



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/23/4632 and FTS/HPC/PF/23/4633

Flat 24, Old Courthouse, 31 High Street, Rothesay, PA20 9AS ('the Property')

Robert McGill residing at Flat 24, Old Courthouse, 31 High Street, Rothesay, PA20 9AS ('the Homeowner and Applicant')

Fyne Homes ('the Factor and Respondent')

Ms Kirstie Donnelly, TC Young, Solicitors ('The Factor and Respondent's Representative')

Tribunal members:

Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member).

Background

1. The Homeowner is heritable proprietor of the property ('the Property'), which is a flat property within a development of 25 flats.

2. Fyne Homes are factors of the Property. They first registered as a property factor on 7th December 2012 and were the first appointed factors of the development.

3. The Homeowner submitted a C1 and a C2 application to the Tribunal, both dated 14th March 2024.

The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the specified sections of the Property Factor Code of Conduct 2012 and the Property Factor Code of Conduct 2021.

4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 14th April 2024 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 21st December 2023 and 3rd April 2024) to a Tribunal.

5. The First Case Management Discussion.

An inperson Case Management Discussion (CMD) took place in respect of the application at the Glasgow Tribunal Centre on 21st August 2024 at 2pm, which was continued to 20th January 2025. The Tribunal issued a separate Note following that Case Management Discussion.

6. Direction.

The Tribunal issued a Direction dated 25th August 2024, which directed the parties as follows:

6.1 The Tribunal Directs the Homeowner to rewrite his application such that his complaints are focused and grouped according to the particular sections of the Codes of Conduct detailed in his application and provide the Tribunal with his amended application.

6.2 The Tribunal Directs the Homeowner to provide the Tribunal with a copy of his letter or email of complaint to the Factor dated 19th November 2020.

6.3 The Tribunal Directs the Factor to provide the Tribunal with a copy of the Factor's responses to the Homeowner's complaint dated 19th November 2020.

6.4 The Tribunal Directs the Factor to provide the Tribunal with Minutes of the residents meetings that took place on 1st November 2018 and 3rd April 2019.

6.5 The Tribunal Directs the Factor to provide the Tribunal with the quotation and report from Buckeridge which specifically identifies that the "gear trays" are the reason for the failure of the emergency lighting.

6.6 The Tribunal Directs the Factor to provide the Tribunal with a copy of their complaints procedure.

7. The Factor's First Inventory of Productions.

7.1 Title Sheet BUT4740

7.2 The Factor's written statement of services.

7.3 Letter to the Homeowner dated 8th April 2013 enclosing the written statement of services.

7.4 The Factor's written statement of services (revised 2nd November 2021).

7.5 The Factor's complaints handling procedure.

7.6 Emergency lighting periodic inspection and testing certificate dated 18th September 2018.

7.7 Letter to Applicant dated 27th September 2018.

7.8 Statement of Factoring Account dated 7th August 2024.

8. The Factor's Second Inventory of Productions.

8.1. Correspondence between Janet McAllister and the Homeowner between 4th November and 6th November 2020.

8.2 Email correspondence between Deirdrie Duncan and the Applicant between 16th July and 1st August 2019

8.3 Minutes of Meeting on 1st November 2018.

8.4 Minutes of Meetings on 3rd April 2019.

8.5 Email correspondence between Donald McArthur of Buckeridge (sub contractor) vis George Hanson (contractor) containing quote.

8.6 Letter dated 7th March 2019 enclosing Agenda for meeting 3rd April 2019.

8.7 Evidence of NICEIC's technical helpline service (as at September 2024).

8.8 Fyne Homes Ltd's Complaints policy (version 3; 2013).

8.9 Fyne Homes Ltd's Complaints policy (version 4; 2018).

8.10 Letter to Applicant dated 19th August 2019.

8.11 Invoice dated May 2020 (for charges between 1st October 2019 and 31st March 2020).

8.12 Utility door inspection report dated 16th July 2019.

8.13 Defect lines raised 13th November 2018 and 5th April 2019.

8.14 Photograph of faceplate as at 17th September 2024.

8.15 Letter to the Homeowner dated 8th April 2013 enclosing the Factor's written statement of services.

9. Additional Written Representations on behalf of the Factor dated November 2024:

'In terms of the Direction dated 25th August 2024, the Factor was asked to produce additional documents. Point (3) of the Direction directs the Factor to provide the Tribunal with a copy of the Factor's responses to the Homeowner's complaint dated 19th November 2020. It is the Factor's position that the Homeowner's complaint referred to was dated 4th November 2020. On 6th November 2020, Janet McAllister replied on behalf of the Factor acknowledging receipt of the Homeowner's letter, indicating a fuller response would be provided the following week. It is the Factor's position that during that period, the Homeowner sent a large volume of correspondence to the Homeowner. Indeed, the Homeowner's email of 4th November refers to the complaint letter being an edited version of a pdf issued in September 2020. As a result of the nature and volume of correspondence received, which concerned matters the Homeowner considered had already been addressed in full, the Factor required to invoke their Unacceptable Actions by Complainants Policy from time to time. Having checked their electronic and paper records, the Factor cannot locate a copy of any further direct response.

Point (5) of the Direction directs the Factor to provide the Tribunal with the quotation and report from Buckeridge which specifically identifies that the "gear trays" are the reason for the failure of the emergency lighting. Reference is made to the Emergency lighting periodic inspection and testing certificate dated 18th September 2018. Upon receipt of the report, the Factor requested a note of costs to remedy the faults identified. Reference is made to the letter the Factor sent to the Homeowner dated 27th September 2018 advising the Homeowner of the test results and that it was the Factor's intention to instruct the works to be carried out in the near future and advising that the Homeowner's apportioned share of the costs amounted to £90.16.

Whilst no further written report was obtained from Buckeridge, a verbal update was provided to the Factor before the meeting on 1st November 2018. Additionally, John MacCallum on behalf of the Factor, contacted the NICEIC technical helpline for a second opinion. At that time, the helpline service was via telephone. The email by Donald McArthur dated 19th September 2018 with details of the quotation for the emergency lighting repairs was referred to. They explained that Donald McArthur is the owner of Buckeridge Installations. Buckeridge Installations are the sub-contractor of George Hanson Building Contractors Ltd. In terms of appointment of

professional contractors, the Factor instructs George Hanson in respect of maintenance work to their tenanted stock following a competitive tender process on public contract Scotland. In line with current EU procurement legislation, such contracts are awarded on a quality and cost basis. Fyne Homes, acting as Property Factor, instruct George Hanson for repairs to factored blocks due to the preferable response times they are able to provide.'

10. Amendment to the Application by the Homeowner.

The Homeowner sent the Tribunal administration an email dated 30th September 2024 which set out his amended application. The details of the original application and the amended application are set out below.

11. The Second Case Management Discussion.

An inperson Case Management Discussion (CMD) took place in respect of the application at the Glasgow Tribunal Centre on 20th January 2025 at 10.30am.

The Homeowner attended on his own behalf.

The Factor was represented by Ms Kirstie Donnelly of TC Young, Solicitors.

12. The detail of the parties' oral representations (made at the CMD's), the parties' written representations and the Tribunal's decisions.

12.1 The parties initial Oral Representations at the first CMD.

12.1.1 The initial Oral Representations by the Homeowner at the First CMD.

The Homeowner explained that his main complaint relates to a regulatory test that was conducted for the emergency lights at the Property on 18th September 2018 by Buckeridge Installations, who had been instructed by the Factor to carry out the test. Once a year the lights are tested by an electrician to ensure that the lights are in good working order. He explained that to enable the electrician to carry out the test the electrician first switches the power off using a key or circuit breaker which automatically forces the batteries to come into play. Following the inspection Buckeridge Installations provided a report which was dated 18th September 2018. The test report concluded that the charging indicators operated correctly after the test. The test did not recommend that the gear trays should be replaced. The gear trays took no part in the test as they require mains power. The gear trays were never tested. However, on 27th September 2018 the Homeowner received a letter from the

Factor advising that fourteen emergency gear trays and one emergency bulkhead light needed to be replaced. The cost would be £2254 and the Homeowner's share was £90.16.

12.1.2 The initial Oral Representations on behalf of the Factor at the First CMD.

Ms Donnelly referred the Tribunal to her written representations. She advised that the Factor had instructed Buckeridge Installations to carry out the test of the emergency lights. They are qualified electricians. They provided their report dated 18th September 2018 which highlighted faults within 15 of the emergency light units. The report notes that the units did not stay illuminated during the three hour discharge. Following further investigation the Factor received advice from Buckeridge that the gear trays within the faulty units needed to be replaced. The Factor obtained a quotation for the works and advised the Homeowner and other owners by letter dated 27th September 2018. The letter advised the owners that the cost was within the level of the Factor's delegated authority of £500 per flat which is contained in the Deed of Conditions. In early October 2018 the Homeowner objected to the proposed works. The Factor replied by letter dated 11th October 2018 explaining its position on the basis of advice they had received from the contractor. An owners meeting was held on 1st November 2018. The emergency lighting was discussed at the meeting and the Factor provided the owners with a review of the electrician's report and recommendations. An alternative option was discussed of fitting a lower specification independent emergency light. The Factor agreed to obtain more information to enable the owners to vote and a further meeting was held on 3rd April 2019. The options presented to the owners included instructing a further three hour discharge test by an alternative contractor. Following that meeting the owners voted in favour of replacing the fourteen gear trays and one emergency bulkhead fitting. As a result of the majority vote the Factor instructed the works and the owners were billed accordingly.

The Factor acted on the advice of an appointed professional contractor. In light of that advice it is the Factor's understanding that the annual emergency light check is a three hour discharge in line with BS5266. If the lights do not discharge for the entire three hour period then further investigations will be conducted. Shorter

monthly tests are carried out monthly by members of the Factor's technical team. It is inaccurate to state that the annual check is an examination of the batteries.

12.1.3 The parties' representations in relation to the breaches of the Code of Conduct detailed in the applications.

**Section 1 of the 2012 Code of Conduct:
The Homeowner's complaint.**

At section 1 of the application form the Homeowner had inserted reference to the Schedule Part 1; 1; 7 and 10.' of the Factor's Written Statement of Services

The Factor's Response.

Ms Donnelly advised that the Factor has provided the Homeowner with a written statement of services as required by section 1 of the Code of Conduct and a copy has been produced to the Tribunal.

The Tribunal's Decision:

The Tribunal find that the Factor has not failed to comply with section 1.1 of the Code of Conduct as the Factor has provided the Homeowner with their Written Statement of Services.

Section 2.1 of the 2012 Code of Conduct: You must not provide information which is misleading or false.

The Homeowner's complaint.

A summary of the Homeowner's complaint is that the Factor had misled the Homeowner by proceeding on the basis that the emergency lighting gear trays are faulty. The Report from Buckeridge Installations had not concluded that the gear trays were faulty.

The detail of the complaint is as follows:

First Complaint: On September 18th, 2018, a regulatory battery test was conducted for the emergency lighting system by a qualified electrician from Buckeridge Electrical Contractors. The purpose of this annual test is to ensure the batteries are in good working condition and can provide backup power during a power outage. The electrician switched off the power using a key or circuit breaker to begin the test. The industry standard EN 50172 / BS5266-1-2016 Emergency Lighting specifies that

battery packs must be replaced if a luminaire fails to provide at least 1 Lux of illumination to an escape route surface for the "declared emergency duration" of 3 hours. 15 batteries failed to produce the required 1 Lux for the regulation time. During the discharge test, the gear trays were not involved as they require mains power (Alternating Current, A/C @ 230V) to function. All batteries charge and discharge with Direct Current (D/C) around 20V. When the mains power is restored, the correct functioning of the charge indicators allows us to assume that the gear trays are working properly. On November 1st, 2018, a meeting was held in the presence of Fyne Homes and the majority owners of the Old Courthouse to discuss the battery test. During the meeting, James Craig, representing Fyne Homes, mentioned that following the test by Buckeridge (electrical contractors) on September 18th, 2018, 15 gear trays were found to be defective regarding the 3-hour discharge of the emergency batteries. He had already received an estimate for gear trays. When the Homeowner asked if he had ever changed the batteries, Mr Craig replied, "Never." The Homeowner then referenced the Code of Practice for Emergency Lighting, EN 50172 / BS5266-1-2016. They were told 15 gear trays had failed even though the primary electrical circuit was switched off. It is the Homeowner's position that this was impossible. Instead of admitting they were wrong, MacCallum and Craig continued to charge owners £90 for something that had never taken place.

The Buckeridge Test Report, September 2108, concluded; Test Report - Items assessed for compliance.

Clause 12; # 19 Luminaires are clean and undamaged with lamps in good condition. Ticked ✓ as OKAY.

Clause 12, Item 23, After testing each luminaire charging indicator operates correctly. Ticked ✓ as OKAY This complies with the Code of Practice BS 5266-1: 2016 V9: The charging indicators operate correctly after the test.

J. McAlister (Technical Director) was present at the meeting but remained silent.

Second Complaint: On September 27, 2018, the homeowners received a letter from Deidre Duncan, Technical Services Administration Manager, advising of the need for the replacement of 14 emergency bulkhead lights. This followed the annual emergency battery test on the 18th September 2018. The total cost would be £2254.00, and the Homeowner's share was £90:16. On April 9th, 2019, the

Homeowner received correspondence from D. Duncan, the Technical Services Administration Manager which stated that a majority of owners present and voting at the meeting held on April 3rd had favoured Option 1, which entails the replacement of 14 gear trays and 1 emergency bulkhead. It is the Homeowner's position that Option One should not have been put to the vote as the gear trays could not have been involved in any battery test as the Buckeridge electrician had switched off the power to enable the test.

Third Complaint: The notes presented by J MacCallum before the meeting held on April 3rd, 2019, headed Emergency Lights were misleading and false. The fire regulations have been disregarded. The testing of the emergency lights was flawed as the batteries were not tested. The Factor falsely claimed that 15 gear trays needed to be replaced and ignored the test results. Owners were wrongly charged £90 each. The Buckeridge Test Report had verified the correct operation of all charging indicators, but Mr McCallum was attempting to convey a different story.

The Homeowner's amended application mentions details of frauds that are outwith the jurisdiction of the Tribunal.

Fourth Complaint: The emails from D. Duncan, Technical Services Administration Manager, contain contradictory statements that misrepresent facts. The email from the Homeowner to D. Duncan dated 16th. July 2019 reports seagull damage to the utility door. She replied the same day Tuesday 16th. July 2019 at 14:26. She acknowledged receipt of the email from the Homeowner and confirmed that a works order would be issued for the repair. However a later email dated Mon 29th July at 12:51 states that she has been on annual leave and only just received the Homeowner's email which she passed on for the attention of James Craig, Technical Services officer responsible for the management of the Old Courthouse.

Fifth Complaint: The Factor has charged for replacement Gear trays instead of the backup batteries.

The Factor's Response.

The Factor received the Emergency Lighting Periodic Inspection and Testing Certificate dated 18th September 2018. The Report listed fifteen lights that had not stayed illuminated during the full three hour discharge. On receipt of the report the

Factor obtained a quotation from George Hanson (Building Contractors) Ltd to remedy the faults. The Factor reported matters to the homeowners in their letter dated 27th September 2018. The Factor proceeded on the basis of advice given to them by professionally appointed contractors. As already referred to above, an owners meeting was held to vote on the action to be taken following the report by Buckeridge Installations. The owners did not agree to obtaining additional quotes or having another test carried out by a different electrician. The Factor is agent of the owners in terms of the Factor's written statement of services and the title deeds. They are not agents of the electrician, The Factor did not carry out the test of the emergency lighting themselves. They did not prepare the report on the test that had been carried out. There is no financial relationship between Buckeridge Installations and the Factors.

The Tribunal's Decision:

The First and Third Complaint.

The Homeowner's complaint is that James Craig, representing Fyne Homes, mentioned that following the test by Buckeridge (electrical contractors) on September 18th, 2018, 15 gear trays were found to be defective and the Factor had obtained an Electrical report which states that lights are faulty. The homeowners were told 15 gear trays had failed even though the primary electrical circuit was switched off. It is the Homeowner's position that this was impossible.

The Minute of the Meeting of 1st November 2018 records that at the annual check some of the lights were not working correctly as they were not holding the emergency charge for the required time.

The Tribunal do not doubt the Homeowner's recollection of the Resident's meeting on 1st November 2018 but as the Minute of the Meeting of 1st November 2018 does not record that the gear trays were faulty the Tribunal are unable to make a determination on this complaint.

The Second Complaint

The Homeowner's complaint is that it was misleading or false for the Factor to put Option One (replacement of the gear trays) to the vote at the meeting on 3rd April 2019 as the gear trays could not have been involved in any battery test as the Buckeridge electrician had switched off the power.

The Tribunal do not accept the Homeowner's position that it was misleading or false for the Factor to put Option One to the vote at the meeting on 3rd April 2019. The Factor put a range of options to the homeowners. Option One was the most extensive repair, Option Two was the less extensive repair and Option Three was to arrange a further discharge test as a second opinion. Offering owners a range of options was not misleading or false. The Tribunal determine that the Factor has not breached section 2.1 of the 2012 Code of Conduct in relation to this complaint.

The Fourth Complaint.

The Homeowner's complaint is that Deirdre Duncan sent an email to the Homeowner dated 16th July 2019 at 14.26 acknowledging receipt of the email from the Homeowner dated 16th July 2019 at 13.23 but her email dated 29th July 2019 at 12.51 advised that she had only just received the email from the Homeowner dated 16th July 2019.

The Tribunal find that the email from Deirdre Duncan dated 29th July 2019 was false as she had already replied to the Homeowner's email dated 16th July 2019. The Tribunal determine that the Factor has breached section 2.1 of the 2012 Code of Conduct in relation to this complaint.

The Fifth Complaint.

The Homeowner's position is that it was misleading or false for the Factor to charge owners for replacement gear trays instead of replacement batteries.

The Tribunal acknowledge that the Factor had instructed Buckeridge Installations, professional electricians, to carry out the Emergency Lighting Periodic Inspection and Testing Certificate and they had instructed George Hanson, a professional building contractor, to provide a quotation for the remedial works required.

The Factor was entitled to rely of the professional expertise of both Buckeridge Installations and George Hanson.

The Factor had charged the homeowners for the cost of the replacement gear trays following the quotation they had received from George Hanson. Consequently, the Tribunal determine that it was not misleading or false for the Factor to charge owners for replacement gear trays instead of replacement batteries. The Tribunal determine

that the Factor has not breached section 2.1 of the 2012 Code of Conduct in relation to this complaint.

Section 2.2 of the 2012 Code of Conduct: You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).

The Homeowner's complaint.

The Homeowner advised that at the owners' meeting on 1st November 2018 John McCallum, the Factor's technical staff member, had said to him 'Don't you point your finger at me'. John McCallum had been abusive and threatening towards him when he was discussing the Fire Regulations at that meeting.

The Factor's Response.

Ms Donnelly advised that this accusation is not detailed in the Homeowner's application.

The Tribunal's Decision:

The Tribunal are unable to make a determination in relation to section 2.2 as the Homeowner's complaint did not form part of the Homeowner's original or amended application.

Section 2.4 of the 2012 Code of Conduct: You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

The Homeowner's complaint.

The Homeowner's complaint is that the Factor wrongly sought payment for the replacement gear trays.

The Factor's Response.

The Factor's position is that the owners meetings that took place on 1st November 2018 and 3rd April 2019 authorised the replacement of the gear trays that had been included in the invoices issued to the owners. The total cost of the replacement gear trays was £2254, which was within the Factor's delegated authority of £500 per flat. As the Homeowner had taken exception to the charge the Factor had taken additional steps by arranging the owners meetings already referred to.

The Tribunal's Decision.

Section 2.4 of the code of Conduct requires the Factor to have a procedure to consult with homeowners and seek approval for works that are in excess of the amount of their delegated authority.

The Factor's Written Statement of Services has been produced. Schedule Part 2, paragraph (f) details the Factor's delegated authority. It states 'The Deed of Conditions relating to the Old Courthouse give the Factor delegated authority to instruct works up to an anticipated cost of £500 attached to each dwellinghouse.'

The Homeowner was charged the sum of £90.15 for the replacement gear trays. This sum is within the Factor's delegated authority of £500. The Tribunal determine that the Factor has not breached section 2.4 of the Code of Conduct in relation to this complaint.

Section 2.5 of the 2012 Code of Conduct: You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).

The Homeowner's complaint.

The Homeowner advised that he had moved into the Property on 3rd April 2013 and had found a number of snagging items/ defects. These included windows that were not wind and water tight, the roof was not wind and water tight, there were problems with the central heating and the front door was not water tight. These problems persisted for seven years. He referred the Tribunal to the photographs he had

provided. In terms of the warranty the problems should have been completed within two years but nothing was done.

The Factor's Response.

Ms Donnelly acknowledged that the Factor and the building developer have similar names and the same staff work for both companies. The Factor is Fyne Homes and the builders are Fyne Initiatives Limited. They are separate legal entities. The Factor has no jurisdiction in relation to snagging or defect claims. The Property had been reroofed in 2019 by the developer at no cost to the Homeowner. The defect had been treated as a latent defect by the developer.

The Tribunal's Decision.

The Tribunal acknowledge that the Homeowner purchased his property from Fyfe Initiatives in 2013 and the Factor is Fyfe Homes Limited. Whilst both companies have similar names and the same registered address they are two separate companies that have two distinct roles. Fyfe Initiatives entered into a contract with the Homeowner for Homeowner's purchase of the Property. The Homeowner has not provided the Tribunal with a copy of that contract but it is accepted by the parties that the Property developer was under a contractual obligation to the Homeowner to repair structural defects/ snagging items within a specific period of time following the Homeowner's purchase of the Property.

The Tribunal find that the Factor is not responsible for rectifying the structural defects/ snagging items that the Property developer was contractually bound to rectify. The Tribunal determine that the Factor has not breached section 2.5 of the Code of Conduct in relation to this complaint.

Preamble of section 3: While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

The Homeowner's complaint.

The Homeowner believes that the Factor has charged the following improper payments:

First complaint (gear trays). A charge in respect of the gear trays (safety system decommission label £410 -59) dated 04/10/19.

Second complaint (removal of bird netting). A charge of £6.34 on 07/11/19, related to AO215773, for the removal of bird netting from flats 23, 24, and 25. The party responsible for this cost is Fyne Initiatives, as they were in charge of the original construction and therefore had an obligation to fix any issues.

Third complaint (repair to utility door). A charge of £750 for repairing the utility door. The Factor arranged for the roof netting to be removed in preparation for the roof repair. The netting had been used as a bird deterrent, but they failed to replace it. Consequently, seagulls nested and bred on the roof. After leaving the nest, they pecked a utility door and created a golf ball-sized hole. The Homeowner sent a sent photo of the damage to D. Duncan, Technical Services Administration Manager, and was told that J. Craig would respond. However, he never showed up until the door had collapsed completely. A quote of £750 was given by Hanson. Technical Services were blaming rot yet there are photos which show otherwise, and the owners were to be billed for it. The Homeowner objected, stating that the owners were not responsible for the actions of J. MacCallum and J. Craig, who were accountable for their actions and the resulting consequences. J. MacCallum sent a letter, citing the Deed of Conditions, stating that the owner-occupiers had to pay for the damage, regardless of who caused it. "This was unacceptable. Fyne Homes, as factor, were responsible for managing and maintaining the common areas. This meant they had a Duty of Care while carrying out their responsibilities. However, they failed to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The Homeowner considers that the Factor has failed to carry out their Duty to Maintain." They could have simply reattached the netting, which they had removed and avoided the situation. Failure to reinstate the netting led to a seagull infestation and additional damage to the property.

Fourth Complaint (charge for repair to broken courtyard light): The charge of £367.75 (£14.71 per owner) on 13th November 2020 for replacement of the broken courtyard light £367.75 was excessive.

The Factor's Response:

The First Complaint (gear trays): The owners authorised the replacement of the gear trays when they voted on 3rd April 2019. The cost is within the Factor's delegated authority of £500.

The Second Complaint (removal of bird netting): The cost was charged to the owners as the Factor had arranged the removal of the bird netting.

The Third Complaint (repair to utility door): The cost of the replacement door fell within the Factor's delegated authority. The damage to the door had not been

caused by the removal of the roof netting. The Factor has no control over the presence of seagulls.

The Fourth Complaint (charge for repair to broken courtyard light): The Homeowner has not produced any evidence to the effect that this charge was excessive.

The Tribunal's Decision.

The Tribunal's determinations in relation to the four complaints are as follows:

The First Complaint (gear trays):

As previously stated, the Tribunal acknowledge that the Factor had instructed Buckeridge Installations, professional electricians, to carry out the Emergency Lighting Periodic Inspection and Testing Certificate and they had instructed George Hanson, a professional building contractor, to provide a quotation for the remedial works required. The Factor was entitled to rely on the professional expertise of both Buckeridge Installations and George Hanson. The Factor arranged for the homeowners to vote on whether to accept the charge for the replacement gear trays, install new LED light fittings or have a further three hour discharge test carried out. On 3rd April 2019 a majority of votes cast voted to proceed with the replacement gear trays. The Factor had charged the homeowners for the cost of the replacement gear trays following the quotation they had received from George Hanson. The Tribunal determine that the charge for the replacement gear trays was not an improper charge and the Factor had not breached the preamble of section 3 of the 2012 Code of Conduct in relation to this complaint.

The Second Complaint (removal of bird netting):

The roof had been repaired/ replaced by the original developers Fyfe Initiatives, at no cost to the Homeowner. The bird netting had been removed to enable the roof repair/ replacement to proceed. Had the roof not needed to be repaired/ renewed the bird netting would not have had to be removed. The owners should not have been charged for removal of the roof netting. Accordingly, the Tribunal determine that the charge for removal of the roof netting was an improper payment and the Factor had

breached the preamble of section 3 of the Code of Conduct in relation to this complaint.

The Third Complaint (repair to utility door):

The Tribunal were unable to determine from the parties productions and representations if the damage to the utility door had been caused by rot or pecking of seagulls. Accordingly, the Tribunal were unable to make a determination in relation to this complaint.

The Fourth Complaint (charge for repair to broken courtyard light):

As the Homeowner had not provided any evidence that the charge for the broken courtyard light was excessive the Tribunal were unable to make a determination in relation to this complaint.

Section 3.1 of the 2012 Code of Conduct: If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

The Homeowner's complaint.

The Homeowner explained that he refused to pay his factoring account in relation to the charge for the gear trays.

The Factor's Response.

Ms Donnelly advised that the Homeowner's complaint is not a breach of section 3.1 of the Code of Conduct.

The Tribunal's Decision.

The Tribunal determine that the Homeowner's complaints relating to the charge for the replacement gear trays is not a breach of section 3.1 of the 2012 Code of Conduct.

Section 6.3 of the 2012 Code of Conduct: 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.

The Homeowner's complaint.

The Homeowner explained that his complaint is that the Factor only instruct Hansons. He confirmed that he had not asked the Factor why they only use Hansons.

The Factor's Response.

Ms Donnelly advised that there has been no breach of section 6.3 of the Code of Conduct.

The Tribunal's Decision.

Section 6.3 of the Code of Conduct requires the Factor to show how and why they have appointed contractors if the Homeowner requests this information. As the Homeowner accepts that he has not asked the Factor for this information the Tribunal find that the Factor has not failed to comply with section 6.3 of the 2012 Code of Conduct in relation to this complaint.

Section 6.9 of the 2012 Code of Conduct: You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

The Homeowner's complaint.

The Homeowner's complaint is in relation to the face plate on the entrance door. The face plate is the plate that houses the buzzers that are used to request access to the properties. The plate should be fitted using six screws and it should be hermetically sealed due to the electrical components. However, only three screws have been used. The Homeowner advised John McCallum of the defect but the repair has not been completed. In addition, his complaint includes the fact that the roof was not repaired until December 2019.

The Factor's Response.

The Factor issued a work order in respect of the missing screws on the face plate on 5th April 2019. Unfortunately, the work was not carried out. However, there are three screws holding the face plate in place and the missing screws have not affected the security of the face plate or the entrance door.

The Tribunal's Decision.

The Tribunal find that the fact that three screws are missing from a face plate that is not insecure is a de minimis matter. Also the Factor is not responsible for the delay by the developers in carrying out the roof repair/ replacement. Accordingly the Tribunal determine that the Factor has not breached section 6.9 in relation to this complaint.

Section 7.1 of the 2012 Code of Conduct: You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

The Homeowner's complaint.

The Homeowner advised that he was charged for replacement of a communal door at a cost of £818 in 2019. The door was not rotten, it had been pecked by seagulls. The Factors were at fault as the roof netting had not been reinstated at the time the reroofing was carried out. This had resulted in seagulls nesting on the roof and pecking the door. The cost of the replacement door should be borne by the Factor.

The Homeowner accepted that the Factor has a complaints procedure.

The Factor's Response:

The cost of the replacement door fell within the Factor's delegated authority. The damage to the door had not been caused by the removal of the roof netting. The Factor has no control over the presence of seagulls. The Factor has a complaints procedure.

The Tribunal's Decision.

Section 7.1 of the 2012 Code of Conduct requires the Factor to have a clear written complaints procedure. Both parties accept that the Factor has a complaints procedure, which has been produced to the tribunal. The Tribunal determine that the Factor has not breached section 7.1 of the 2012 Code of Conduct in relation to this complaint.

Section 7.2 of the 2012 Code of Conduct: When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner

is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

The Homeowner's complaint.

The Homeowner explained that he sent a formal complaint to the Factor dated 19th November 2020. The letter has not been produced to the Tribunal. The Factor did not reply to his complaint they just sent him a bill for the replacement gear trays.

The Factor's Response:

The Factor believes that the letter of complaint sent by the Homeowner was in fact dated 4th November 2020. On 6th November 2020 Janet McAllister replied to the Homeowner and acknowledged receipt of his letter and advised that a fuller response would be provided the following week. During that period the Homeowner sent the Factor a large volume of correspondence. As a consequence of the volume to correspondence the Homeowner had sent to the Factor the Factor had to implement their Unacceptable Actions policy from time to time. The Factor cannot find a copy of a direct response to the complaint.

The Tribunal's Decision.

The Factor has been unable to provide the Tribunal with evidence that they sent the Homeowner a letter confirming their final decision in response to the Homeowner's complaint. The Tribunal determine that the Factor has failed to comply with section 7.2 of the 2012 Code of Conduct in relation to this complaint.

Section 2.4 of the 2021 Code of Conduct: Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

The Homeowner's complaint.

The Factor wrongly sought payment for the replacement gear trays.

The Factor's Response:

The owners' meetings that took place on 1st November 2018 and 3rd April 2019 authorised the replacement of the gear trays that had been included in the invoices issued to the owners. The total cost of the replacement gear trays was £2254, which was within the Factor's delegated authority of £500 per flat. As the Homeowner had

taken exception to the charge the Factor had taken additional steps by arranging the owners meetings already referred to.

The Tribunal's Decision.

The Homeowner's complaint relating to the Factor's invoice for the replacement gear trays was not a breach of section 2.4 of the Code of Conduct. Section 2.4 relates to the obligation on the Factor to provide information or documents to a homeowner. The Tribunal determine that the Factor has not breached section 2.4 of the Code of Conduct in relation to this complaint.

Section 2.6 of the 2021 Code of Conduct: A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

The Homeowner's complaints.

The First Complaint.

The Factor has charged for too many lift shaft inspections in relation to the presence of seagull nests. One visit per year is sufficient, and it is recommended to do it in September or October when the chicks have left the nest. By charging for too many inspections the Factor has inflated costs.

The second complaint.

Despite the lack of documented evidence, J. MacCallum relied on a majority vote to impose an unproven cost on the community for replacing the gear trays, which the owners duly accepted.

The Factor's Response:

Section 2.6 of the Code of Conduct requires the Factor to have a procedure to consult with Homeowners before incurring additional costs beyond costs relating to the provision of core services. The Homeowner's complaints are not matters that relate to section 2.6.

The Tribunal's Decision.

The Tribunal accept that the Factor has the required procedure in place for consulting with homeowners when necessary, as is evidenced by the votes that took place at the meeting that took place on 3rd April 2019. The Tribunal determine that the Factor has not breached section 2.6 of the Code of Conduct in relation to these complaints.

Section 3.1 of the 2021 Code of Conduct: While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters.

Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

The Homeowner's complaint.

The Homeowner believes that the Factor has charged an improper charge of £875.10 (£35 per owner) on 14th July 2023 for decommissioning the roof anchors. There would have been no need to remove the roof anchors if remedial work had not been necessary to the roof.

The Factor's Response:

The Factor clarified their position in their letter to the Homeowner dated 23rd September 2019. The letter advised that the Factor had decided to decommission the roof anchors and that there would be no new anchors penetrating through the new roof. The roof anchors had been removed as it was thought that they were the source of water ingress. The Factor accepted that the owners should have been asked to vote on their removal. The cost fell within the limit of the Factor's delegated authority.

The Tribunal's Decision.

As previously stated, the roof had been repaired/ replaced by the original developers Fyfe Initiatives. As with the bird netting, the roof anchors had been removed to enable the roof repair/ replacement to proceed. The Factor provided no evidence that the roof anchors had been removed as they were a source of water ingress. The

Tribunal find, on a balance of probabilities, that had the roof not needed to be repaired/ renewed the roof anchors would not have had to be removed. The owners should not have been charged for removal of the roof anchors. Accordingly, the Tribunal determine that the charge for removal of the roof anchors was an improper payment and the Factor had breached the section 3.1 of the 2021 Code of Conduct in relation to this complaint.

Section 6.3 of the 2021 Code of Conduct: 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.

The Homeowner's complaint.

Fyne Homes Factors use Hanson's Building Contractors. They do not carry out competitive tendering.

The Factor's Response:

The Factor instructs George Hanson in respect of maintenance work to their tenanted stock following a competitive tender process on public contract Scotland. In line with current EU procurement legislation, such contracts are awarded on a quality and cost basis. Fyne Homes, acting as Property Factor, instruct George Hanson for repairs to factored blocks due to the preferable response times they are able to provide.

The Tribunal's Decision.

The Homeowner has not provided evidence that he asked the Factor to explain why they instruct George Hanson to carry out maintenance work to the Homeowner's Property. Consequently, the Tribunal are unable to make a determination in relation to this complaint.

However, the Tribunal note that the Factor has provided an explanation as to why they instruct George Hanson to carry out maintenance work in their additional written representations as at November 2024, detailed above.

Section 7.1 of the 2021 Code of Conduct: A property factor must have a written complaints handling procedure.

Section 7.2 of the 2021 Code of Conduct: When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

The Homeowner's complaint. The Homeowner made a formal complaint to the Factor and was promised a reply by J. McAlister, Technical Director. The reply was a bill franked on 19th November 2020 with no reference to his email. He did not receive a final decision.

The Factor's Response.

The Factor's 2013 and 2018 complaints procedures have been lodged. The Homeowner's complaint was dated 19th November 2020 and predated the 2021 Code of Conduct.

The Tribunal's Decision.

The Tribunal acknowledge that the Factor's complaints procedure has been produced and letter of complaint from the Homeowner to the Factor dated 19th November 2020 predates the 2021 Code of Conduct. The Tribunal determine that the Factor has not breached sections 7.1 and 7.2 of the 2021 Code of Conduct in relation to these complaints.

Section OSP1 of the 2021 Code of Conduct: You must conduct your business in a way that complies with all relevant legislation.

Section OSP2 of the 2021 Code of Conduct: You must be honest, open, transparent and fair in your dealings with homeowners and

Section OSP4 of the 2021 Code of Conduct: You must not provide information that is deliberately or negligently misleading or false.

The Homeowner's complaint (OSP 1, 2 and 4).

The Factor did not provide the Homeowner with evidence that the gear trays had failed. He was refused access to the Test Report and they deliberately withheld it from him.

The Factor's Response (OSP 1, 2 and 4).

The Factor does not believe that they have failed to comply with OSP1, OSP 2 or OSP 4.

The Tribunal's Decision (OSP 1, 2 and 4).

The Homeowner provided the Tribunal a copy of the Emergency Lighting Periodic Inspection and Testing Certificate dated 18th September 2018 with the productions he lodged with the Tribunal on 8th August 2024. The Factor must have provided him with a copy. The Factor has not provided evidence that the gear trays had failed. The Factor relied on the professional advice of Buckeridge Installations who carried out the certificate and Hansons who the Factor consulted to have the emergency lights repaired. The Factor is entitled to reply on such professional advice. Also, the owners voted against option three on 3rd April 2019. This option was to arrange for another test to be carried out by another electrician as a second opinion. In the circumstances, the Tribunal determine that the Factor has not failed to comply with OSP1,2 and 4 in relation to these complaints.

Section OSP12 of the 2021 Code of Conduct: You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

The Homeowner's complaint.

The Homeowner's complaint under OSP 12 concerns the incident on 1st November 2018.

The Factor's Response.

This is not a valid complaint as OSP 12 only came into effect on 16th August 2021.

The Tribunal's Decision.

The Tribunal determines that the Homeowner's complaint predates the commencement of the 2021 Code of Conduct.

13. Findings in Fact.

13.1 The Homeowner purchased the Property on 28th March 2013.

13.2 The title number of the Homeowner's Property is BUT4740.

13.2 The Factor was first registered as a Property Factor on 7th December 2012 and they were the first appointed factors of the development.

13.3 The Property is part of a development of 25 flats that were converted in 2011.

13.4 Buckeridge Installations carried out the Emergency Lighting Periodic Inspection in September 2018.

13.5 Buckeridge Installations issued the Emergency Lighting Periodic Inspection Testing Certificate dated 18th September 2018 that stated that 15 lights had not stayed illuminated for the full three hour discharge period.

13.6 The Factor's level of delegated expenditure in terms of section 18.3 of the Deed of Conditions by Fyne Initiatives Limited and Fyne Homes Limited registered 13th May 2011 is £500.

13.7 An owner occupiers meeting was held on 3rd April 2019. The owners voted on three options. (1) replacement gear trays and one emergency bulkhead fitting at a cost of £90.15 per owner. (2) Install 14 new LED lights and replace one emergency bulkhead fitting at a cost of £42.06 per owner or (3) instruct a further three hour discharge test by another electrician. A majority of the votes cast voted in favour of option one.

13.8 The Factor has a written complaints policy.

13.9 The Factor issued their Written Statement of Services to the Homeowner.

13.10 The Homeowner sent a letter of complaint to the Factor dated 16th July 2019. The factor replied on 16th July 2019 and 29th July 2019.

13.11 The Property developer Fyne Initiatives Limited carried out snagging/ warranty works to the roof and repaired or replaced the roof at their expense.

13.12 In preparation for the repair/ replacement of the roof the Factor had nets and anchor points removed from the roof and charged the homeowners for the costs involved.

13.13 The face plate is the plate that houses the buzzers that are used to request access to the properties. It should have been fitted using six screws and it should be hermetically sealed due to the electrical components. However, only three screws had been used.

13.14 The Homeowner sent the Factor a letter of complaint dated 4th November 2020. The Factor did not issue a final response to that complaint.

13.15 The Factor has a procedure for consulting with homeowners.

14. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with sections 2.1,

the preamble of section 3 and 7.2 of the 2012 Code of Conduct and section 3.1 of the 2021 Code of Conduct. Section 19(2) of the Property Factors (Scotland) Act 2011 requires the Tribunal to decide whether to make a Property Factor Enforcement Order.

15. The Tribunal considered that the Factor's breach of section 2.1 of the 2012 Code of Conduct by replying to the Homeowner's letter of complaint twice was a technical breach and it was not appropriate to make a Property Factor Enforcement Order in relation to that breach. In relation to the other breaches the Tribunal determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'The Factor must pay the homeowner £150 for the stress and inconvenience he had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'.

16. Appeals

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

Jacqui Taylor

Signed Date 3rd February 2025

Chairperson