property factors did not understand what the works entailed and they did not obtain an appropriate breakdown of costs, as requested by the homeowner. As a result, the cost of repair and maintenance could not be balanced with other factors such as likely quality and longevity, as the property factors had not carried out an appropriate vetting exercise against AGS. They had failed to provide a suitable alternative contractor, thus failing to consider a range of options for repair, and had failed to liaise with the appointed contractor to remedy the defects in any inadequate work or service. There was also a failure to investigate an issue raised with the property factors by the homeowner on 17 February 2022 regarding damage to her property door, which she suspected had been deliberate. This incident had been reported to the Police.
50. The Tribunal did not uphold the homeowner's complaints under Section 6 of the Code. In providing at the outset an estimated timescale for completion, they were relying on information provided by the contractors and were entitled to do so. It was the case that they had misunderstood the position in relation to access being required to the individual flats, but they corrected the mistake when they became aware of it and apologised for the misunderstanding. The estimate for the project included a cost allowance for work within each flat and it was not possible for the property factors to obtain a further breakdown. In any event, such a breakdown would have had no effect on the matter of quality or longevity of the works. The property factors were unable to find an alternative contractor to take on the work after Stage 1, but they did attempt to engage with one of the other companies who had originally tendered for the project and it is within judicial knowledge that it was extremely difficult following the COVID-19 lockdown to find tradesmen to carry out work at short notice, as they were caught up in a backlog of work to which they were already committed and there were significant difficulties in sourcing both materials and labour. The

homeowner had accepted at the Case Management Discussion that there were no issues with the quality of the work, and she did not provide any specific evidence that the property factors had failed to liaise with the contractor to remedy defects. The Tribunal did not have information as to whether the matter of pipes not being watertight had been dealt with as a snagging issue, but it had clearly been remedied satisfactorily.

51. The Tribunal noted that the homeowner had reported to the property factors damage to her entrance door which she thought had been caused deliberately, but accepted the property factors' position that they would not become involved in behaviour disputes between the residents and the contractor. In any event, the matter had been reported to the Police, so would have been out of the property factors' hands.
52. The Tribunal sympathised with the homeowner and understood her frustration that a job she initially understood would be completed in 6-8 weeks took so long but was not satisfied that the delays and other issues were attributable to a failure by the property factors to comply with the Code of Conduct. There clearly were issues with the appointed contractor at the outset and during the Stage 1 work, but these had been taken up with him by the property factors. The owners were given the opportunity in a vote organised by the property factors to agree to instruct another company to complete the works and it was understandable that the property factors recommended continuing with him, given the difficulties the owners might have faced in finding a replacement at short notice. The Tribunal also noted that the property factors had accepted some responsibility for delays and that they had reduced their own fee very substantially in recognition of that.
53. The decision of the Tribunal was unanimous.

Right of Appeal

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



Signed

George Clark (Legal Member/Chair)

Date: 17 July 2023