

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with Statement of Reasons on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/Property Factor/22/3982 and FTS/HPC/Property Factor/4023

Flat 2/3, The Pirns, King Street, Galashiels TD1 1PX ("the Property")

Parties:-

John Rankine, Morva, 9 Buccleuch Street, Innerleithen, EH44 6LA ("the Homeowner")

James Gibb Residential Factors, Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ ("the Property Factor")

The Tribunal:-

Melanie Barbour (Legal Member)

David Godfrey (Ordinary Member)

Decision

The Factor failed to comply with (First Application)(C1) dated 29 October 2022 Sections 2.5, 6.1, 6.4, 7.1 and 7.2 of the 2012 Code of Conduct and had failed to carry out its Property Factor's duties in terms of its written statement of services sections 1.2, 4.1, 4.8, 6.11, 7.0; and (Second Application) (C2) dated 6 November 2022 Sections 2.1, 2.7, 6.4, 6.7, 6.12, 7.1 and 7.2 of the 2021 Code of Conduct and had failed to carry out its Property Factor's duties in terms of its written statement of services sections 1.2, 4.1, 4.2, 4.8, 6.0, and 7.0. The decision is unanimous.

BACKGROUND

1. By the first application (C1) dated 29 October 2022, the Homeowner complained to the Tribunal that the Property Factor was in breach of Sections 1 B.c, D.l.m.n; 2.5; 6.4; 7.1 and 7.2 of the 2012 Code of Conduct and had failed to carry out its Property Factor's duties as set out in section 7B of the application form, namely failure:- to maintain the fabric of the building; to carry out repairs resulting in increased costs; to carry out repairs from a H&S aspect; to hold a face to face meeting with owners to discuss issues and concerns in over 7 years; to comply with internal complaints handling procedures; to carry out property inspections resulting in failure to maintain the fabric of the building and increased repair costs.
2. By the second application (C2) dated 6 November 2022 the Homeowner complained to the Tribunal that the Property Factor was in breach of Sections OSP3 and OSP 11; 2.7 and 2.1; 6.1; 6.2; 6.4; 6.7; 6.12; 7.1 and 7.2 of the 2021 Code of Conduct and had failed to carry out its Property Factor's duties as set out in section 7B of the application form, namely failure to:- maintain the fabric of the building; to carry out repairs resulting in increased costs; to carry out health and safety repairs; communication failures; to hold meetings with owners from taking over factoring service to present day (7 years); to carry out property inspections; and to monitor and inspect repairs.
3. By Notices of Acceptance dated 9 January 2023, a legal member of the Tribunal with delegated powers accepted both applications and a case management discussion was assigned to take place on 24 March 2023. Written representations were submitted by the Property Factor on 6 February 2023. The Homeowner provided written representations on 19 January 2023; and further representations in response to a Tribunal Direction on 12 March 2023.
4. Both the Homeowner and Property Factor attended the case management discussion on 24 March 2023. Roger Bodden, Regional Director appeared for the Property Factor. Also, in attendance as a supporter for the homeowner was Lorna Rutherford; and Steven Paterson, Senior Development Manager with the Property Factor.
5. The Homeowner made four further written submissions on 4 and 24 April 2023 dealing with each alleged breach of the Code of Conduct 2012; Code of Conduct 2021; property factors duties up to August 2021; and property factors duties after August 2021.
6. There was a second case management discussion on 21 July 2023. Reference is made to the terms of the Note produced for that Case Management Discussion. A direction was also issued after that case management discussion to regulate further procedure.

7. On 8 August 2023 the Property Factor submitted written representations in response to the Homeowner's complaints. They confirmed in that letter that they would not attend the forthcoming hearing but would rely on their written submissions.
8. On 31 August 2023 a hearing took place. The Homeowner attended with his supporter (and co-homeowner) Lorna Rutherford.

FINDINGS IN FACT

9. The Tribunal made the following findings in fact:-
10. The Property Factors are James Gibb Residential Factors.
11. The homeowner is John Rankine.
12. The property is Flat 2/3, The Pirns, King Street, Galashiels.
13. The development is the Pirns, Galashiels.
14. There is a written statement of services for the development. It has been updated and amended since 2015.
15. There is a development schedule for the development which sets out which defined works that the property factor will undertake as part of their duties, and the frequency of those works. It has been updated since 2015. The changes to the development schedule were not discussed with the owners before they were implemented. The changes reduced the matters which would be included in the definition of common areas. The frequency of inspections to the property were reduced.
16. The Property Factor did not provide reports of property inspections carried out by them.
17. The Property Factor has been appointed to act as factors for the development since around 2015.
18. The development is an old converted mill building. It has garden ground attached to it. There are outbuildings at the development.
19. In March 2018 the Property Factor advised that they would instruct a survey on the wood and beams to make sure that there was no rot to the building following a major leak to the top floor. No survey was carried out until 2022.
20. In March 2018 the Property Factor advised that the communal windows needed work and the Property Factor had a quote for those works. No repairs to the stairwell windows were carried out.
21. The homeowner raised concerns with the Property Factor about the condition and safety of the outbuildings since at least July 2018. No works have been carried out to the outbuildings.

22. The homeowner raised concerns about the condition of the garden ground with the Property Factor since at least 2020.
23. Since at least August 2020 the homeowner had raised concerns with the Property Factor about leaking gutters and wall damage.
24. An on-site meeting with the Property Factor and homeowner took place on 15 September 2020 to discuss issues needing repair and maintenance.
25. On September 2020 the Property Factor suggested putting a hiatus on the cleaning and using that money towards repairs. This was not carried out.
26. The homeowner complained to the Property Factor about various matters including repair and maintenance on 17 August 2020. The Property Factor on 24 October 2020, upheld the Homeowner's complaint. That email confirms that the complaint related to failure to respond to complaints, failure of the Development manager to react to issues, failure to organise a meeting, failure to maintain the building - numerous issues; a failure to manage fire risk in the stairwell. The email confirmed that the complaint has been upheld and that an action plan has been set up for the development.
27. The homeowner made a second formal complaint in September 2021 the Property Factor did not respond to that complaint.
28. The Property Factor did respond to the homeowner's complaint of 8 August 2021.
29. The Property Factor did not hold any owners meetings despite being asked to do so by the homeowner.
30. A building survey report was carried out by F3 Surveyors on 6 May 2022. It set out recommended works including immediate/short-term works; medium terms work; and longer-term works. The recommended repair costs total £82, 524. Out of that total, £60,444 were red costs which suggests that they should be carried out in the short term.

HEARING

31. As noted, the Homeowner had prepared detailed written submissions in terms of both applications (which had been submitted to the tribunal as set out above). The Property Factor had submitted its written representations on 8 August 2023. The tribunal had regard to both of those documents, together with the oral submission of the homeowner during the hearing.

FORM C1- COMPLAINT

32. In terms of the case reference PF/22/3982 (Form C1)
33. The written submission set out the background leading up to the Property Factor taking over management of the property in 2015; the Homeowner's experience with other factors and this as a basis for having concerns about the Property Factor's discharge of its duties and breaches of the code of conduct in terms of this property. With the written submission photographic evidence had been submitted in support of the submission.
34. The Property Factor had objected to section 6.1 being considered as it was not referred to in the application form provided by the homeowner. The homeowner asked for it to be considered. He noted that it was referred to in his code of conduct letter sent to the Property Factor. They had notice of the alleged breach. He considered that the Property Factor had not objected to the inclusion of 6.1 at the case management discussions or before the submission of 8 August 2023. He moved to allow the application to be amended and for the tribunal to consider an alleged breach of 6.1. He had sent all written representations to the Property Factor. They had ample notice of the breach.
35. The tribunal agreed to allow the application to be amended to include consideration of the alleged breach under 6.1, given that notice had been given in terms of the letters of complaint. The Property Factor had already been given clear notice of this alleged breach with the first notice of complaint, and they had had notice of it prior to making their submission on 8 August 2023.

36. 1. B Services Provided

- 37. c. The services that you will provide. This will include the minimum service delivery standards that can be expected and the target times for taking action in response to requests for both routine and emergency repairs. Any work or services which are a requirement of the property titles should also be stated.**
38. The Property Factor responded that the Homeowner has not provided evidence to support this alleged breach. They advised that their written statement of services sets out examples of core services and their development schedule sets out specific core services provided. Further, the development schedule sets out the frequency of property inspections carried out by the development manager. They did not consider that they breached this section of the 2012 Code.

39. *The tribunal considered that the property factor had set out in their written statement of services and development schedule their core services; it also set out target times. We do not consider that there had been a breach of this section.*

40. 1. D Communication Arrangements

41. **I. your in-house complaints system and how you can make an application to the housing and property tribunal; m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail; n. your procedures and timescales for response when dealing with telephone enquiries;**

42. The homeowner referred to the lack of progress with complaints made. He referred to evidence he had submitted about the complaints made and what he perceived as the lack of response. The homeowner accepted that there was information in the written statement of services setting out the complaint's procedure.

43. The Property Factor provided copies of their written statement of services as evidence that their written statement of services met the requirements of section 1.D (I,m and n) of the 2012 Code. They do not consider that there is a breach of this section of the 2012 Code.

44. *Section 1 of the code deals with what a property should have in its written statement of services. We consider that section 1 imposes a duty to set out various matters in the written statement of services. We find that there is no breach of this section as the written statement of services complies with the terms of the code in terms of the information it contains.*

45. Communications and Consultation

46. **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 (Section 1 refers).**

47. The Homeowner said that there has been a lack of communication throughout the time the Factors had been appointed. There had been a constant change of staff, with eight different development managers in place since 2015. This had resulted in poor communication. There had been very little action taken by the Factors, no continuity of staff, and poor or no response to enquiries or complaints. No timescales had been provided for action. No receipt of complaints. The Homeowner had had to progress to formal complaints to get any action. He had supplied evidence to the tribunal of copy

letters with formal complaints setting out all failures. There had been a failure to forward matters to complaints.

48. He stated that there was a failure of development managers to respond to issues. They had accepted that they had failed to organise meetings to discuss issues. There had been a failure to carry out services; and a failure to address fire risk and this had led to further deterioration of the building.
49. He made reference to his first email (email number 1) which he had sent to the Property Factor on 15 March 2018 which was the first to set out the issues at the development which needed to be addressed. These issues raised were the condition of the outside parking area, the main stairwell, and the outbuilding/store.
50. He noted that Email 2 was from the Property Factor dated 16 March 2018 responding to email 1. It noted that there was major damage to the inside of the development and they had confirmed that first, they needed to get a survey to assess the condition. The Homeowner advised that no survey was ever carried out. There was water damage to the top corner of the development. He referred to pictures on p.466 of his submission. It also stated that the communal windows needed work and he had picked the cheapest estimate to repair and repaint them cost £800.
51. The Homeowner referred to Email 5 sent by him on 11 July 2018. It raised issues of concern with the Property Factor. He notes that top floor landing lights had cables hanging down, cross member lights were breaking and needed repair.
52. He advised that the outbuilding doors were not safe and needed a clasp and padlock; young guys were trying to get in by going through the roof of the outbuilding. They were not repaired by the factor, despite them indicating that they were organising quotes. He said the Property Factor agreed that this was a health and safety issue. The Homeowner was concerned that they were not liable for any injury as they had informed the Property Factor about this matter.
53. The Homeowner advised that there had been subsequent emails sent regarding the numerous issues he had been raising and he referred to emails 9-11 sent by the Homeowner to the Property Factor in January 2019; email 12 (sent 15 August 2020), 15 (sent 15 August 2020); and email 19 (sent by the Homeowner on 13.9.20 about issues of concern); all raising issues with the Property Factor.
54. He referred to email 26 sent to the Homeowner from the Property Factor on 24 October 2020, which upheld the Homeowner's complaint of 17 August 2020. That email confirmed that the complaint related to failure to respond to the complaint of 17 August; failure of the Development manager to react to issues, failure to organise a meeting, failure to maintain the building - numerous issues; a failure to manage fire risk in the

stairwell. The email confirms that the complaint has been upheld and that an action plan has been set up for development.

55. The Homeowner advised that the Property Factor's Tracey Makin and Alan Martin Operations Manager, had come to look at the development following the formal complaint which had been made. The meeting was on 15 September 2020. The condition of the window was very poor and needed repair and the guttering needed cleaning. The homeowner was concerned about the condition of the window as it was so bad and there was a risk that they may fall out. The Property Factor agreed works needed to be carried out on 2 in their email of 24 October 2020. The work has never been done in terms of repairs to the window. The outbuilding has never been repaired. In the meeting on 15 September 2020, the factor suggested removing the roof.
56. He referred to Email 26 and advised that there has never been an action plan in all the years that the Property Factor has been appointed for the property. There was another change to the Development Manager, it was currently Stephanie Paterson. She asked to visit to see around it. In July/August she was to attend but Stephanie Paterson could not attend then and had never been to the Pirns. The Homeowner said that if there had been an action plan, he had never had sight of it. He advised that he had asked them a number of times for a copy of any action plan but none had ever been provided to him.
57. The Homeowner had requested on a number of occasions that the Property Factor meet the owners and have a meeting, but they never had a meeting. The factors had advised that they will have meetings but this has not happened. He referred to emails in January 2023 (C2 application).
58. The Property Factor accepts that they have breached this aspect of the 2012 Code.

59. *The tribunal finds that this section of the code has been breached. We note that the Property Factor accepts that they have breached this aspect of the code.*

60. SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

61. **This section of the Code covers the use of both in-house staff and external contractors.**
62. **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.**

63. He referred to page 508 of his submission. The Homeowner said during an on-site visit by the Operations Manager and Development Manager of the Property Factor, on 15 September 2020, they identified three life-threatening issues: fire risk in the stairwell, safety issues regarding the outbuildings, and safety issues regarding windows in the stairwell.
64. He advised that the bin store/outbuilding and its roof were not safe. There was a fire risk as the development was an old woollen mill, and there was a cupboard which is filled with flammable items and people had been entering the building to smoke. Coming into the fire escape there was a lot of wood. There was a potential fire risk. The homeowner had wanted the stairwell emptied and a lock securing the cupboard. This was agreed in October 2020. Work was not completed until February 2022 in terms of the cupboard. He said the other matters were never addressed. The work on the stairwell was not done until February 2022.
65. The Homeowner referred to email 2 (at p469) from the Property Factor dated 16 March 2018 where there is a reference to the windows needing work done, and the Property Factor had picked the cheapest estimate for the work to be done. The Homeowner also referred to email 12 (at p475) sent by the Homeowner on 15 August 2020 raising concerns about the lack of progress in the Development including referring to the windows in the stairwell windows being rotten now and noting that this matter was to be addressed by the Property Factors in 2018. The Homeowner also referred to (See page 492) a quote for the window repair dated 11 December 2017. The Homeowner advised that the Property Factor obtained this quote for windows in 2017 but did not do anything about the window's quote. The Homeowner referred to (page 383) an email from Property Factor's Aimee Russell on 11 October 2021 referring to the quote, asking if the Homeowner has ever received it, and noting that the work could be carried out without the owner consenting as it was below delegated authority in 2021. She noted that she did not know why it had not been actioned.
66. The Homeowner advised that the condition of the outbuilding and stairwell windows was still outstanding and needed repairs/replacement. The issue has been ongoing since at least 2017. The Property Factor did not keep owners updated on what if any progress they were undertaking.
67. There are 23 properties in the development
68. The property factor in their written submission advised that they did not consider that the tribunal was entitled to consider this issue as it had not been included in the Homeowner's application form.

69. *The tribunal is prepared to consider this breach of section 6.1 for the reasons set out above. We find that the property factor has breached this section of the code. While the property factor has procedures in place to allow a homeowner to notify the factor about repairs, what they failed to do was keep the homeowner informed about the progress of works to be carried out to the development, this failure appears to have been ongoing for several years. Action only appears to have been prompted on occasions when the matter was chased up by the homeowner, but actions do not appear to have resulted in the completion of many repairs to the development. The homeowner has provided a note of emails from and to the property factor over several years raising issues of repair works needing to be done, and chasing the property factor about the outstanding work. The complaint which was upheld by the factor shows two matters, the first that the factor accepts that complaints were not actioned and that there were repairs which were to be addressed. It secondly, sets out matters to be addressed and the position of the homeowner was that these matters were not addressed other than to tidy the stairwell. There is a degree of overlap in terms of the homeowner's complaint with the concerns of the condition of the outbuilding, stairwell, and stairwell windows being highlighted through several sections of the application. The property factor does not respond to these particular matters in their written submission, they did not attend the hearing and they were not therefore available to respond orally to this complaint. There is no contradictory evidence submitted by the factor on these particular matters, to counter the evidence provided by the homeowner. The tribunal considers it is entitled to uphold this part of the complaint.*

70. 6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

71. The Homeowner advised that the Development Schedule set out cyclical property inspections. He suggested that planned preventative maintenance meant that they were meant to have property inspections once a month. On 28 November 2020, the Property Factor changed this to bi-monthly. It was later changed to 4 times a year in 2022. In addition to routine property inspections, the Property Factor was also to undertake routine maintenance namely gardening and cleaning. He advised that the Property Factor in 2020 removed gardening from the Development Schedule. He advised that they had not given any indication that they were removing gardening from their scheduled works. It is paid for by the owners. He advised that the owners did not ask them to remove the gardening or reduce the inspection periods. He advised that he had received no notification of these changes to the owners.

72. He advised that when he had met the Property Factors Alec Martin to discuss the condition of the store and cleaning, it had been discussed that they were spending more on cleaning than they did on repairs. The Property Factor said they would put a hiatus on cleaning as all the flaking paint was still in bad condition. The Property Factor was going to write to the owners about this, before they made the change, as they needed permission before they made changes for a hiatus, however, no letter was ever sent out, he submitted therefore, if they could not eliminate cleaning without consultation, so they should also not eliminate gardening without consultation.
73. He advised that he was unclear what inspections had been done and in view of the lack of any repairs being completed, he did not think that they had been done or if done not to a satisfactory standard. There had been no maintenance over the last 5 years, nothing whatsoever by the Property Factors. The Homeowner asked for inspection reports but had received nothing.
74. The Homeowner said there was a serious problem with water ingress. The factor had twice said before we could do work, they needed the consent from owners. The homeowner said these were now emergency repairs but the factor still had not done the work. The owner said if the windows blew out directly above the entrance there was a risk of injury.
75. He asked for inspection reports but they had not been made available, they are not on the portal and so there was no information about the inspections done.
76. The development schedule removed a lot of work categories in 2019; then in 2022 they removed further matters; the owners received no notification of this. The factor removed matters from the development schedule as the owners complained about those matters. We complained about the windows; the bin store; the gutters - removed. The list of items they would deal with was condensed.
77. The Property Factor advised that the Homeowner was confused about Planned Preventative Maintenance systems which are done by qualified contractors and site inspections done by the development manager. They dispute that monthly maintenance visits have never been discussed. This is not part of the core service provided by the Property Factor. There is no agreement in place for a planned cyclical programme of maintenance and to do so would have required a chartered surveyor's service. Their services only include routine and reactive repairs and maintenance. They do not consider that section 6.4 of the code has been breached.
78. *The tribunal finds that this section of the code has been breached. We note the terms of the Written Statement of Services - Section 3 of the Written Statement of Services narrates that the Property Factor provides an extensive range of services for the*

communal area in each of its development. ... in 3.2 the services provided cover the maintenance, management and repair of the communal areas detailed in section 03 of your Development Schedule. Section 4 deals with maintenance and response arrangements. 4.1 deals with routine maintenance. 4.2 deals with routine repairs and provides that request for routine repairs can be made through following communications ... [including] by advising your property manager during a routine inspection of your building development. The Written Statement of Services states 4.6 property inspections: 4.61 routine property inspections will be made by the property manager at a frequency detailed in section 6 of your development schedule. Visits can be more frequent in the event of on-going problems, repairs, major project. We note that at least until 27/11/2020 when the Property Factor amended which communal areas were covered, areas covered included communal gardens, parking areas, bin stores, windows.

79. *Given the terms of section 6.4 of the code of conduct and the terms of the written statement of services, we find that there has been a breach of this section of the code. The terms of the code do not differentiate between what type of inspections are to take place. We note that there are a number of emails provided which show that the Homeowner has raised on a number of occasions the concerns he has about the repairs to the property, there is also an acceptance by the Property Factor that there are repairs to be carried out. As there were supposed to be regular property inspections then in following the code there should have been a programme of works. We have no evidence of any such programme being in place. Further, we consider that the various repairs raised with the factor should reasonably have become part of any programme of works to be carried out by the Property Factor. It seems to us that had there been some sort of written programme of works then when development managers changed a written programme of works would have made the handover much easier.*

80. Complaints Resolution

81. 7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

82. The Homeowner advised that they have not followed the complaints process. For example, in October 2020, the letter of complaint was upheld and it said that they agreed that they had failed on a number of matters. The factor did nothing to address those issues and they remained outstanding. They take complaints to the limit and

only if the homeowner threatens to take them to the Housing Tribunal do they do anything about the complaint.

83. The Property Factor disputes that they have breached the section of the code, as they have a complaint procedure and this is all that this section requires.

84. *The tribunal considers this part of the code to be breached. The tribunal finds that the factors do have a complaint procedure. The Homeowner agrees that one exists, however his complaint is that the Property Factor do not follow the complaints procedure through. We agree with the homeowner, for example Stage three of the factors' complaints procedure states that "depending on the complexity, the investigation may include ... root cause analysis as well as the implementation of corrective and preventative measures". The factors' email of 24 October 2020 upholds the owner's complaints and confirms that there has been an action set up for the development which Tracey has continued to work through. ... As discussed there are works currently progressing and others that will need proposals and agreement with the owners but at the meeting each of the 5 points outlined in the complaint have/are being addressed and actioned. The evidence from the homeowner is that this is not the case, and he submits for example that the outbuildings were never repaired, and windows in the stairwell were never repaired/or repainted. He provides an email of 8 August 2021 sent to the factor detailing the history of his complaint and what had not happened since 24 October 2020.*

85. 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.

86. The Homeowner alleges that the Property Factor repeatedly failed to follow through on the procedure.

87. The Property Factor accepts that they have breached this section of the code having regard to the submission by the Homeowner set out in his written submission on page 510 of the Property Factor code of conduct letter.

88. *The tribunal finds this section of the code to have been breached, given the acceptance by the property factor.*

PROPERTY FACTOR DUTIES TO AUGUST 2021

Written Statement of Services SECTION 1.2 (as at December 2020)

- 89. 1.2 we act on your behalf to organise and administer the maintenance and repair of the common areas of your development.**
90. The Homeowner set out the concerns he has about the conduct of the Property Factor namely failure to maintain the fabric of the building; failure to carry out repairs resulting in degradation to the property and increased costs in the repairs; putting health and safety of owners at risk; failure to carry out routine inspections and allowing the development to fall into a state of disrepair; failure to carry out cyclical maintenance; being reactive to concerns not proactive; failure to hold a meeting with owners between January 2015 – 16 August 20-21; failure to deal with complaints by owners; failure to follow complaints handling procedures.
91. The particular details of this complaint included the leak to the top floor of the development noted in 2018. The Property Factor advised that there was major damage to the inside and the Property Factor was getting a survey instructed. The stairwell windows needed work and the Property Factor was getting a quote to do those. This was advised in an email dated 16 March 2018.
92. The Property Factor advised in August 2018 that they were waiting to get the roof survey, no survey was done however. No window repairs were carried out. The roof survey was eventually done in March 2022.
93. Concerns about the roof and gutters were raised with the Property Factor in September – November 2018. No action was taken until February 2020. The Homeowner sent emails raising concerns about the property in January 2019 and August 2020.
94. An on-site meeting took place on 15 September 2020. The Property Factor advised that they would get a contractor instructed immediately to get the stairwell windows repaired. The Property Factor considered the windows to be a safety issue. The cupboard under the stairwell was also to be cleared as it was a fire risk. The cupboard was not cleared until February 2022. The work on the stairwell windows has never been carried out.
95. The Property Factor was going to put a hiatus on the clearing, this was discussed at the meeting on 15 September 2020, and they would use that money towards repairs. This was not carried out.
96. The Homeowner made a formal complaint on 6 September 2020 and it was upheld in its entirety on 24 October 2020.
97. The Homeowner contacted the Property Factor on 8 August 2021 about the state of the development; about the failure to carry out the agreed works, the ongoing safety

issues, and the fact that the property had deteriorated significantly since his original complaint in September 2020 (see his email dated 8 August 2021 to Property Factor). The first substantive response he received to this letter was on 22 December 2022 inviting him to a meeting with Property Factor, he declined this meeting at that time.

98. That between May 2015 - August 2021 the Property Factor spent over £7,700 on cleaning and £3,900 on roof repairs. He considered that the wrong matters were prioritised.

99. On 11 August 2021 his complaint was escalated to Mr Bodden, but nothing happened to his complaint, the Property Factor did nothing at all, and there was no communication at all from Mr Bodden.

100. The Property Factor's response is that although the Homeowner may believe that the Property Factor has not "organised and administered the maintenance and repair of the common areas of your development" to a high enough standard, he has not proven this statement to be factually correct, and therefore they do not believe that they have breached section 1.2.

101. *The tribunal finds that the Property Factor has breached this section. The Property Factor undertakes in its Written Statement of Services to organise and administer the maintenance and repair of the common areas of the development. As a starting point there are matters of repair which the Homeowner had brought to the Property Factors' attention since at least 2018 and which have not been attended to at all, for example the stairwell windows, and the outbuildings and therefore the question as to whether or not they have done the work "to a high enough standard" does not arise, as the fact is, they have not done the works at all.*

102. *The maintenance of the gardening area was an ongoing concern that was raised by the homeowner however this also appears not to have been addressed.*

103. *The repairs to the roof were to be the subject of a survey report to be instructed in March 2018 but the report was not obtained until 2022.*

104. *The tribunal notes that the Property Factor upheld the Homeowner's complaint in its entirety in 24 October 2020 which included failure to maintain the building; failure to manage fire risk in the stairwell; and therefore, as of 24 October 2020 the Property Factor admitted this breach.*

105. *Thereafter the timeline produced by the Homeowner indicates that the Property Factor did not resolve those issues.*

106. *The Homeowner wrote to the Property Factor by email on 8 August 2021. Noting the following matters were still outstanding "no further work has been carried out on the gardens, and the weed in the gable wall has never been removed as it*

continues to grow. No remedial work has been carried out on the window, that was deemed to be urgent. Nothing has been done to the understairs cupboard which was deemed to be a fire risk. Nothing has been done to the outbuildings with associated safety risks. The condition of the stairwell and upper landing continues to deteriorate No follow-up visits promised by the Property Factor have taken place.”

107. *From the terms of the correspondence supplied by the homeowner, the tribunal finds that the Property Factor has failed since at least March 2018 to organise and administer the maintenance and repair of the common areas. We consider that the standard that needed to be met would be akin to that of a reasonable agent taking reasonable care of the property. Where the repairs had been flagged up to the Property Factor, the Property Factor should have taken steps to address those issues. They acknowledge that as of October 2020 they had failed to do so, and from the information presented by the Homeowner that failure continued thereafter for many of the repairs. The Property Factor has presented no evidence to counter the homeowner’s evidence.*

108. **4.1 Routine Maintenance**

109. **Gardening services where applicable, will be provided in accordance with the gardening schedule referred to in Section 04 of the development schedule.**

110. The Homeowner submitted that the poor condition of the garden ground was identified and accepted by the Property Factor in a meeting on 15 September 2020. Assurance was given that a clean-up would be arranged and a schedule put in place, that was not however ever carried out. In support of his position, he referred to the email to the Property Factor dated 28 October 2020.

111. He advised that the gardening works were never carried out.

112. The Property Factor has since November 2020 removed gardening works from the development schedule. He advised that there was no consultation or agreement with the owners to this change to the development schedule.

113. He advised that the gardening works were not even done on an *ad hoc* basis. He advised that owners had complained about how bad the garden had become. The Property Factor had not met any standard of maintenance. The Homeowner advised that some work was done to the garden the week after the Homeowner had asked the tribunal to hold a site visit. It was not done to a good standard. He had supplied photographs and they show garden areas not touched.

114. The Property Factor accept gardening services have not always met their desired standard.

115. *The tribunal finds that this section of the code has been breached. It is not disputed by the Property Factor. The Property Factor upheld the homeowner's complaint in October 2020, the issues in the complaint included gardening works. After the complaint was upheld, no gardening works were carried out it appears until the middle of 2023, a date when the Property Factor no longer included gardening works as part of its remit of works.*

116. **4.4.5 it's very important that your development is maintained to an acceptable level. Not only does this improve the daily visual benefits of a well-maintained, clean environment, it also helps maintain/improve the value and saleability/ rentability of your property. For these reasons, ongoing maintenance/improvements are essential.**

117. The Homeowner refers to the planned preventative maintenance which is carried out on assets in the development on a regular basis to preserve the condition of the property. The Homeowner questioned that the Property Factor did not practice the planned preventative maintenance.

118. The Homeowner submits that the Property Factor has failed to maintain the fabric of the building and to carry out ongoing repairs. This has resulted in increased costs for repairs. Proper preventative maintenance would have avoided this. He refers to his submitted photos which show the garden area, and asks if a routine inspection should have been done why did the Property Factor not do so.

119. The Property Factor states that the Homeowner has confused planned preventative maintenance of the mechanical and electrical/life safety systems with general repairs or major works projects.

120. *The Tribunal notes the terms of 4.4.5 above. It does not appear to the tribunal that the exact terms of 4.4.5 impose a duty on the Property Factor as such. For that reason, the tribunal does not find that there has been a breach of this section.*

121. **4.8 routine property inspections will be made by the development manager, at a frequency detailed in section 06 of your development schedule. Visits can be more frequent in the event of ongoing problems, repairs, major projects etc.**

122. The Homeowner states from January 2015 until November 2020 (when the development schedule was changed) the development was to have received maintenance visits every month. They were never carried out. During that period no

maintenance reports were ever compiled or sent to owners or placed on the factor's portal. Maintenance visits were then reduced to bi-monthly without consultation with the owners.

123. The Homeowner went on to state that for example there was water ingress at the development, this was never properly addressed; as also was the problem with central valley guttering. The eventual F3 survey flagged up issues which should have been addressed earlier but were not. He advised that he had been looking for evidence of monthly routine property inspections. He has not been provided with any from the Property Factor. He considered that monthly maintenance is the same thing as a routine property inspection. He advised that he has no idea if the Property Factor do property inspections. There is only one on the portal.

124. He noted that moving the frequency to less than once a month might be okay, but in this case, the development is in a state of disrepair, and therefore it was not reasonable to reduce the inspections to bi-monthly, and later once every 3 months. It was during an inspection that issues were highlighted for example the water ingress, check hanging cables, etc. That is when these matters were raised.

125. The property factor states that the Homeowner confuses property inspections carried out by the development managers with "monthly maintenance visits" which are not part of their core service at the Pirns. They do not believe that the Homeowner has evidenced a breach of section 4.8 of their Written Statement of Services. They accept that however, they cannot evidence all the required property inspection reports over this period.

126. *The tribunal finds that there has been a breach of section 4.8 of the Written Statement of Services there was a duty to carry out property inspections at the frequency set out in the development schedule. By the Property Factor's own admission, they cannot evidence that they carried out the property inspections. The homeowner's position is that he does not think that they did, and he highlights throughout his evidence that there was no progress in repairs and maintenance being carried out. It appears that there were some meetings at the development but these do appear to have been at the request of the homeowners.*

127. **6.11 good communication between the factor and homeowner are the key to a successful relationship.**

128. The Homeowner advised that there has been ongoing poor communication. The Property Factor has failed to hold a single face-to-face meeting with owners despite requests to do so. There have been eight development managers since 2015,

and some had no handover which resulted in poor communication, as they had to start at baseline 1 and go through things again, this added to the poor communication and very little action was taken. Also, the Property Factor upheld the homeowner's complaint in October 202 which included failure to respond to complaints, failure to respond to issues, and failure to organise meetings to resolve issues.

129. The Property factor accepts that communication has not always been at the desire standard in the code of conduct section.

130. *The tribunal finds that the Property Factor has breached this section of this code given it has been admitted by the Property Factor and also having regard to the submission by the homeowner.*

131. **7.0 There is a detailed complaints procedure set out. (The terms are not set out in this decision).**

132. The Homeowner advised that complaints have gone unanswered to the point where a formal complaint has to be made. While complaints have been upheld the associated actions and promises have not been delivered. The Homeowner states that senior managers have been aware of the situation but did nothing to address the issues.

133. The Property Factor accepts that its adherence to its own complaint's procedure has not always met with its desired standard in the code conduct section.

134. *The tribunal finds that there has been a breach of this section given that it is admitted by the property factor. We would note that the homeowner made a complaint on 8 August 2021, and he submits that a formal one was raised on 10 September 2021. He sent a reminder on 8 October 2022 but received no response until 23 December 2022. We note that a letter was sent to him from the factors dated 19 October 2021 responding to the letter of 8 August 2021. We do consider therefore that the factors did respond to his complaint of 8 August 2021.*

FORM C2 - COMPLAINT

**135. OSP3. You must provide information in a clear and easily accessible way.
OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.**

136. The letter to the Property Factor giving notice of the complaint refers to OSP1 and 2. The letter does not refer to OSP 3 and 11. The Property Factor states that these sections do not form part of the homeowner's application and should not be considered at the hearing. As the letter to the Property Factor does not contain notice of these alleged breaches, the tribunal is not entitled to entertain consideration of these two matters.

137. *The tribunal therefore makes no finding on either of these two aspects of the code of conduct.*

138. **Section 2: Communication and Consultation**

139. **2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.**

140. The Homeowner referred to the photographs he had submitted in support of his case showing the condition of the property. Page 375 of the submission shows weeds coming out of the gable wall. At the fire escape, the window had blown in around August 2022. This was resolved, and there was new glazing, but looking at the pictures of the two stairwell windows, they appear to be in poor condition and he was concerned that the glazing could come out also. At page 378 there were photographs of areas of the development where there was damp. The Homeowner advised that windows cannot be opened and cannot get the air into the building. Therefore, there is condensation forming. The photographs at page 379 show the central gulley gutter, two days after it was cleaned on 6 September 2022, it shows that there is water lying in it, moss and other vegetation.

141. The Homeowner considered at this part of the code of conduct there was a significant breach. He referred to his response at pages 411-412 which is a response dated 19 October 2021 from the Property Factor to the Homeowner in terms of a formal complaint he had made on 8 August 2021. There is reference in that letter to holding a ballot with owners. The Homeowner advised that the Property Factor did not have the correct information about the owners, the Homeowner did not receive a letter on the first occasion. There is reference to a new development manager and there was to

be a second ballot again. The Homeowner did not consider that the Property Factor had the wrong information as they were able to send out invoices to the correct addresses.

142. He advised that the F3 Survey was not undertaken until 25 April 2022 and in the interim, there were ongoing issues with health and safety.

143. There was to be a conference call and it was delayed on several occasions. It took place eventually on 10 August 2022. The minutes of that meeting were prepared by the Property Factor and they were received 3 months after the meeting. Previous managers had left copies at front doors. The Homeowner advised that they have had ongoing concerns with security at the building and they were concerned that letters could go missing if just left on the floor at the front doors of properties. The Property Factor would refer homeowners to the portal but information was not always put on the portal. Only after they complained about minutes not being on portal where they added.

144. The Homeowner had asked for a meeting in September but it never went ahead, it was cancelled, and a new meeting was to be arranged, but it was not until there had been another three development managers in place and until Stephanie Paterson was appointed, the 12th development manager.

145. He advised that the letter from the Property Factor talked about being over-committed at that time, he advised that this had not changed since they made that comment.

146. The property factor advises that they accept that there has been a breach of section 2.1 of the code.

147. *The tribunal finds this section of the code has been breached given it is accepted as a breach by the factors.*

148. Section 2.7 a property factor should respond to enquiries and complaints received orally and /or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible and to keep homeowner(s) informed if they are not able to respond within the agreed timescale.

149. The Homeowners set out the terms of his complaint.

150. The property factor accepted that they had breached this section of the code.

151. *The tribunal finds this section of the code has been breached given it is accepted as a breach by the factors.*

152. **Section 6: Carrying out Repairs and Maintenance**
153. **6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.**
154. The Homeowner referred to the contact he had had with the Property Factor on 16 March 2018 that there was a major leak to the top floor and that the Property Factor would get a survey carried out on the wood and beams to make sure that there is no rot. The communal windows will need work. The Homeowner advised that the survey was eventually carried out on 17 March 2022. He notes that the windows were never repaired. He referred to the issues highlighted in the survey report in support of this position that this section has been breached. He also referred to the lack of progress with emergency repairs.
155. The Property Factor's position is that section 6.1 is an introductory statement that places no obligation on the Property Factor. They do not consider therefore that there has been any breach of this section.
156. *The tribunal agrees with this property factor on the meaning of this section, it is a statement explaining that Property Factors can help prevent damage or deterioration but it does not in itself impose a duty on the Property Factor. We do not therefore find a breach under this section.*
157. **6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.**
158. The Homeowner said that he had never received any information from the Property Factor that they were changing the frequency of the inspections. The Written Statement of Services said they had an online portal. The Property Factor changed the Written Statement of Services during COVID-19. They did not receive any notice from the Property Factor that the Written Statement of Services was being changed. The Homeowner had repeatedly asked for a meeting with the Property Factor. The

Property Factor did not request to have a meeting with the owners when they decided to change the Written Statement of Services.

159. The Homeowner advised that he was unhappy about the changes to the development schedule, there has only been one on the portal in 2023.

160. The Property Factor advised that the Property Factor has the authority to amend the Written Statement of Services. They accept that they have not always made inspection reports available to homeowners.

161. *The tribunal finds that there has been a breach under this section of the code. The Property Factor in the first place accepts that they have not made all inspection reports available. We note that the Homeowner states only one report was ever made available. This point is not disputed by the Property Factor.*

162. *In terms of the complaint that the Property Factor has changed the frequency of their property inspections, the Property Factor does not point to where the Written Statement of Services gives them the unilateral right to change this part of the Written Statement of Services. Further, even if the Property Factor has the right to unilaterally change the frequency of their inspections and what work they will do in terms of their Property Factor duties, the Homeowner advises that there was no notice that this change was going to take place. We find that there is also a breach under this section in terms of the fact that the Property Factor did not advise the homeowner that the timescale was changing and to agree with owners that it was “an appropriate timescale.” We would have expected a reasonable Property Factor to have provided notice of proposed changes in order that owners could consider this proposal, and in this case, given the outstanding repairs to be done to the property, we consider that it would have been reasonable to assume that owners would want to know and discuss any changes to the inspection timescales.*

163. **6.7 It is good practice for periodic property visits to be undertaken by suitable qualified/trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.**

164. The Homeowner narrates that there should have been gardening maintenance carried out to the property. The Property Factor received complaints about the condition of the garden. Regular inspection visits would have highlighted the garden's condition. The Property Factor removed the garden maintenance contract in

November 2020. Garden maintenance was raised as part of the homeowner's second formal complaint and the Property Factor advised on 19 October 2021 grounds had not been maintained to an acceptable standard and that they would have a contract in place for 2022. The Homeowner said no contract was put in place.

165. The Property Factor advises that they do not consider that the complaint is relevant as they consider that this relates to "6.12 which is focussed on building condition survey".

166. *The tribunal finds that there has been a breach under this section. This section merely talks about "periodic property visits" or a "planned programme of cyclical maintenance" to be created to ensure that the property is maintained. We do not therefore agree with the Property Factor that this section refers to work involving building condition surveys. The Homeowner notes that gardening had been part of the development schedule, but was removed by the Property Factor in November 2020. The Property Factor said in their letter of 19 October 2021 it was being carried out on an ad hoc basis. They admit it was not always maintained to an acceptable standard. They say they will have a contract in place for the start of the gardening season. We note that the Homeowner states that no contract for gardening had been put in place and only one invoice had been issued for gardening. It appears that the Property Factor has failed to have in place any adequate programme for gardening maintenance even on an ad hoc basis. Accordingly, we find that this section of the code has been breached.*

167. **6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e., contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third-party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.**

168. The Homeowner referred to the photographs he had lodged. He referred to the central gutters. The Homeowner advised that there had been severe water ingress along the top floor, the Central Valley gutter had associated build-up, he had gone to the Property Factor to advise about the problem, and he considered it to be an emergency repair. The Property Factor Al Duncan thought so too.

169. The Property Factor had instructed a company to complete works to the central gutter. The Homeowner advised that this work was not carried out to a suitable standard in 2022. The Homeowner requested that no payment to the roofing contractor be made until the outstanding issues with their work were addressed. The Property Factor initially advised that they would have the contractor return to do this work, but several days later on 4 October 2022 (email 56) they advised that they now considered the work to have been to a good standard. The Homeowner advised that they required to have further work done on the roof guttering in January 2023.

170. The Homeowner advised that he had photos and he was able to see the build-up of sludge and that it had not been removed. The water could not run freely. The Homeowner went back to the Property Factor and provided the photographs showing soil and sludge. The owners complained and said they were not paying the bill. The Homeowner had paid for this job twice.

171. The Property Factor did not consider that there had been any breach under this section. They advised that the matter of the gutters was fully investigated by the Property Factor and no defects or inadequate works were found to exist in their professional opinion.

172. *The terms of section 6.12 deal with the Property Factor liaising with third-party contractors to remedy defects if requested to do so by homeowners. The Homeowner provided evidence showing that he made a complaint of inadequate work, and he provided photos in support of this complaint. At first the Property Factor agreed that they would have the matter rectified, and several days later they changed their position. The Property Factor advised that they fully investigated the matter, however, they present no evidence to support their position. Their response to the Homeowner appears to have been that they consulted with the roofing contractor considered the issue internally and decided that the work was carried out to a good standard. There is no evidence that they attended at the development to assess the guttering at the site. Given that they had been provided with photos showing the current condition after the work had been carried out, it is difficult to understand that they properly investigated the matter without at least a site visit, or if not to at least explain and provide an evidential basis showing how they concluded the work was satisfactory. They do not appear to have done so. We find that there was a breach of this section.*

173. **Section 7: Complaints Resolution**

174. **Property Factor Complaints Handling Procedure**

175. **7.1 A property factor must have a written complaints handling procedure.**

The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: Written Statement of Services that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

176. The procedure must include: The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process. The complaints process must, at some point, require the homeowner to make their complaint in writing. Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded. How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf. Where the property factor provides access to alternative dispute resolution services, information on this.

177. **7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.**

178. The Homeowner sets out in his written submission that he made numerous complaints to the Property Factor and further that he escalated those complaints. He accepted that there was a written complaints procedure in place, his complaint under these sections relates to the failure of the Property Factor to apply the complaints procedure consistently and reasonably. He provides examples of failure to respond to his complaints and lack of action in terms of the complaints he has made.

179. The property factor accepts that there has been a breach of section 7.1 on the basis of the application of the procedure; and also, a breach of section 7.2.

180. *The tribunal finds that there have been breaches of section 7.1 (in terms of application of the procedure) and 7.2 given that the Property Factor accepts that there have been breaches of these two sections.*

Property Factor Duties

181. **Written Statement of Services**

182. **Section 1.2 We act on your behalf, to organise and administer the maintenance and repair of the common areas of your development**

183. The Homeowner sets out in detail why he considered that this section was breached after August 2021. He refers to honesty and integrity. He considered that the Property Factor manipulated the portal after complaints were received. He submitted that in terms of the stairwell and outbuilding, nothing had been done to complete repairs to those areas. There were ongoing issues with water ingress and health and safety issues. All should have been addressed and had become emergency repairs as set out in the F3 survey report. The Property Factor had not acted on behalf of owners for the common areas of the development.

184. There was water ingress into the property see (page 431) at the same time that there was a problem with the central valley guttering, there was an issue with the pipe opposite. The homeowner had previously asked the property factor for contact details of other owners, he was told that they could not do that as they would need to email owners and get consent to share details but then nothing happened. To date the homeowner has had no contact from the Property Factor about this matter, however, he managed to get the other owners' details himself.

185. Since the Property Factor took over every week the Homeowner has been trying to do something about the property. He has got all the owners together. He wanted an owners meeting. The Property Factor would tell him that the owners did not want a meeting, he later met some of the owners and they indicated that they did want a meeting. There has been no owners meeting since 2015. The Homeowner did a mail drop to the other properties and found out that the other owners wanted to see corrective action.

186. The Property Factor does not consider that they have breached this section of the Written Statement of Services.

187. *The tribunal finds for the same reasons as set out earlier that the Property Factor have breached this section of the Written Statement of Services. In support of this finding, we would highlight the fact that the windows in the stairwell have not been replaced despite a number of times that the Property Factor advised that they would address the matter. We note that the F3 survey report was not completed until 2022 despite the fact that the factor stated that they would obtain a survey report in 2018. We consider that there are a number of examples where the Property Factor has not organised or administered the maintenance and repair of the common areas of the development and these matters have been ongoing since August 2021.*

188. **Section 2.7 James Gibb will only use approved and authorised contractors for any repair work and will always endeavour to obtain the best**

possible value for its customers. Multiple quotes will be arranged where appropriate.

189. The Homeowner reiterates the issues surrounding the guttering and the instruction of TECX roofing, and the homeowner's complained about their work to the Property Factor. This is set out in more detail in 6.12.

190. The Property Factor states that this complaint is a duplicate of 6.12 of the Code. They do not comment on whether they accept that this is a breach of their duty or not.

191. *The tribunal finds that the Homeowner does not complain about whether the contractors were not approved or authorised. The question of multiple quotes has not been raised. It appears that the Homeowner considers that the Property Factor has not obtained the best possible value for its customers. The Homeowner does not explain in what way the costs are not best value, we note that he does not accept that the work was done properly and the tribunal has considered that complaint under 6.12. We consider that the Homeowner has not evidenced that this section of the Written Statement of Services has been breached. We consider that the homeowner's complaint relates to the quality of the work, which is not the same as the best possible value. We do not uphold that there is an evidenced breach of 2.7*

192. **Written Statement of Services Section 4.1 Routine Maintenance; Gardening services; Cleaning services; Roof inspections; Statutory inspections**

193. The Homeowner's complaint deals with the failure to maintain the garden ground. This is dealt with earlier.

194. The Property Factor accepts this breach of the Written Statement of Services.

195. *The tribunal finds that there has been a breach under this section of Written Statement of Services given that the Property Factor accepts this breach.*

196. **Written Statement of Services Section 4.2 Request for routine repairs can be made using email, telephone.**

197. The Homeowner refers to an incident involving water leaking into his property, he advised that the leak was coming from the property opposite. He had contacted the Property Factor but they did not do anything about the reported leak, including respond to him about the reported issue.

198. The Property Factor advised that this was a leak into his own private property coming from another private property. They say this was not a common repair and the

Property Factor was not responsible for this. They do not therefore consider that this is a breach of this section of the Written Statement of Services.

199. *The tribunal notes that section 2 of the Written Statement of Services states that the Property Factor was appointed to manage the communal areas of your development. In the event that the leak was from one private flat to another, we would agree that this would not be a matter which would fall within the communal areas of the development. We note however that the Property Factor did not respond to the call that was made by the homeowner, they also did not investigate the complaint, and cannot therefore have known where this leak was coming from. We note in section 4.3.5 in the Written Statement of Services that there is a provision for owners making payment of invoices where the emergency repair has been identified as private, we assume therefore given the terms of that section, the Property Factor should have investigated the matter, and had emergency repairs been done they could have then billed the owner, if it was subsequently found to be private. We find that the Property Factor has breached this section of the code as they do not appear to have responded appropriately to the homeowner about the matter.*

200. **Written Statement of Services Section 4.8 This section relates to routine property inspections.**

201. The Homeowner provides detail of this complaint, it is in the same terms as the earlier complaint for the section under C1.

202. The Property Factor accepts this breach.

203. *The tribunal finds this breach established given that it is accepted by the Property Factor.*

204. **Written Statement of Services Section 6.0 Good communication between the Property Factor and the homeowner are the key to a successful relationship. For general enquiries email is the best form of communication.**

205. The Homeowner sets out the detail of his complaint and the failure of the Property Factor. His complaint includes that the Property Factor would not set up a meeting with other owners, that managers failed to respond to complaints and follow up with the owners on action plans. That there were so many development managers taking over the role for the development that this led to poor communication. That notice of a Zoom meeting on 10 August 2022 was not given to all owners. There was a failure to communicate in relation to repairs to be carried out.

206. The Property Factor accept that this section of the Written Statement of Services has been breached.

207. *As the Property Factor accept this breach, the tribunal upholds that homeowner's complaint under this section.*

208. **Written Statement of Services Section 7.0**

209. The Homeowner made a complaint. There was no response and he chased the matters with the Property Factor in September 2022. He received a response on 9 September 2022 which asked the Homeowner to put in a formal complaint. He did so on 9 September 2022. He received no response to this complaint. He chased the matter up on 8 October 2022.

210. The Property Factor accept this breach of this section.

211. *As the Property Factor accept this breach, the tribunal upholds that homeowner's complaint under this section.*

REMEDIES SOUGHT BY HOMEOWNER

212. The Homeowner advised that he had spent 160 hours preparing for the tribunal. They have a repair bill for £84,000.00 and the Property Factor is wiping their hands of the burden, it is the responsibility of the owners, but the burden is so high due to the work not done by the Property Factor.

213. The Property Factor has said that they are only allowed to do works up to £20 per property plus VAT. In terms of repairs to the central guttering, there are no issues with paying for the work by the owners.

214. The water ingress was a big issue, over both floors but for 6 weeks the Property Factor had sat on the estimate. They should have sent this invoice to the owners as there was no issue.

215. They need scaffolding for the roof.

216. £20 per property delegated authority since 2017. He thought that there was very little done with such a low amount. He noted that the management fee had gone up. If a meeting had been held, they could have discussed the delegated authority with the Property Factor.

217. They should consider the float amount required and the delegated authority limit.

218. The Homeowner wanted the tribunal to request a statement from the Property Factor that there was not a meeting with owners. He wanted this to be confirmed.
219. He wanted practices and procedures put in place to address these issues and he did not consider that they are in place at the present.
220. He wanted health and safety addressed early as they are pressing issues.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

221. Having considered what breaches of the code of conduct and Property Factors duties have been established we require to consider an appropriate remedy.
222. The 2011 Act seeks to resolve disputes between a factor and a Homeowner. Having regard to the application, the evidence before the tribunal and current circumstances of the parties as we understand them (as set out in the previous paragraphs) we consider that the most appropriate remedy would be to make a proposed order.
223. We would confirm that the application appears to have been made in large part due to issues arising from outstanding maintenance and repair of the roof; stairwell, outbuildings; water ingress; and maintenance of gardening areas. There are also issues involving communication; and changes to the development schedule without consultation. The lack of any programme of works to address repairs has led to further concern.
224. The tribunal did not have before it comprehensive evidence of the state of the development before 2018. We do not know the extent of the maintenance and repairs carried out before 2018. We are not clear therefore what number of defects have been caused since 2018 and what amount were outstanding at 2018. We also consider that the owner has a duty as owners to ensure the proper maintenance of their property, and we consider that this includes communal areas. Further, we do not consider that this tribunal has jurisdiction to consider actions of negligence. Accordingly, we do not consider that we are entitled to make awards for losses (which may be evidenced under that head) and we do not therefore draw any conclusions on whether the factor has been negligent. .
225. That said, we are aware of the ongoing efforts that the Homeowner has made to get the factors to carry out repair and maintenance works to the subjects. The Homeowner has been trying to get the property factors to do works over a number of years, with little evidence of any success. The property factors in correspondence do indicate that they are acting to address repairs and maintenance matters. They also

accept on a number of occasions that they have breached the code of conduct and their own duties. We consider that the Property Factors have not provided an adequate service. We have found them to have failed to carry out their duties under a number of different heads and over a long period of time.

226. We find the failure to obtain a survey report for the development for four years inexplicable. We consider that it would have provided a straightforward basis from which all parties could consider necessary works and discuss having those works instructed. Meetings with owners would also have allowed the owners and factors to agree on what would and would not be done in terms of repairs.

227. The factors have not provided any evidence to demonstrate what they did to discharge the duties which are fundamental to maintaining the fabric of the building. It is noted that the factors are prepared to accept breaches involving failure to communicate and follow complaints procedures. Unhelpfully, what they do not do is provide any detailed response to the substantial matters complained about, namely the condition of the building.

228. While they have a clear Written Statement of Services in place, they appear not to have acted in accordance with their terms. They also failed to advise the owners when they unilaterally changed the development schedule. The failure to follow their own procedures in terms of repairs and maintenance was a breach of their Property Factors' duties. The failure to provide responses to complaints was also problematic. The failure to keep owners advised about matters relating to the maintenance and repair of the development was concerning. Overall, we find that the Property Factors have breached several sections of the code and have not carried out their duties properly.

229. We consider that these breaches are significant in terms of the competency of a Property Factor.

230. We consider that we should make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19 (2)(a) Notice.

231. As part of the order we consider that we should make an award to the Homeowners to compensate for the stress and inconvenience caused by the ongoing failure by the Property Factors to provide a professional service to them for the sum of £1,200.00. In calculating this sum we have taken into account the factoring charge paid by the homeowner since the factors were notified about the repairs to the building by the homeowner; the time and effort the homeowner has expended in raising issues with the factor over a number of years; and the apparent delay and failure by the factors to put in place any scheme to address defects, repairs and maintenance at the building.

232. We consider that the proposed order should also address the following matters. Putting procedures in place to address communication; to determine what should be contained in the development schedule; to organise a meeting with owners; to address outstanding repairs and put in place a programme of works to address outstanding repairs

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.

Melanie Barbour Legal Member and Chair
5 January 2024 Date