



**Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.**

**Chamber References:** HPC/PF/21/2439, HPC/PF/21/2627,  
HPC/PF/21/2513, HPC/PF/21/2438,  
HPC/PF/21/2380 and HPC/PF/21/2368

**Re: Properties at 40 Cranworth Street, Hillhead, Glasgow, G12 8AG (“the Properties”)**

**Parties:**

**Ms Kirsty Scott (2439), Mrs India Fullarton (2627), Mrs Fiona Mann (2513), Ms Pasquale Cerullo (2438), Mrs Ping-Tai Wong (2380) and Mr Alan Ker (2368) (“the Applicants”)**

**Lomond Property Factors Limited, The Gowk, Gartocharn, Dunbartonshire, G83 8ND (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister, solicitor, (Legal Member) and Robert Buchan, chartered surveyor, (Ordinary Member) (“the tribunal”)**

**Background**

1. This is an application by the Applicants in respect of the Properties in relation to the Respondent’s actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application originally alleged that the Respondent had failed to comply with Sections 2.1, 2.4, 2.7, 3.11, 5.1, 5.11, 6.4, 6.6, 6.9, 6.12, 7.5 and 7.6 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”) and had failed to carry out the property factor’s duties. The applications were dated on various dates between 30<sup>th</sup> September 2021 and 25<sup>th</sup> October 2021 and all were accepted by the Tribunal for determination on 7<sup>th</sup> December 2021. A case management discussion was held at which it was established that there was lack of clarity as to the version of the Code referred to in the applications. The applications were accompanied by a number of documents.

2. Subsequently, amended applications were lodged alleging failure to comply with Sections 1, 2.1, 2.5, 3.5a, 5.1, 6.1, 6.6 and 6.9 of the 2012 version of the Code and containing no allegation that there had been failure to comply with the property factor's duties. In initial representations and at the case management discussion, the Respondent had helpfully indicated that it had assumed that the Applicants had referred to the wrong version of the Code and had tailored its representations accordingly and had raised no objection to amended applications being submitted.
3. The Tribunal determined that the applications be considered together and noted that Ms Kirsty Scott, one of the owners would be representing the Applicants.
4. Parties submitted various representations and productions.
5. The tribunal issued a Direction requiring the Respondent to produce documentation and to provide representations on some matters.
6. During the course of the Hearing, Ms Scott conceded that she was withdrawing certain parts of the applications and consequently the alleged breaches of Sections 1, 3.5(a) and 5.1 were not considered by the Tribunal.

## **Decision**

7. **The tribunal determined that the Respondent had failed to comply with the Code and it determined that it make a proposed property factor enforcement order.**
8. **The tribunal determined that it make a proposed property factor enforcement order requiring the Respondent to pay the sum of £500 to each Applicant.**

## **Hearings**

9. Hearings were held in Glasgow Tribunal Centre on 4<sup>th</sup> July 2022 and 7<sup>th</sup> September 2022.
10. Ms Kirsty Scott, one of the homeowners, was in attendance at both Hearings and she also represented the other applicants. Mr David Allan, a witness for the Applicants was in attendance on 4<sup>th</sup> July 2022 from the point where the Hearing re convened after a short adjournment in the morning and was present for all of the proceedings on 7<sup>th</sup> September. It was accepted that he was a supporter of Ms Scott as well as being a witness and the Respondent raised no objection to his presence.
11. Mrs Catherine McInnes, a Director of the Respondent was present at both Hearings and was supported by her son, Callum McInnes on 4<sup>th</sup> July 2022.

## The Applicants' Position

12. Ms Scott set out the background to the applications. She said that 40 Cranworth Street is a tenement of eight flats. A report on the condition of the tenement had been prepared by John Gilbert, Architect, in 2012 which identified that work required to be done to the fabric of the tenement. She said that the tenement had been self -factoring with owners arranging amongst themselves what repairs required to be done. She said that, following the John Gilbert report, some work had been carried out. Ms Scott explained that after a period of some stability in ownership, some flats had been sold and it was realised that the way forward would be to appoint a property factor for the building. She also said that a prerequisite of the Council providing grant funding for any repair work was for the tenement to be factored.
13. Ms Scott said that the owners decided to approach two possible candidates for factoring: Ann Gordon Property Management and the Respondent. She said that Mr McInnes of the Respondents met with the owners and made what she described as "a good presentation." Ms Scott said that they were anxious to move things on and that Lomond's proposal was such that the owners decided to appoint them as property factor without hearing a presentation from the other proposed property factor. Ms Scott said that Mr McInnes is a director of Lomond Property Factors Ltd ("LPF").
14. Ms Scott said that the building was in a poor state of repair and that Mr McInnes was aware of this. He had told the owners that there was an opportunity to get grant funding from Glasgow City Council ("the Council") and the owners signed an appropriate mandate authorising Lomond to submit applications on their behalf. The tribunal was referred to Production 1 of the Applicants' bundle which was an example of a mandate signed by the owners. It states "*I agree to Lomond Property Factors Ltd acting as agent in respect of a repairs grant application to Glasgow City Council for 40 Cranworth Street, Glasgow, G12 8AG*".
15. Ms Scott said that, as a prelude to applications being submitted to the Council, Mr McInnes commissioned a report from Cowal Design Consultants Ltd. Ms Scott said that, as Mr McInnes had commissioned the report, she considered it to have been instructed by LPF on behalf of the owners. She said that the process was that Mr McInnes instructed Cowal and then the quantity surveyor for the project and a Bill of Quantities was then prepared. The tribunal was referred to the Cowal report which had been lodged and was referred to in 2.2 of the Respondent's submissions.
16. Ms Scott said the owners were given a Property Condition Report which had been prepared by Mr McInnes. (Production 48 from Respondent's bundle)

17. Ms Scott said that the applications for grant funding were signed on 6<sup>th</sup> May 2018 after the relevant forms had been sent to the owners by the Respondent. She said that the process was dealt with by Mr McInnes with whom the owners had a meeting. Ms Scott said that she assumed that the costs for the work were submitted to the Council along with the applications.
18. Ms Scott said that, at a meeting which the owners had with Mr McInnes in February 2018, Mr Miller had been introduced as the quantity surveyor on the project. She said that the owners were not involved in any process of appointment of Mr Miller. Ms Scott said that, at the meeting, owners were made aware that the total cost of the project would be £246,583.83. She said that the Bill of Quantities was available at the meeting and that owners could see the costs for individual items.
19. Ms Scott said that owners had been told that the process in the Council was that applications for grant funding took a minimum of six weeks to be considered.
20. Ms Scott said that the first time she saw the tender report prepared by Mr Miller was in 2022 in connection with the Tribunal process and that she did not see it prior to the contractor being appointed. The tribunal noted that the tender report had been lodged by the Respondent (Production 2 in the Respondent's bundle).
21. Ms Scott said that, at the meeting of owners on 13<sup>th</sup> February 2018, Mr Miller had elaborated on the works to be carried out and total cost of the work was said to be £246,534.83 with the cost for each flat to be £30,816.85 less grant funding of 50 % from Glasgow City Council. She referred to the minute of the meeting (Production 1c in Respondent's bundle). Ms Scott said that subsequently the contract sum was accepted. She said that she had never before been involved in such a matter and that she relied on the experience of Mr McInnes, the property factor, and Mr Miller, the quantity surveyor. She said that her approach in relation to Mr Miller was that "this person knows more than we do."
22. Ms Scott said that, at the meeting, Mr Miller and Mr McInnes reassured owners when there was a discussion about the possibility of costs rising. She said that they were told that there was no need to worry because, built in to the costings, was a contingency provision of 10% and that this was reflected in the minutes of the meeting. Ms Scott said that the owners thought that was reasonable although she personally had concerns that the works required to stonework might cost more based on her reading of the John Gilbert report from 2012 and the fact that someone from Glasgow City Council had told her that the property would probably have deteriorated since the report had been done. She said that, notwithstanding her personal concerns, she thought that Mr Miller and Mr McInnes "had the measure of what was needed." She said that she was reassured because professionals were involved in the project. She said that the

professionals' view was that the stonework element of the project had been over estimated and that, in relation to that aspect, there would be some leeway. Ms Scott referred to Applicants' Production 5 which was a response sent by the Respondents to a query raised by Mr Allan to Iain McInnes on 28<sup>th</sup> February 2018. In it, Mr McInnes stated "we have allowed some 21.5 m<sup>2</sup> for the stone indentation and 64m<sup>2</sup> for stone restoration based on our observation. This assessment was agreed to be sufficient by Stone Mason when he returned to site to check over.... We consider it likely that any additional costs which may occur will be covered by the £17,519.77 contingency fund."

23. Ms Scott said that, after the decision meeting, the owners each deposited the sum of £12,972.13 in respect of the individual share due. She said that Mr McInnes, at that time, was trying to make savings on the contract works. She said that owners were subsequently asked to lodge an additional sum of £858.57.
24. Ms Scott said that, from the John Gilbert report and the Cowal report, it was clear that there was a possibility that a closer examination of the chimneys would show that more work was required than had been anticipated. She accepted that there were issues with regard to carrying out assessments of the rear elevation of the roof because of difficulties with access to the rear of the tenement.
25. Ms Scott said that the owners were relying on the Respondent to ensure that their interests were protected. She said that, at the time the project was initiated and after works had commenced, she had no understanding of the involvement of Lomond Building Consultants ("LBC"). When Ms Scott was asked by the tribunal about the Respondent not being paid for work done in relation to the project, she said that she assumed that they were being paid from elsewhere.
26. Ms Scott accepted that she had sight of the Property Condition Report which Mr McInnes had prepared prior to submission of the grant funding application. She said that she saw no significance or did not notice the reference in the footnote of that report: "*This report has been prepared for the co-owners by Lomond Building Consultants and is offered free of charge to clients for their consideration.*"
27. Ms Scott said that the application for grant funding was successful and that, on 3<sup>rd</sup> July 2018, scaffolding was erected and works got under way.
28. Ms Scott said that Mr David Allan, a quantity surveyor, is the uncle of Ms India Fullerton, one of the owners. She said that, when the additional £867 had been requested from owners, it was suggested that he be contacted because it was thought to be a good idea that "someone who knows something" be involved to assist owners.
29. Ms Scott said that all owners in the tenement gave authority for Mr Allan to have access to all the documentation relating to the contract and the works and that he subsequently put questions to Mr McInnes. She said that he was looking for clarification on some matters. She said that his initial questions were answered.

30. Ms Scott said that, on 6<sup>th</sup> August 2018, intimation was given to owners that there had been an increase in costs and that each of them would require to pay an additional £5,863.45. She said that the increase in costs was due to repairs needed to chimneys and extra stonework which was required.
31. Ms Scott said that this news put the owners in “deep water” and that some of them had difficulty paying. She said that some had to access bank loans and others sought financial assistance from relatives.
32. Ms Scott said that one of the owners drafted a letter on behalf of them all and that this was sent to Jamie McEwan of Glasgow City Council on 28<sup>th</sup> August 2018. She said that there was a response from the Council by email on 28<sup>th</sup> August 2022 and that a meeting was arranged. (Both items of correspondence: Production 6 in the Applicants’ bundle).
33. Ms Scott said that Mr McInnes wrote to owners on 30<sup>th</sup> August 2018 (Respondent production 5) and that this was in response to the letter which had been sent to Glasgow City Council on 28<sup>th</sup> August 2022. The letter was on LPF notepaper and made no reference to LBC. It was signed by Mr McInnes.
34. Ms Scott said that, at that point, she considered that Mr McInnes of LPF was the agent of the owners and that, at that point, she had never heard of LBC. She accepted that there was reference to that company in the Property Condition Report prepared by Mr McInnes before the contract began but she said she could not remember that she noticed that and she certainly did not realise the significance.
35. Mr Allan said that LBC was referred to at that stage as having limited involvement as Construction, Design and Management consultants.
36. Ms Scott said that owners began to question what was going on and the contractual arrangements. She said that delay caused by the extra work identified involving a shared chimney stack and the consequent delay in owners making funds available caused significant water damage to the building. She said that all owners consented to Mr Allan intervening to try and get information which it hoped would assist them.
37. Ms Scott referred to Mr Allan’s email to Mr McInnes dated 2<sup>nd</sup> September 2018 ( Applicant Production 7) in where he had asked for the following information: a copy of his calculation of the owners’ share costs, the status of Mr Miller in relation to the contract between the owners and the main contractor, information on the role of Mr McInnes, appointment agreements for Mr Miller and Mr McInnes and information on where owners’ funds were being held.

38. Ms Scott referred to an email by India Fullarton, one of the owners, to Mr McInnes on 11<sup>th</sup> October 2018 where a number of queries were raised and items of documentation were requested (Applicant Production 7.1).
39. Ms Scott said that Mr Allan then had a meeting with Mr McInnes and, following that, he sent an email requiring information and documents (Applicant Production 7.2).
40. Ms Scott referred to an email sent by Mr Allan to Mr McInnes on 23<sup>rd</sup> October 2018 (Applicant Production 7.3) where he was seeking information which had been requested previously and which he had not received.
41. Ms Scott referred to a letter sent by Mrs McInnes on 5<sup>th</sup> November 2018 (Applicant Production 7.4). Ms Scott said that the letter had been sent to all homeowners in the tenement. The letter makes reference to the Property Factor having engaged with Mr Allan despite misgivings about his involvement: "*Why do clients feel they need an additional advisor? ....there is certain information that we, as factors, could not share with David to comply with our professional code of conduct. There may be similar restrictions for other professionals involved in the contract as David is not their client.*" The letter states that Mr Allan had been sent relevant documentation
42. Ms Scott said that the owners thought that the Respondent was the project manager and Mr Allan said that the contract documents refer to it as the project co-ordinator. Ms Scott said that the letter from the Respondent dated 5<sup>th</sup> November 2018 reinforced the owner's views that the Respondent was managing the project of refurbishment.
43. Ms Scott accepted that the Respondent could only act as advised by the professional consultants involved, particularly Mr Miller and Cowal Design Consultants Ltd.
44. Ms Scott said that there was concern because Mr Allan was not getting access to documents and information which he had requested.
45. Ms Scott referred to Applicants' Productions 6, 7 and 8. Ms Scott said that the owners had contacted Mr McInnes to come to a meeting and that they had wanted him to attend because he was the person who they had been dealing with and who had been dealing with the contract. She said that Mr McInnes did not attend. Mrs McInnes attended the meeting and Ms Scott said that there was a passing reference to LBC and that Mrs McInnes had said that she could not respond to some matters because they were within the remit of LBC. Ms Scott said that this totally confused her. She referred the tribunal to Applicant Production 8 which is the Minute of the meeting of 26<sup>th</sup> February 2019. She said that she had been disappointed that Mr McInnes had not attended because of his deep involvement in the project especially when Mrs McInnes had said at the meeting that there were some things which she could not discuss because they were the responsibility of LBC.

46. Ms Scott referred to emails which India Fullarton sent to Mr McInnes on 2<sup>nd</sup> and 23<sup>rd</sup> April 2019 on behalf of the homeowners. (Applicant Productions 8a and 9). Both referred to her looking for progress reports because the contract was coming to an end. She also referred to an email from Glasgow City Council dated 24<sup>th</sup> April 2019 seeking information on what stage the contract was at (Applicant Production 9).
47. Ms Scott said that the silence from the respondents and delay in getting responses to questions was unnerving.
48. Ms Scott referred to Applicants' Production 10 which was a letter from the Respondent dated 16<sup>th</sup> May 2019 signed by Mrs McInnes. She said that the letter referred to "LBC" as the project manager. Ms Scott confirmed that she now understands this to be a reference to Lomond Building Consultants. She said that, as far as she was concerned, it was Mr McInnes of Lomond Property Factors Ltd who was managing the project on behalf of the owners.
49. Ms Scott said that the owners were not involved in hiring any of the professionals involved in the project. She said that when Mr Miller attended the meeting of owners, he was simply introduced as the quantity surveyor on the project.
50. Ms Scott said that Mr McInnes had access to the 2012 report from John Gilbert and would have known about the deterioration in the building. It states that the building is in a poor state of repair. Ms Scott said that she gave a hard copy of the report to Mr McInnes. She said that she had been told by him that the Council would require a more up to date report because, by then, it was five years old.
51. Ms Scott indicated that the owners were not fully aware of the different relationships of those involved in the project and it was difficult for them because Mr McInnes was "the property factor as well as the agent." She said that she had difficulty in understanding the different roles.
52. Mr Allan said that someone with experience of these matters would have known that there was a potential that such a project could have increased costs because of the requirement for more stonework to be replaced.
53. Mr Allan said that he was a quantity surveyor with forty five years' experience and that, although he had retired, he still does freelance work. He said that he has direct experience of projects such as that carried out on the building in Cranworth Street and he cited the fact that he had been project manager on a similar tenement refurbishment.
54. Mr Allan explained that, in such projects, a Bill of Quantities is prepared by a quantity surveyor and then used by potential contractors to price the work. He said that the Bill of Quantities and Tender Report for the Cranworth Street project states that Lomond Property Factors Ltd is the Project Coordinator and that Iain

McInnes "Director, Lomond Building Consultants" is described as the principal designer. (Tender Report is Respondent Production 2).

55. Mr Allan confirmed that, although the term "designer" seems unusual, it is a result of references in the relevant statutory regulations: The Construction, Design and Management Regulations. He said that these regulations impose obligations with regard to health, safety and welfare. He said that a CDM Designer is required for each construction project and that the involvement of such a consultant is from the outset of a project because the obligations are also important at the design stage. He said that such a consultant would be involved in site visits and that qualifications are required for anyone performing such functions. He said that professional indemnity insurance would require to be held by a person undertaking the role.
56. Mr Allan said that, when he first became involved, he had no real concerns about the relationships between the various parties. He said that his understanding was that LPF was acting as the project co-ordinator and would typically be dealing with contract administration, giving instructions to contractors, verifying works and arranging for payments to contractors. He said that LBC, as CDM Designer would have a fairly limited role.
57. Mr Allan said that, in February 2018, his niece, India Fullerton asked him to become involved to assist her and the other owners and that he raised certain matters with Mr McInnes and got satisfactory responses. He said that, at that stage, he did not consider that there were any "warning lights."
58. Mr Allan said that, on 8<sup>th</sup> August, when owners had been made aware of the additional stonework repairs which were needed, he attended a meeting where owners raised concerns about increases in costs, how the works were being managed and the appointment of consultants.
59. Mr Allan said that, as a result of the meeting, he began to "delve" into the contractual arrangements and that information which he requested from Mr McInnes was not forthcoming. He said that this "sounded alarm bells" for him.
60. Mr Allan said that he attended a site meeting with Mr McInnes and that, together, they inspected the stonework. Mr Allan said that he was satisfied that additional repairs to the stonework necessitated additional costs.
61. Mr Allan said that a fee of around 10% for project management and quantity surveying work in a project such as this was fairly standard and that the fee charged in this project of 9.75% was not unusual. He also said that fee sharing arrangements amongst consultants was not unusual. He said that he had assumed that the Respondent was receiving part of the fee of the quantity surveyor.

62. Mr Allan said that there appeared to be no formal appointment of Lomond Building Consultants (LBC) by Miller. He said that perhaps LBC got a share of the quantity surveyor's fee.
63. Mr Allan said that, without formal appointments and contracts in relation to LBC and Miller, the owners were exposed and might be limited in what recourse they could take against them if issues arose with the project.
64. Mr Allan said that, in August 2018, the owners had nominated him as client adviser. He said that this was a role for which he was not paid. He said that he asked Mr McInnes if he could attend progress meetings with the contractors but that he received no response to this request. He said that he did not know if such meetings took place. He said that he had asked for access to the works but that this request was refused on health and safety grounds.
65. Mr Allan said that he moved to Fife and that, as a consequence, he was not as deeply involved after November 2018 and had only limited knowledge after that date.
- ### **The Respondent's Position**
66. Mrs McInnes said that Lomond Building Consultants ("LBC") had been in existence for more than twenty years. She said that Lomond Property Factors Ltd ("LPF") came into being because it was established that there was a need for clients of LBC to have their properties factored.
67. Mrs McInnes said that her husband, Iain McInnes had years of experience of building projects and managing grant applications. She confirmed that LBC is a "sister company" of LPF. Mrs McInnes said that Mr McInnes had no formal qualifications with regard to construction work and that his qualifications are in administration.
68. Mrs McInnes said that her understanding was that LPF had been proposed by Ms Scott because she had been satisfied with the service that LPF provided in factoring another property which she owned. Mrs McInnes said that she normally handles meetings with potential clients but that, in the case of 40 Cranworth Street, Mr McInnes had attended.
69. "The respondent, as part of their submissions, said that although they had been advised that the building required a degree of remediation, LPF had no specific appreciation of what that remediation was prior to appointment. Homeowner mandates appointing LPF as Factor make no reference to application for grant assistance. LPF subsequently agreed to provide a co-ordinating role without fee or expense on the logic that a fully refurbished building would be relatively issue-free to factor.
70. Mrs McInnes explained that part of the offer which LPF can make to clients is that a building condition report can be prepared by LBC. She said that such reports

provide an overview of what works require to be done to bring a property up to standard.

71. Mrs McInnes referred to Respondent's Production 42 which is the Property Condition Report which was prepared by LBC. She said that the document stated that it had been prepared by LBC.
72. Mrs McInnes said that it was her belief that owners got copies of the Bill of Quantities and the Tender Report and that these documents contained references to LBC.
73. Mrs McInnes said that, when Mr Miller was instructed, it was her understanding that he would provide all relevant services including quantity surveying and project management. She said that it became clear that Mr Miller was not interested in project management and that Mr McInnes agreed to share that duty. She said that she is not aware of the existence of documentation to reflect the arrangement between LBC and Mr Miller.
74. Mrs McInnes said that Mr McInnes responded promptly to any requests put to him by owners. She cited an example of an occasion when a query was raised and he met with Ms Scott the following day.
75. Mrs McInnes said that Mr McInnes did day to day project management and site management. She said that her role was to carry out the normal factoring duties. She said that, apart from the factoring, she had no definitive source which would assist her in knowing what she was required to do and when. She said that LPF were advised by Mr Miller what was to be paid to contractors.
76. Mrs McInnes agreed that LBC did not have a dedicated email address and that its emails were sent to and from the email address of LPF.
77. In relation to terminology, Mrs McInnes said that her understanding of the definition of "administrator" was a person who inspected the works and decides about payments to be made. She said that Mr McInnes carried out the inspections.
78. Mrs McInnes accepted that some documents detail that Mr McInnes and LBC had responsibility as CDM Designer. She said that another consultant carried out this work and that it was not done by Mr McInnes who has no qualifications in that field. She said that a company had been appointed to deal with the CDM regulations. She thought that the quantity surveyor would have done this.
79. Mrs McInnes was referred to Respondent Production 5 which was a letter from LPF to homeowners dated 30<sup>th</sup> August 2018 and which was signed by Mr McInnes. She said that the letter summarised the background to the project and where it was at that particular time.
80. Mrs McInnes accepted that LPF was mandated by the owners to submit applications to the Council. She said that she had no idea who appointed the

quantity surveyor. She supposed that it had been LPF who had invited Mr Miller to attend the meeting of owners. She said that she had no previous experience with Mr Miller and that this was the first project that he had worked on with LPF.

81. Mrs McInnes was directed to the insurance documents which she had lodged and which showed that Lomond Property Factors Limited and Lomond Building Consultants Ltd had professional indemnity insurance for 2016 and 2017. She was referred to records from Companies House which showed that Lomond Building Consultants Ltd was incorporated on 8<sup>th</sup> April 2020 and that the latest accounts to April 2021 show it as being a dormant company. She could provide no explanation and said that she would need to ask her husband and provide further information to the Tribunal in due course.

#### The Hearing on 7<sup>th</sup> September 2022

82. Subsequent to the Hearing on 4<sup>th</sup> July 2022, the tribunal issued a Direction requiring the Respondent to produce certain documentation and information. Both parties also submitted written representations.

#### Respondent's submissions following upon the Direction

83. The tribunal noted that Lomond Building Consultants Ltd was incorporated on 8<sup>th</sup> April 2020 and that, from representations from the Respondents, it was done to protect the trading name. The tribunal noted that LBC (Scotland) Limited was incorporated on 24<sup>th</sup> May 2007 and was the trading entity of Lomond Building Consultants. It noted the representations of the Respondent that reference to Lomond Building Consultants Ltd on the professional indemnity insurance documents should have read "LBC (Scotland) Ltd and/or trading as Lomond Building Consultants." The representations of the Respondent state that "*This was an administrative oversight, not noticed and since corrected.*"
84. The tribunal noted the directors of Lomond Property Factors Ltd, LBC (Scotland) Ltd and Lomond Building Consultants Ltd are Mr Iain McInnes and Mrs Catherine McInnes.
85. The tribunal noted that the written representations of the Respondent disclose that it is "*not aware*" of any contractual arrangements between Lomond Property Factors Ltd and LBC (Scotland) Ltd trading as Lomond Building Consultants, of any contractual arrangements between Lomond Property Factors Ltd as agent of co-owners at 40 Cranworth Street and LBC (Scotland) Ltd trading as Lomond Building Consultants and of any contractual arrangements between Lomond Property Factors Ltd or Miller Surveying Services.
86. The representations of the Respondent state that it is "*not aware*" of "*formal contractual arrangements between LBC (Scotland) Ltd trading as Lomond Building Consultants and Miller Surveying Services.*" The Respondent's representations refer to fees paid to Miller Surveying Services and submitted a schedule showing fees paid to Miller Surveying Services and Lomond Building Consultants.

87. The representations of the Respondent state that LPF instructed Miller Surveying Services to carry out a building condition survey “*on the basis that they represented value to co-owners being both “chartered surveyor and quantity surveyor and RICS registered.*” The representations state that there is no documentation of that instruction because it was by telephone conversation. They go on to state that the co-owners accepted Miller Surveying Services’ presentation of costs and QS fees and services at a meeting on 13<sup>th</sup> February 2018 but that this was not reflected in the Minute of that meeting. The representations go on to state that it is considered the Bill of Quantity represented the contractual arrangement for the appointment.
88. The representations of the Respondent state that the contingency fund level was set by the quantity surveyor as “*part of their Bill of Approximate Quantities*”.

#### Further Evidence

89. Mrs McInnes said that the Respondent had real difficulty in gathering information to deal with the applications which had been submitted to the Tribunal. She said that this was because of the passage of time since the end of the contract, the Respondent ceasing to be property factor for the tenement and the date of submission of the application.
90. Mrs McInnes said that she considered that the Respondent’s role as project coordinator was liaising and to provide information “backwards and forwards.” She said that she was certain that homeowners understood the various roles undertaken by the professionals involved in the contract and, in particular, the role of LBC. She conceded that she had been unable to produce documentary evidence of this. Mrs McInnes said that the Respondent “should have protected itself” by making it crystal clear what the various roles were. She said that the clients were aware of the existence of LBC and that it was acting as project manager.
91. Mrs McInnes said that the Respondent took on a considerable amount of work as property factor and that she did not appreciate all which would become necessary. She said that the work was carried out without the homeowners being charged a fee. She said that she made payments to the contractors when authorised to do so by the valuations which were issued by Mr Millar and in accordance with the authority given by Glasgow City Council. Mrs McInnes said that this work was in addition to the normal factoring work which was carried out.
92. Mrs McInnes said that she did not consider there to be a conflict of interest in what was done. She said that LBC was a separate entity but that many property factors have in house project management services for which homeowners are charged. She said that there might be a conflict if the Respondent had been paid a fee for the work which it did in relation to the refurbishment project. Mrs McInnes said that homeowners knew about the two companies but conceded that she may have been remiss in not making clear at the beginning of the contract

what the situation was and having some kind of documentation to evidence that homeowners were aware. She said that such documentation might have existed but that it was not possible for her to produce it after the passage of three or four years and she commented that she had probably spent more than two hundred hours trying to get information together to deal with the application to the Tribunal.

93. Mrs McInnes said that the advantage in using Mr Millar was that he was a chartered building surveyor as well as being a quantity surveyor and that this gave added value to the homeowners. She said that no other quantity surveyors were asked to quote for the work. She said that a survey had to be done as part of the Glasgow City Council application for grant funding and Mr Millar did this and then discussed matters at a meeting of homeowners when he went over the survey. She said that the result of the meeting was that Mr Millar was appointed. She said that no owner at that meeting raised a question about contractual arrangements.
94. Mrs McInnes said that there were then discussions about savings in the contract and she understood that the level of the contingency allowance was reduced. Mrs McInnes said that none of the owners were involved in the discussions and that these would be between the quantity surveyor, the Council and the project manager which was LBC. She said that she had no part in discussions about the contingency allowance.
95. Mrs McInnes said that neither LBC nor LPF was the author of documents which described LBC as Principal Designer or LPF as Project Co-ordinator.
96. Ms Scott said that the actions of the Respondent caused issues when the homeowners tried to appoint another property factor. Ms Scott said that the homeowners determined to appoint Anne Gordon as property factor following upon their termination of the factoring contract with the Respondent but that she could not take on the appointment because the Respondent had renewed the property insurance for the tenement and that this was done when the Respondent knew that the contract was to be terminated. Ms Scott said that, as a consequence, homeowners did not have a property factor for a large part of 2021 and that Anne Gordon took up her appointment when the property insurance expired.
97. Mrs McInnes said that she had advised the homeowners that the Respondent would deal with any insurance claims which arose after termination of the factoring contract. She said that, had the Respondent been appointed in circumstances similar to Anne Gordon, it would have taken up the appointment notwithstanding the fact that there was an existing insurance policy. Mrs McInnes said that the fact that Anne Gordon chose not to do so was a matter for her and had nothing to do with the Respondent.
98. Ms Scott referred to an issue with work done as part of the refurbishment contract. She said that it involved a drainpipe which was faulty and that the matter was reported to Mr McInnes. She said that it transpired that the pipe had

not been connected. Mr Allan said that, as a latent defect, the contractor would have still been liable. Ms Scott said that there was difficulty in resolving the issue during lockdown and eventually the homeowners paid for a drainage contractor to remedy the issue. Ms Scott accepted that, when Mr McInnes was told about the matter, he would not have known that the pipe had not been connected to the mains drainage system. Mr Allan said that it was a somewhat unusual arrangement of a soakaway in what is an urban environment.

## The Code

99. Paragraph 2.1 of the Code states:

*2.1 You must not provide information which is misleading or false.*

100. Ms Scott referred to paragraph 4 of the Applicants' representations which were submitted on 25<sup>th</sup> August 2022: "*The Owners' complaint is that the absence of transparency relating to the professional appointments, and Lomond's failure to provide the information requested by them, amounted to breach of the Code of Conduct requirement, not to provide information which is misleading or false. This lack of transparency, together with the escalating costs of the works, led the owners to have concerns about the way the project was being managed, and gave them cause for anxiety and worry about the outcome.*"

101. The representations of the Applicants go on to state that the failure of the Respondent to properly deal with the contractual appointments amounted to a failing.

102. Ms Scott said that the misleading information provided to the Applicants was in relation to the confusion of roles and that the failure to ensure that the contractual arrangements were properly in place was also misleading because the homeowners were entitled to believe that the Respondent, as their agent, had dealt with matters properly. She said that she believed the confusion of roles between Lomond Property Factors Ltd and Lomond Building Consultants was, in itself, misleading.

103. Ms Scott referred to her original submission where she referred to the Respondent's failure to provide information to Mr Allan who had been instructed by the homeowners to deal with certain matters on their behalf.

104. Ms Scott said that she also considered it misleading for the Respondent to maintain that it was not getting paid for the role it was carrying out in connection with the project when Lomond Building Consultants which shared ownership and directors with the Respondent was getting paid although the homeowners were never advised of this. She said that this showed a lack of transparency.

105. Ms Scott said that various documents produced to the Applicants had false information and she cited the document which described Mr Iain McInnes as the Principal Designer.

106. Mrs McInnes said that "hindsight is a wonderful thing" and that it would have been better if the Respondent had been able to produce documentation confirming that the homeowners knew about the respective roles of the Respondent and Lomond Building Consultants.

107. Mrs McInnes said that a lot of matters which the Applicants were complaining about were not the responsibility of the Respondent but rather the professional consultants involved in the project. Mrs McInnes said that the Respondent's firm position was that the Applicants had a knowledge of the roles and identity of the property factor, the quantity surveyor and the project manager. She said that the Applicants knew that LBC was fulfilling the role of project manager.

108. Mrs McInnes said that homeowners attended meetings at which questions could be directed to the professionals involved.

109. Ms Scott said that her recollection was that the homeowners did not see the quantity surveyor on a regular basis. She said that owners met the quantity surveyor at the outset and then at the end of the contract. She said that Mr McInnes was what she described as "the principal point of contact." She said that, as matters developed it "was not clear what hat he was wearing on any particular occasion."

110. Mrs McInnes said that the Respondent did not make the appointments of the quantity surveyor, the Principal Designer or the project manager.

111. Paragraph 2.5 of the Code states:

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

112. Ms Scott said that there were periods of non-communication from the Respondent. She said that the Respondent's representations refer to an inability to respond because it was awaiting information from others. She said that, if that were the case, the homeowners were never told that a response was not forthcoming because the Respondent was awaiting information. She referred to emails sent by Ms Fullarton (Applicants' Productions 8a and 9).

113. Ms Scott said that the Respondent had failed to respond to Mr Allan when he had asked for information. Mr Allan said that his was an informal appointment but that he had been instructed by all the homeowners to find out information. He said that he could make no distinction between LPF and LBC. Ms Scott said that any letters which homeowners received were on the Respondent's notepaper and from its email address and that it was therefore assumed that it was the Respondent which was communicating.

114. Ms Scott referred to Applicants' Production 7 and the letter of the Respondent which was sent to owners on 5<sup>th</sup> November 2018 and where Mrs McInnes referred to "some owners" wishing the Respondent to recognise Mr Allan as a representative. She disputed the reference to "some" owners having instructed Mr Allan. Ms Scott said that all owners wanted his involvement.

115. Mrs McInnes referred to Respondents' Productions 32 and 33. She said that there was constant communication between the Respondent and owners and she cited various examples. Mrs McInnes said that property factors are heavily regulated and that there were GDPR issues in communicating with Mr Allan and that she was not aware of anything in the Code which required her to communicate with an adviser appointed by homeowners. She said that the Respondent did communicate with its clients, the homeowners.

116. Mrs McInnes said that she could only evidence so much with regard to communication because of the passage of time and that not all her records were available.

117. Mr Allan said that responses provided to him by the Respondent represented a partial response to what he had been looking for. He said that lots of information was never provided such as appointment agreements but now he realises, from the representations of the Respondent and the evidence of Mrs McInnes, that such documents do not exist.

*6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*

118. Mrs McInnes said that procedures were in place to allow homeowners to notify the Respondent of any matters requiring repair, maintenance or attention. She referred to various matters which had been reported to her and which were attended to.

119. Mrs McInnes said that the refurbishment project was professionally led and that, from time to time she was not getting information to pass on. Mrs McInnes said that there was no regular procedure of reporting to homeowners and that reports were provided when there was information to impart. She said that she could only give information as and when it was provided by contractors. She described the reporting as periodic and reactive. She said that reports were provided when valuations of works were carried out.

120. Ms Scott said that homeowners had been expecting to get regular reports and that these were not forthcoming. She said that the tenement building next door had gone through a refurbishment programme and that owners there had

received regular reports. Ms Scott said that, when reports were provided, they consisted of a series of photographs and with no substantive information Ms Scott was referred to Respondents' Productions 28 and 29 and she conceded that these were reports on progress which contained not only photographs but also written information.

121. Ms Scott said that there had been delays in the middle of the project and there was reference to delays: one for a period of nine weeks and another for a period of three weeks. Mrs McInnes said that the delays were as a consequence of issues with the grant and also the issue with the chimneys. She said that the owners of properties in the neighbouring tenement had to be involved in matters relating to the chimneys. She said that the contractor had been able to continue with some work which avoided contractual penalties for the homeowners.

*6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.*

122. Mrs McInnes said that rot and asbestos contractors were involved in the project. She said that the quantity surveyor had been appointed because he seemed to be well qualified since "he was chartered as well as being a quantity surveyor." Mrs McInnes said that she had no information with regard to the appointment of the Principal Designer

123. Mr Allan said that there are plenty of individuals/companies with the correct skills and experience to be asked to tender for work in a project such as the one involving the Properties. He said that he asked for information on the tendering process but none was provided.

124. Mr Allan said that, when he asked Mr McInnes for the tender report in connection with the appointment of the principal contractor, he was provided with a copy of the lowest tender rather than what had been requested.

125. Mr Allan referred to Applicants' Production 7 which was an email from him to Mr McInnes dated 2<sup>nd</sup> September 2018 in which he was seeking information including that in relation to the tender process and documentation.

126. Mrs McInnes said that the tender report had been sent to all homeowners. She said that she had no email to support that but was certain that this had been the case. Mrs McInnes said that it would have been extremely unusual for clients not to have seen the tender report because Glasgow City Council would require to have sight of it and discussion of its terms would be part of the grant application process.

127. Mrs McInnes said that there were no contracts in place for LBC, the quantity surveyor, the principal designer or the rot and asbestos contractors. She said that no tendering exercise had been carried out other than for the principal contractor.

128. Ms Scott said that the first they saw details about other contractors was when documents were produced for the Tribunal process.

*6.9 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.*

129. Ms Scott said that there had been difficulties in pursuing the contractor in respect of work which was not up to standard. She said that it took weeks for anything to be done. She said that some external works had not been completed and that confusion had been caused because different people were doing different things. She said that there were also internal works which had not been completed.

130. Mrs McInnes said that there is a difference between defects and snagging of items. She said that the main contractor had returned to the tenement to deal with minor snagging issues. She said the contractor dealt with a number of snagging issues together rather than them being dealt with on an individual *ad hoc* basis. She said that one difficult issue was that, when the contractor was carrying out such works, he had not been fully paid. She said that owners had been unwilling to pay what had been due in relation to the final valuation.

131. Mrs McInnes said that the process for payment throughout the contract had been for the quantity surveyor to value the work, for that to be ratified by Glasgow City Council and for her then to pay the contractor

#### Submissions

132. Ms Scott said that she wanted the tribunal to have regard to written representations which she had made.

133. Ms Scott said that the Respondent should acknowledge that mistakes had been made in relation to the refurbishment project. She said that this caused anxiety and worry for homeowners for a protracted period.

134. Ms Scott said that, at the outset of the project, homeowners had confidence in Mr McInnes, their property factor, and trusted him to ensure that things were done properly. She said that she considered it significant in evidence that Mrs McInnes referred to the fact that the Respondent could have protected itself better when the important thing should have been to ensure that the homeowners were protected.

135. Ms Scott said that homeowners felt cheated and that parts of the works which they hoped to be included in the contract, such as some internal works, had not

materialised. She said that homeowners had to pay for some work which they felt should have been included in the contract.

136. Ms Scott said that she felt homeowners should be given financial compensation.

137. Mrs McInnes said that she wanted the tribunal to have regard to written representations which the Respondent had made.

138. Mrs McInnes said that the Respondent always behaved in the best interests of the clients. She said that there had been an awareness that funds were “tight” for the homeowners and that the Respondent always had regard to that.

139. Mrs McInnes said that she was sorry that the homeowners did not get the “commercial” finish they wanted but that they did get the essential works done. Mrs McInnes said that she shared the homeowners concerns about increasing costs but that these were beyond the control of the homeowners.

140. Mrs McInnes said that the quantity surveyor was pressed by the Respondent to produce the best project possible for the homeowners and the most from the contractor.

141. Mrs McInnes referred to the double oversight there had been in relation to the contract. She said that this had been provided by Glasgow City Council and the quantity surveyor and she said that the Respondent felt confident that the best interests of the homeowners were being served.

142. Mrs McInnes said that there had been an issue with payment of a deceased’s owner’s share and that the Respondent had lodged a Notice of Potential Liability with the Land Register to protect the interests of the other homeowners.

143. Mrs McInnes said that, if the Respondent had not acted the way that it had when the dangerous chimney was discovered, there could have been significant safety issues and liabilities for the homeowners.

144. Mrs McInnes stressed that, at all times, the Respondent had acted professionally and always in the interests of homeowners.

## **Findings In Fact**

- a) The Respondent was the property factor for the tenement at 40 Cranworth Street, Glasgow (“the tenement”) until 1<sup>st</sup> November 2020.**
- b) The Properties are contained within the tenement.**
- c) The Respondent acted as agent of all the homeowners within the tenement in connection with a project of refurbishment.**

- d) The Applicants are the homeowners of the Properties.
- e) The Respondent acted as agent of all the homeowners within the tenement in connection with an application for grant funding from Glasgow City Council.
- f) The Respondent instructed Cowal Design Consultants to visit the tenement of which the Properties form part and undertake a non-intrusive structural inspection of the building fabric and common areas.
- g) The Respondent arranged for the refurbishment works to be carried out to the tenement and arranged for the necessary consultants and contractors.
- h) No tendering process was carried out for appointment of the quantity surveyor, principal designer, rot contractor or asbestos contractor required for refurbishment of the tenement.
- i) No contract exists or existed between homeowners or their agent and the quantity surveyor, principal designer, rot contractor or asbestos contractor involved in the refurbishment of the tenement.
- j) No contract exists between the Respondent, as agent of the homeowners, and LBC (Scotland) Ltd trading as Lomond Building Consultants.
- k) The Respondent provided misleading information to the Applicants.
- l) The Respondent did not respond timeously to requests for information from the Applicants or their agent.

#### Discussion and Determination

- 145. The tribunal considered the written representations, productions and the oral evidence.
- 146. This was a contract for refurbishment of a tenement in Glasgow. In its nature, such a contract is not unusual and it also is the case that such projects often increase in cost after they have commenced. It seemed to the tribunal that the Applicants would not have submitted the applications to the Tribunal but for the increased costs which they had to bear.
- 147. It is not unusual for property factors to be involved in refurbishment works being carried out in properties which they manage. Indeed, the tribunal heard evidence, which was not challenged, that it was a prerequisite of grant funding from Glasgow City Council that the homeowners appoint a property factor.

148. The Homeowners sustained increased costs on the project. It seemed to be no part of the Applicants' case that this was directly as a result of any failings of the Respondent although there was reference by Ms Scott that she thought that the contingency provision was insufficient.

149. In arriving at its determination, the tribunal had difficulty in identifying the roles of LBC and LPF. The Respondent chose not to lead Mr McInnes in evidence which may have been of assistance in clarifying a number of matters for the tribunal.

150. The tribunal found Ms Scott and Mr Allan to be credible witnesses and relied on their evidence.

151. The tribunal found the evidence of Mrs McInnes to be generally credible but confused in some respects. Where her evidence was in conflict with that of the Applicants, the tribunal preferred the evidence of Ms Scott and Mr Allan. It was clear to the tribunal that the principal issue of dispute between the parties was caused by the confusion of relationships between the Respondent and its "sister company." It was not considered that the Respondent set out to confuse homeowners but an example of its failure to grasp the importance of distinguishing between the Respondent and LBC was the fact that the professional indemnity insurance policy was wrong for at least two years and it was not until the issue had been pointed out to the Respondent that the matter was rectified.

152. For the purposes of the applications before it, the tribunal found that Mr Iain McInnes, in his work relating to the refurbishment project, was doing so as a director/ employee of the Respondent.

The tribunal considered the alleged breaches of the Code

153. *2.1 You must not provide information which is misleading or false.*

154. The Applicants' position was clear and that was that what they considered to be a lack of transparency amounted to misleading information. Their position was that the various relationships of parties involved in the contract was confused and that their unawareness of the existence and position of LBC amounted to misleading information being provided to them. The Applicants' case also was that they were entitled to expect that anyone involved in the contract had been properly appointed and, for them not to be effectively led to homeowners being misled.

155. The Applicants also submitted that it was misleading that the Respondent's position was that they were not being paid for their role. Ms Scott had suggested that the fact that the Respondent and Lomond Building Consultants shared the

same directors and ownership showed that it was benefiting financially from the contract.

156. The Applicants submitted that the Homeowners had been provided with false information by the Respondent and that the Tender Report and priced Bill of Quantities ("tender documents") which stated that Iain McInnes was the Principal Designer was wrong.

157. The Respondent's primary position in relation to this alleged breach of the Code is that many matters which the Applicants have complained about had nothing to do with the Respondent but were the responsibility of professional consultants involved in the project and that the Homeowners had full knowledge of the roles and identity of the property factor, the quantity surveyor and Lomond Building Consultants who Mrs McInnes described as the project manager.

158. The tribunal determined that the statement in the tender documents that Iain McInnes was the Principal Designer was clearly misleading. The Respondent's position that it had not been the author of that document was not relevant. The Respondent had an awareness of the document when it was issued and should have corrected the erroneous information. Mr McInnes did not have the necessary qualifications to be a Principal Designer under the Construction, Design and Management Regulations. The Respondent must have known this given that Mr McInnes is one of its directors. It distributed or at the very least would have sight of the documents and should have arranged for the misleading and false information to be removed.

159. It appeared to the Tribunal that, from the evidence of Mrs McInnes, she did not consider that there was confusion about the various roles undertaken by the professional consultants, LPF and LBC. Notwithstanding this, the Respondent took insufficient steps to ensure that the documentation provided to the Homeowners contained accurate information and that they were made fully aware of the various relationships, roles and responsibilities.

160. The Respondent's position is that the Homeowners were aware that LBC was involved at the outset and had been responsible for the Condition Report prepared by Mr McInnes. The Tribunal preferred the evidence of Ms Scott in this regard and did not consider that the reference to Lomond Building Consultants at the end of that report (in a smaller font) would necessarily have flagged this to Homeowners especially since Mrs McInnes accepted that LBC used the email address and notepaper of LPF.

161. Limited companies have individual legal personalities but, in the particular circumstances before the tribunal, matters were not entirely straightforward. The shared ownership and directorships of the Respondent and Lomond Building Consultants together with the fact that the homeowners received documentation from Iain McInnes on notepaper of the Respondent and that he also used the email address of the Respondent led them to consider that Iain McInnes was

corresponding with them as an employee/director of the Respondent. This appeared to the tribunal to be a reasonable assumption to make.

162. Mrs McInnes accepted that, in hindsight, things could have been made clearer. The tribunal considered that, particularly in circumstances of such a close relationship between companies, homeowners are entitled to a clear statement in writing setting out not only the relationship but also the particular responsibilities of each company. The failure to do this amounted to the homeowners being misled.

163. The tribunal found that the Respondent was acting as agent of the Homeowners in relation to the grant application to Glasgow City Council. This is supported by the mandate lodged by the Applicants. It was entirely reasonable for Homeowners to expect that the Respondent would continue to be their agent in connection with other aspects of the contract. There was no evidence that they had been otherwise informed. The tribunal determined that it was a reasonable expectation that the Respondent would ensure that proper appointments would be made of consultants such as the quantity surveyor and principal designer, that a proper tendering process would be used and that contracts would be in place. The Respondent did not do so and, in this regard, the Applicants were misled.

164. The tribunal determined that the Respondent had not complied with paragraph 6.1 of the Code.

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

165. The requests were made by Mr Allan as representative of the Homeowners. The Tribunal considered that it was reasonable and appropriate for Homeowners to appoint an agent to represent them

166. The tribunal noted the various copy emails which had been lodged by the Applicants and, in particular, those written by Ms Fullarton and Mr Allan seeking information from the Respondent. These cumulatively demonstrated that there was delay in response. The tribunal did not accept that the Respondent was not required to respond to Mr Allan because he was not a client. He was an agent of the homeowners and had been authorised to make requests for information. In any event, had the Respondent had concerns about responding to him, it could have sent the requested information to the homeowners in response to Mr Allan's communications.

167. The tribunal determined that the Respondent had not complied with paragraph 6.1 of the Code.

*6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*

168. No evidence had been produced to support the contention that the Respondent did not have in place procedures to allow homeowners to notify it of matters requiring repair, maintenance or attention. Mrs McInnes gave evidence that she had attended to what she described as “normal factoring duties” and this was not challenged by Ms Scott.

169. Ms Scott alluded to what she considered a failure by the Respondent to keep Homeowners advised about progress with the refurbishment project.

170. The Tribunal did not consider that the Applicants’ complaint about progress reports was supported by evidence. Ms Scott said that, when reports on progress of the project were provided by the Respondent, they consisted of some photographs and little information. This was at odds with examples of such reports which were before the Tribunal. These seemed informative and the combination of photographs and information would have provided useful information for the Homeowners.

171. It could be argued that more regular progress reports could have been provided but there was no evidence that these had been asked for and, on balance, the Tribunal accepted the position advanced by Mrs McInnes that she could provide no report when she had not been provided with information by the professional consultants to pass on to homeowners.

172. The Tribunal determined that, on the evidence before it, the Respondent had complied with paragraph 6.1 of the Code.

*6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.*

173. Requests were made by Mr Allan for documentation relating to the tendering process. These would appear to have been made available although the Tribunal could come to no finding with regard to whether or not the Tender Report was included in this.

174. Mr Allan, as representative of the Homeowners also asked for sight of documentation relating to the appointment of professional consultants. It appeared to the Tribunal that it was appropriate in a contract such as this for tendering exercises to be carried out for the quantity surveyor, CDM Designer, rot specialist and asbestos specialist or for information to be provided as to why such

an exercise was not necessary. For example, it may not have been proportionate for such an exercise to be carried out for a low value contract or there may have been a particular matter which required to be expedited. The role of LBC (whatever that may have been) may also reasonably have been included in a tendering process.

175. Contractual documentation in respect of the professional consultants and other contractors should have been available. There should have been a tendering process for all professional consultants and for all contractors. The documents were unavailable because they did not exist. The Respondent appeared to have complete disregard for the requirement of contractual processes in a project such as that involving the Properties and the potential implications for Homeowners if matters arose which required action to be taken against any consultants and contractors other than the principal contractor.

176. The Tribunal determined that, on the evidence before it, the Respondent had not complied with paragraph 6.6 of the Code.

*6.9 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.*

177. The Applicants' position as advanced by Ms Scott was that there was difficulty in pursuing contractors for works which were incomplete or faulty. An example was given of the soakaway pipe. She also said that some works were never completed.

178. Mrs McInnes' position was that there was a difference between defects and items of snagging. She said that the principal contractor did attend to snagging matters and dealt with them on a collective basis rather than individually.

179. We did not consider that, on the evidence presented, the Respondents had failed to comply with paragraph 6.9 of the Code. It was clear that there were matters carried out as part of the refurbishment, or perhaps not carried out, which the Homeowners considered to be unsatisfactory but we accepted that this was not necessarily due to failings of the Respondent. In relation to the drainage issue which Homeowners paid to get remedied, the Respondent was unaware that there was a soakaway and Mr Allan confirmed that such an arrangement was unusual in an urban situation.

## Disposal

180. Ms Scott said that the Homeowners were seeking an acknowledgement that mistakes had been made by the Respondent and she said that they were seeking financial compensation.

181. This was a refurbishment project which cost Homeowners more than had been anticipated. In determining the appropriate remedy for failure to comply with the Code, we did not attribute the increased costs to be as a result of failure of the Respondents. We did, however consider that the Homeowners were not best served by the Respondent who had failed to ensure that appropriate processes were in place in relation to the appointment of professional consultants and contractors and had failed to provide appropriate and timely responses to the Applicants. Because of the failure of the Respondent to make clear its responsibilities as opposed to those of its “sister company”, we took the view that any actions or failures by Mr McInnes were those of the Respondent. Mr McInnes was a director of the Respondent.

182. The Respondent failed to comply with paragraphs 2.1, 6.1 and 6.6 of the Code.

183. It was clear from the written representations and the submissions of Ms Scott that the failures of the Respondent caused them concern. We considered it reasonable that the Respondent pay a sum of compensation to the Applicants in respect of its failure to comply with the Code.

184. The tribunal proposes that a property factor enforcement order will be made requiring the Respondent to pay the sum of £500 to each Applicant.

## **Appeals**

**A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Martin J. McAllister  
Legal Member  
19<sup>th</sup> October 2022

