

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Property Factors (Scotland) Act 2011: Section 19(1) (a)

Chamber Ref: FTS/HPC/PF/19/1666

2/1 Cranworth Street, Glasgow, G12 8AG ("The Property")

The Parties:-

**Ms Alison Arnot, 2/1, 40 Cranworth Street, Glasgow, G12 8AG
("the Homeowner")**

**Lomond Property Factors Ltd,
The Gowk,
Gartocharn,
Dunbartonshire,
G83 8ND
("the Property Factor")**

Tribunal Members:

**Martin J. McAllister, Solicitor, (Legal Member)
Andrew Taylor, Chartered Surveyor (Ordinary Member)
(the "tribunal")**

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules" and the First-tier Tribunal for Scotland (Housing and Property Chamber) is referred to as "the Tribunal" and Lomond Property Factors Ltd is referred to as "Lomond."

Decision

The tribunal finds that the Property Factor has not complied with the property factor's duties and has breached Sections 2.5 and 6.1 of the Code and it is proposed that a property factor enforcement order be made requiring the Property Factor to pay the sum of £500 to the Homeowner.

Background

The application made by the Homeowner had been received by the Tribunal on 31st May 2019.

The application contended that the Property Factor had not complied with the property factor's duties and that it had not complied with sections 2.5, 6.1, 6.9 and 7.2 of the Code.

On 19th June 2019 a legal member of the Tribunal, acting under delegated powers, referred the application to the tribunal for determination.

On 29th May the Property Factor had written to the homeowner in response to matters of concern raised by her in her communication to them of 15th May 2019. A copy of both communications had been sent to the Tribunal.

Hearing

A Hearing was held on 8th August 2019 in the Glasgow Tribunals Centre. Ms Alison Arnott was present and gave evidence. Mrs Catherine McInnes and Mr Ian McInnes of the Property Factor were present and gave evidence.

Preliminary Matters

In the week prior to the Hearing the Property Factor had written to the Tribunal seeking an adjournment because it was stated that new information had come to light, that information had to be obtained from the quantity surveyor involved in the project and that information was to be sought from an employee of Glasgow City Council who was currently on holiday.

After some discussion Mrs McInnes confirmed that she was happy that matters proceed without an adjournment.

Ms Arnott said that Trading Standards advised her that she has a claim against the Property Factor based on the Consumer Rights Act 2015.

The tribunal advised that it was limited to considering the Application in terms of the 2011 Act.

Matters of Agreement

Parties agreed that the Property is a flat in a tenement of eight flats and which is situated on the second floor. The proprietors of the tenement resolved to do extensive work to the common parts of the tenement and Lomond was appointed as the property factor and agent to arrange the works. The principal contractor was Paul Lees Stonemasonry. The quantity surveyor involved in the project was Mr Sandy Miller of Miller Surveying. Glasgow City Council provided a grant of 50% of the costs of the works.

Written Representations

The Property Factor submitted written representations which were received by the Tribunal on 18th July 2019. These are summarised as follows. The italicised text represents the Homeowner's position.

Alleged failure to compensate or secure roofing contractor compensation for damage to personal contents damaged by the common works despite a legal obligation to do so under the Consumer Rights Act 2015.

Lomond stated that it was not their role as factor to reimburse the client for alleged damage to household contents and that it was a matter for the main contractor. They accept that it is their duty to pursue the contractor on behalf of the Homeowner and have and continue to do this. The representations state that the amount and extent of the claim is disputed.

A lack of speedy and professional response to the calls, emails and text messages from the Homeowner about the damage.

The Property Factor states that it considers that responses have been timeous and lodged a log of emails between the Homeowner and the Property Factor.

A lack of progress and many months of haggling around fixing the structural damage, then rescheduling this again – which is particularly galling given your quick response to residents at number 34.

The Property Factor disputes that there was structural damage caused by the refurbishment works. The representations state that water ingress to the flat immediately above caused minor plaster damage to the ceiling. The representations state that the Property Factor negotiated that the contractor would remedy damage and that it had advised the Homeowner of this. The representations state that the remedial work could not be carried out until the roof was watertight and that this was delayed pending instruction on additional works and agreement for works to a chimney which was common with the adjoining tenement.

A refusal to honour a verbal agreement that the Property Factor would compensate certain items and fully deep clean the property after works ended.

The Property Factor's representations state that the Homeowner's claim for compensation for damage to contents was forwarded to the main contractor. The representations state that the damage to contents was inspected and that its extent was disputed by the Quantity Surveyor and roofing sub-contractor (to whom the claim would ultimately fall). The representations state that there was no agreement regarding deep cleaning of the property and that Lomond continue to seek a resolution acceptable to both the Homeowner and the main contractor.

The fact that the Property Factor has not formally confirmed that the Homeowner had exhausted its in house complaints procedure without resolving the complaint.

The representations state that, although the contracted works have reached practical completion, the contract is still ongoing with additional works instructed by owners on 3rd July 2019. The representations state that the main contractor is considerably overdue payment for contract works completed and certified by valuation. Lomond's representations state that it still awaits settlement of co-owner's shares of approximately £22,000 which may be delayed as owners contest their liability to fund the missing share of a deceased neighbour. The representations state that, in these circumstances, it is extremely difficult for Lomond and LBC, the project manager, to negotiate a resolution between parties.

Homeowner's Response to Property Factor's representations

On 24th July 2018 the Homeowner submitted a response to the Property Factor's representations. The response was accompanied by extensive emails, photographs and appendices.

The Homeowner's response stated that she had spoken with Trading Standards in March 2018 and had been advised that the Property Factor is the trader who arranged the works and therefore has the responsibility to compensate the Homeowner for the damage and that this is in terms of the Consumer Rights Act 2015. The response states that the Homeowner recognises that the Property Factor disputed such responsibility but accepts that it is responsible to pursue the main contractor and/ or roofing contractor. The Homeowner states that the Property Factor has not kept her advised of progress in this regard.

The Homeowner's response states that she does not accept that there is any dispute with regard to the amount and extend to the claim. She disputes that there was only one hairline crack in her son's bedroom and cites, in support of this, photographic evidence which she has produced. The response disputes the Property Factor's position that not all the damage caused to the Property was as a result of the recent works carried out.

The Homeowner's response states that she had asked the Property Factor to carry out a condition report including damp readings prior to the works starting.

The Homeowner's response states that she believes that the dispute has occurred because of a conflict of interest in the Property Factor taking on roles of Factor, Agent and Project Manager. The Homeowner states that the Property Factor has failed to clarify these roles or to answer any questions on the matter and refers the Tribunal to Sections 2.1 and 2.5 of the Code.

The response states that the Homeowner does not agree with the contractor that delay in the works was "entirely the client responsibility"

The Homeowner's response refers to the fact that each owner of flats in the tenement was asked to pay an additional £5,863.45 some months after they had paid £15,408.42 for the works which she states was paid in response to a fully costed tender. The Homeowner refers to Section 6.9 of the Code.

The Homeowner's response refers to the fact that the contractor had not been provided with sufficient information by the Property Factor to persuade it that the damage to the Homeowner's property was as a result of the works. The Homeowner refers to photographic evidence which she had lodged and to Section 6.9 of the Code. The Homeowner's response notes that the contractor does not accept responsibility for the damaged vacuum cleaner, disputes this and refers to additional cleaning work which she had to do. The Homeowner refers the tribunal to Section 6.9 of the Code in this regard.

The Homeowner's response states that there were issues over the insurance position, that the Property Factor had not properly advised the insurers of the works prior to commencement and that any claims for damage to contents should be properly directed to the contractor's insurance. The Homeowner refers the tribunal to Sections 2.5, 6.5 and 6.9 of the Code.

The Homeowner's response states that the email log lodged by the Property Factor is not accurate and has been updated retrospectively. The written representations refer to Section 2.5 of the Code.

The Homeowner's response refers to the damage caused and to the fact that the diaries of the roofing contractor and painter should support her version of events.

The Homeowner's response states that the Property Factor agreed to replace bedroom blinds and to pay for deep cleaning. It refers to Section 2.1 of the Code.

The Homeowner's response referred to possible conflicts of interest and the close relationship between the Factor and the Property Manager. It seeks information that such a relationship was of benefit to the residents of the tenement of which the Property forms part. It refers to Section 2.1 of the Code.

The Homeowner's response refers to soot damage and it challenges the Property Factor's position as to when such damage occurred and it also states that the Homeowner had reported damage by phone, text and email.

The Homeowner's response states that it had been verbally agreed that the blinds would be replaced or she be given some compensation or replaced at the end of the works and that it was not necessary to put anything further in writing. It states that no compensation has been paid and that the Homeowner has no evidence that the Property Factor had pursued the main contractor in this regard. Reference is made to Section 6.9 of the Code.

The Homeowner's response refers to various documents which have been lodged along with it.

Productions

The Homeowner had lodged a number of photographs, an email chain between Glasgow City Council and the Homeowner and had also lodged a number of documents along with the Application.

The Property Factor had lodged a log showing emails between Lomond and the Homeowner and other owners. It also lodged a number of documents including an undated letter from Mr Lees of Paul Lees Stonemasonry, one from Miller Surveying Services dated 12th July 2019 and one from ECO/ A.Rae Roofers and Builders dated 16th May 2019.

Homeowners' Position

Ms Arnot said that she had lived in the flat for ten years. She said that another tenement in Cranworth Street had benefited from grant assistance in having significant work done. She said that the proprietors of the flats in her tenement agreed to pursue such grant assistance for this work. Ms Arnot said that the tenement had been self-factoring but that it was a requirement of the grant conditions that a property factor be in place. She said that this was how Lomond came to be appointed as the property factor. Ms Arnot said that the work requiring to be done was underestimated and that she and the other proprietors had to pay an additional sum of over £ 5,000. She said that the tender had been fully costed and that Paul Lees Stonemasonry had won the principal contract. She said that all the proprietors were asked to pay an additional sum and that in her case she paid the sum of £5,863.45 shortly after it had been requested. Ms Arnot said that, during the work, damage was caused to the Property and there was water ingress. She said that damage to the flat immediately above the Property was worse. She said that an excessive amount of soot had come down the chimney and caused damage to the Property. Ms Arnot referred the tribunal to photographs showing the extent of soot which was deposited on the carpeting and furniture. She said that water ingress had damaged the nursery furniture in her son's bedroom including his cot and mattress. Ms Arnot said that the cost of making good damage and replacement of items was more than £2,000.

In response to questioning, Ms Arnot said that the Property has open fires which are features and which are not used to heat the flat. She said that the Property Factor had advised that it would be a good idea to put newspapers up the chimney to prevent deposits of soot and that she had done so but that this had been ineffective.

Ms Arnot said that the work carried out to the tenement caused cracking to ceilings throughout the Property and that these seemed to get worse as the work progressed. She said that she had particular concerns about her infant son's bedroom and the possibility of him being possibly injured if plaster dropped from the ceiling. She said that, because of her partner's work pattern, she was often alone with her son in the Property and she sought reassurance that there were no safety concerns.

Ms Arnot said that, at the end of November/ beginning of December 2018 the Property had been empty for a few days because the family had been on a short holiday. She said that, upon their return, it was discovered that water had come through the ceiling of the Property and caused damage. She said that there was so much water that it was pooling on top of the nursery furniture in her son's bedroom. She said that it was damaged beyond repair and that the cot mattress had been ruined. Ms Arnot referred to photographs which showed the damage. Ms Arnot said that she never received an acknowledgement, apology or compensation for the damage caused on that occasion. Ms Arnot said that, in September 2018, there had been water ingress through windows of the Property because the contractor had forgotten to replace a particular gutter. She said that this was fixed and that the water ingress stopped. She said that is when

blinds were damaged and that she is looking for compensation in respect of the damaged blinds.

Ms Arnot said that, on a number of occasions, she had reported to the Property Factor that there was cracking on the ceiling of her son's bedroom and that there was damp staining on the ceiling. Ms Arnot referred the tribunal to photographs showing the damp staining.

Ms Arnot said that Andy the roofer (Andy Rae) had been in the Property a number of times to inspect the damage. Ms Arnot said that the cracks in the ceilings of her son's bedroom, hall and her bedroom were repaired in February 2019 and some decoration done at no cost to her. She said that, at that time, Mr McInnes had asked her to send a list of damage caused and details of what she was wanting to claim. She said that Mr McInnes said that he would arrange for replacement of the blinds.

Ms Arnot said, that when she had reported the water ingress and the soot deposits, no one from the Property Factor responded and that it was Andy who came on a handful of occasions when there had been damage. She said that, on one occasion, Mr McInnes and Mr Miller, the Quantity Surveyor, came to the Property. Ms Arnot said that Mr Miller had said that he could not see any water staining and accused her of being "over the top." She said that he had been aggressive and that she had asked him to leave her flat.

The tribunal noted the terms of Mr Miller's letter of 12th July 2019 in which he states that that he considers the bulk of the ceiling cracking to be of some age and that it is not due to the works being done to the tenement. The letter states that that when Mr Miller visited the Property he saw little sign of water ingress to the ceilings and walls. Ms Arnot said that he thought that Mr McInnes would arrange for replacement of the blinds and that he had told her that he would arrange for a deep clean of the Property when the work was completed. She said that she could not wait for this and had dealt with the cleaning herself.

Ms Arnot said that the contract was for a significant sum and she said that she could not understand why there were issues about dealing with the matters she had raised. Ms Arnot said that there was a common insurance policy arranged for the tenement and that this had been arranged by the Property Factor after it had taken on factoring duties. She said that, prior to Lomond being the Property Factor, each proprietor had arranged his/ her own insurance cover. Ms Arnot said that, as a consequence of changing insurance, she had not yet put contents insurance in place.

Mrs McInnes said that, in all communications with the homeowners, Lomond had tried to be sensitive. She said that she always remembered that it was people's homes which they were factoring.

Mrs McInnes said that on 31st July 2018 she had written to the homeowners in the tenement and suggested to them that they should use newspapers to block chimneys to protect against possible deposits of soot. She said that she was surprised that the Homeowner would have suffered such an amount of soot coming down the chimney if it had been properly blocked with newspapers.

Mrs McInnes said that the contractor was responsible for keeping the properties wind and watertight. She said that the physical damage to the Property had been rectified by the contractor.

Mrs McInnes said that the timing of all the work to the Property (plastering and painting) had been carried out to accommodate the Homeowner. Mrs McInnes said that some of the ceiling cracks in the Property may have been pre-existing.

Mrs McInnes said that she had agreed with the main contractor that the homeowner be compensated in respect of blinds, the mattress and the cost of carpet cleaning. She said that, at no time did she reject any head of claim. Mrs McInnes said that, for other reasons, the main contractor would not deal with the agreed matters without dealing with all matters together.

The Tribunal was referred to an undated letter from Paul Lees Stonemasonry which stated that it was in response to the Homeowner's letter of 18th March 2019.

This letter states that the water ingress which caused damage was as a result of storm impact to tarpaulin cover. The letter states that the work to the tenement had been stopped while approval was sought for common chimney works. The letter states that the contractor was entitled to claim for interruption of works but had not done so. The letter states that household goods in the Property were damaged because the flat immediately above it was frequently unoccupied and that this was the reason that damage had been caused to the items in question. The letter states that, since the roofing contractor provided a weekend and out of hours response, liability for any alleged damage must be shared with the owner of the flat immediately above the Property.

The letter states that the majority of household goods alleged to have been damaged were located in one room and that the damage to that room was a single narrow crack in the plasterwork in the ceiling at the centre of the room. The latter states that the contractor has not received a satisfactory explanation as to how so many items could have been sited beneath the crack and been damaged. The letter states that the Homeowner could reasonably be expected to anticipate that soot would be dislodged down the chimney during chimney works and take steps to protect the interior and that all owners were advised to block their chimneys. The letter states that the contractor does not accept liability for any alleged damage to a vacuum cleaner as its operation was completely within the control of the Homeowner,

Mrs McInnes said that one issue which there is with the main contractor is that it has not been paid for work which it had done in terms of the valuations of work carried out by the quantity surveyor. She said that the last valuation showed that the contractor was due £22,000. Mrs McInnes said that the bulk of the funds had been paid by the proprietors but that Lomond was still due payment in respect of some of the sum due. Mr McInnes said that one of the proprietors had died and that Lomond was dealing with the executors and that no payment had been forthcoming. She said that a Notice of Potential Liability had been put on the title of that property.

Mrs McInnes acknowledged that she had perhaps not pursued settlement of the sum due from the contractor in respect of the blinds, mattress and carpet cleaning as vigorously as possible because of the issue of the contractor not being paid what it was contractually due.

Mr McInnes said that there had been problems with the contract because after work had commenced, it had been found that additional work was needing to be done to the rear elevation. He said that the contractor had checked the chimneys and found that there were serious issues and that one of them was common with the neighbouring tenement.

Mrs McInnes said that there was deemed to be imminent danger to the occupiers of the tenement from the chimneys. She said that the Building Standards department of Glasgow City Council had been involved and that a decision had eventually been taken that those occupying the tenement did not have to be evacuated. Mrs McInnes

said that, with the additional work required and the death of one of the proprietors, there was a void in funding the project. Mrs McInnes said that, for the moment, the share due by the deceased proprietor had been apportioned amongst the other proprietors.

Mr McInnes said that when the issue with the chimneys had been discovered the scaffolding had already been erected. The decision was taken to proceed with the work but at a slower pace. He said that the contractor worked with Lomond in this regard and that the pace of the work was reduced. He said that the contractor would have had the contractual right to sue because it had not been able to progress the contract. He said that the contractor already had materials on site.

Mr McInnes said that when the pace of the contract slowed, the roof had already been stripped and could not be reinstated until the chimneys had been dealt with. He said that the roof had been covered in tarpaulins and that water ingress had occurred.

The tribunal was referred to Lomond's letter to proprietors of the tenement dated 3rd December 2018. It stated that the slate was stripped from the roof in July 2018 but that reslating works could not proceed as additional stonework and then chimney works were discovered. It states that there was a delay of nine weeks as a result of this.

Mrs McInnes was referred to a paragraph in the letter of 3rd December where it was stated that "the contractor will remedy damage caused by water ingress at his expense. We have met with affected owners and carried out inspections/ surveys several times and given further assurances that damage caused by this unavoidable water ingress will be remedied." Mrs McInnes said that what she had meant was that the contractor would deal with damage to the fabric of the building. She accepted that the terminology in the letter could be misinterpreted

The tribunal noted the terms of a letter dated 16th May 2019 from Andy Rae, the roofing contractor, which stated that he did not believe that so much furniture and goods could have been damaged from a hairline crack on the ceiling.

Both Mr and Mrs McInnes said that they did not dispute that furniture had been damaged.

Breaches of the Code

The tribunal was provided with specific evidence with regard to the alleged breaches 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.

Ms Arnot said that her complaints and concerns were not responded to promptly and that full replies were not provided.

Ms Arnot referred the tribunal to the documentation she had lodged which included copies of intimations from her to the Property Factor with regard to issues she was

experiencing in connection with water ingress, damage caused and the issue with soot.

Ms Arnot said that, on 10th September, she had reported water ingress causing damage to blinds. She said that, although Mr McInnes had come to the Property in response to her reporting the issue, she had not been updated with regard to replacement of the blinds.

Ms Arnot said that, on 13th September she had reported the damage caused by the soot and had not received a response.

The log lodged by the Property Factor showed an entry dated 17th September: "Advised water ingress to rear bedroom ceiling and cracks in same and in hall. The log shows an entry of the same date indicating that all the proprietors were written to "re ongoing liaison with neighbouring building re common chimney."

Ms Arnot said that on 7th October, upon her return from holiday, she had reported significant cracks and that she did not receive a response. The Property Factor's log discloses that the Homeowner had "advised more cracks to rear bedroom and hall ceiling observed on return from holiday." The log did not record a response.

On 28TH October Ms Arnot had reported concerns she had about the safety of her son sleeping in a room where there was a cracked ceiling and she said that she did not feel that her concerns had been treated in a serious manner. The Property Factor's log discloses that "confirm previous inspection that ceilings not in danger of collapse, advised contractor would attend to inspect again on Friday when client returned from holiday."

Ms Arnot said that, on 1st December when she returned from a holiday, she reported significant water ingress and damage and that, although she got a response on 3rd December, she never received an apology. The Property Factor's log disclosed a letter to all proprietors which was sent on 3rd December. It disclosed no specific response to the Homeowner.

Ms Arnot said, in general terms, that the Property Factor did not give full responses to complaints she had made and that it was poor at updating her on progress of the resolution of such complaints.

Mrs McInnes referred to the log which she had lodged and which showed various responses. She said that, where there might be no entry in the log which corresponded with issues raised by the Homeowner, the matter would have been responded to by the contractor/sub contractor.

Mrs McInnes said that the ceiling was considered to be safe. She referred to the log entry for 2nd November where it states that the contractor deemed the ceiling to be safe. This states "Contractor reports ceiling structurally sound."

Mrs McInnes said that two additional flats had sustained damage to contents. She said that agreement had been reached with the contractor in respect to damage caused to

the flat immediately above the Property. She said that it had not been possible to agree matters with the Homeowner.

Ms Arnot said that the upper flat had been "decimated" and that her neighbour who owned the flat had not made a claim for damage to contents because they were old. She said that her neighbour was extremely distressed with the whole process of the work and subsequent damage.

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.

Mrs McInnes said that there was a twenty-four hour hotline which proprietors could use to report any issues with regard to the works being carried out.

Ms Arnot said that she did not get progress reports on the timescale for works being done and the internal issues in her flat being dealt with. She said that, on one occasion there was an arrangement for someone to come to the flat to deal with something on a particular day but no one turned up as arranged. Ms Arnot said that, on occasions, it was Andy of the roofing contractors (Andy Rae) who responded rather than Lomond.

Mrs McInnes said that there had been an issue where the Homeowner wanted the work to the ceilings to be done within a certain time period. She said that the Homeowner had said that the work must be completed by 5th March and that this was achieved. Mrs McInnes said that she had arranged matters in such a way that the repairs to the ceiling and the subsequent painting could be done at the same time so that it could be done in as inconvenient a manner as possible.

Mrs McInnes said that the roofing contractor responded to demands made by clients on site.

Mrs McInnes said that she should have perhaps contacted the Homeowner more in the period when the plasterwork and painting were being done.

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.

Ms Arnot's position on this was clear. She said that the Property Factor had failed to pursue the contractor to make good the damage caused to her flat and the contents. The Property Factor's position was also clear and that was that it had pursued the Property Factor, had passed on the claim and that, part of the reason for the matter not being resolved, is the issue that there is with payment to the contractor.

7.2 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.

Ms Arnot said that her complaint has not been resolved.

Mrs McInnes said that the complaints process had not been exhausted and that the contract had not been finalised.

Specific items of claim from the Homeowner:

Ms Arnot said that the blinds could not be cleaned because the staining was too bad.

She said that her Dyson vacuum cleaner had been disposed of because it had been used to lift soot and rubble. She said that it could not be cleaned and had been totally ruined.

Ms Arnot said that she had blocked the chimney with newspapers but that this did not stop the soot coming down the chimney.

Mr McInnes said that he did not consider that Lomond could be held responsible for blocking the chimneys of the tenement and that it had given advice to proprietors about how they should try and stop soot coming in.

Mr McInnes said that, prior to the current contract, no major work had been done to the tenement for about thirty years.

Alleged Failure to carry out the Property Factor's Duties.

Ms Arnot said that she considered that the roles of factor and agent had been confused. Lomond was the Property Factor but Mr McInnes, and owner of Lomond, was also the agent as far as the contract was concerned and he was also the project manager. She said that all she had asked for was help from her property factor but that it had not been forthcoming. She maintained that the Property Factor's failures in connection with management of the project and the way she had been treated amounted to breach of the property factor's duties in terms of the Act.

Discussion

The tribunal considered that it was not a matter for it to determine whether or not the contractor was obliged to recompense the Homeowner or whether or not her claim was reasonable. The tribunal is limited to considering whether or not there had been breaches of the Code and whether or not the property factor duties had been complied with. There was no doubt that there had been difficulties with the contract for refurbishment and the Homeowner did not disagree with the Property Factor's position that significant work was found to be needed after the roofing works had commenced and that this caused delay in the work progressing. The situation was that the roof had been stripped of slates and the work had to stop until the issue with chimneys had been resolved. The Homeowner did not disagree with this.

The Homeowner's evidence with regard to the fact that there had been water ingress was not challenged by the Property Factor and the tribunal accepted that such ingress had occurred, not only through the windows but also through the ceilings of the Property. The Property Factor did not dispute the deposit of soot although Mrs McInnes said that she had been surprised at the amount which had been deposited

and that she would have thought that, if the chimney had been adequately blocked with newspapers, there would not have been the amount reported by the Homeowner. The tribunal accepted that the Property Factor had difficulties with regard to the contract and the fact that the contract had already commenced when the issue with the chimneys had been identified.

The tribunal recognised the traumatic experience suffered by the Homeowner but what it had to determine was whether or not the particular circumstances amounted to breach of the Code and/or failure to carry out the property factor's duties.

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.

The tribunal recognised that the Property Factor did respond to various matters raised by the Homeowner but it did not consider that it responded fully to the concerns raised and that, sometimes, it relied on others such as the contractor or a sub contractor to respond on its behalf. The tribunal preferred the evidence of Mr Arnott in this regard. It also considered that, whilst there may have been advantages in Mr McInnes being property factor, agent and property manager as far as progressing the contract, it did mean that sometimes the Property Factor did not respond to complaints in the appropriate way.

The tribunal determined that the Property Factor had breached the Code in this regard.

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.

It was accepted by the tribunal that the Property Factor had in place appropriate procedures to notify it of matters requiring repair, maintenance or attention. It accepted the evidence of Ms Arnot that, at times, during the contract, she had not been kept apprised of progress of work relating to the Property and also the position with regard to her claim for recompense for damaged contents.

The tribunal considered that the Property Factor had breached this section 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.

The tribunal did not find that the Homeowner had provided evidence which would have supported a finding that the Property Factor had not pursued the contractor. The tribunal accepted as entirely reasonable the reason for the delay in the contract being progressed- the discovery of considerable additional work which required to be carried out. It also accepted that the claim for recompense for damaged contents had been put to the contractor. It was clear from the contractor's undated letter that there were difficulties in it accepting the heads of claim and it accepted the difficulties

which the Property Factor had in pursuing the contractor on this matter because of the sums which were outstanding and due in terms of the contract.

The tribunal did not find that the Property Factor had breached this section of the Code.

7.2 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 tribunal accepted the Property Factor's representations that the complaints process has not been concluded. It considered that the Property Factor could have progressed the complaints process but that the process has not been concluded. The tribunal did not find that the Property Factor had breached this section of the Code.

Property Factor's Duties

The tribunal accepted the evidence of the Homeowner in this regard and found that the Property Factor has not complied with the Property Factor's duties. The Homeowner was entitled to a better service. The dual role adopted by personnel within the Property Factor (project manager and property factor) meant that it did not manage the common parts of the tenement appropriately in ensuring that the Homeowner was kept fully apprised of the matters which she had raised. To keep a homeowner fully informed is one of the roles of a property factor.

Disposal

The tribunal, having determined that the Property Factor had not complied with the property factor's duties and breached sections 2.5, and 6.1 of the Code required to consider the appropriate disposal. The Property Factor's failings were those primarily of communication and at times this lack of communication was stressful for the Homeowner particularly around concerns she had about safety. The tribunal considered that a Property Factor Enforcement order should be made requiring the property Factor to pay compensation of £500 to the Homeowner.

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 of the
First-tier Tribunal for Scotland
30 August 2019