



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

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(1)(a) of the Property Factor (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/24/1611**

**Re: Property at 41 Winning Quadrant, Wishaw, MI2 7TT (“the Property”)**

**Parties:**

**Ms Diana Cooper, 24 Tradescant Drive, Meopham, Kent, DA123 0EE (Homeowner)**

**James Gibb Residential Factor , Red Tree Magenta, 3<sup>rd</sup> Floor, 270 Glasgow Road, Glasgow, G73 1 UZ (Property Factor)**

**Tribunal Member:**

**Melanie Barbour (Legal Member)  
Sara Hesp (Ordinary Member)**

**Decision**

**The Property Factor failed to comply with the overarching standards of practise 2, 3, 4, 6, and 11; Sections 2.6; 2.7; 5.6; 5.7; 6.4; and 7.1 ; and in breach of the Property Factor’s duties in relation to sections 4.6.1; 6.1.1; 7.4; 7.5 and 8.17 of the Written Statement of Services. The decision is unanimous.**

**BACKGROUND**

1. By application received on 10 April 2024 the Homeowner (“Homeowner”) complained to the Tribunal that the Property Factor (“Property Factor”) was in breach of the overarching standards of practise 2, 3, 4, 6, 8 and 11; The written statement of services (all sections); The communications and consultation sections 2.3, 2.4, 2.6 and 2.7; Financial obligations 3.4; Insurance 5.6 and 5.7; Carrying out repairs and maintenance 6.4, 6.7 and 6.12; and Complaints resolution (all sections).

2. The Homeowner also considered that there had been a breach of the Property Factor's duties in relation to sections 1, 3.2, 4.1, 4.3.1, 4.6.1, 4.6.2, 4.7, 5.11.6, 6.1.1, 7.4, 7.5 and 8.17 of the written statement of services (issue 15; the majority of the paragraphs of customer complaints guide; and the promises made on page 8 of the communal insurance cover and claims process guide.
3. The Homeowner notified the Property Factor for the purposes of section 17 (3)(a) of the Act on 1 April 2024.
4. The application was accepted by the Chamber on 18 April 2024.
5. The Property Factor submitted a written representation dated 26 July 2024.
6. The application proceeded to a case management discussion on 2 September 2024. Both the Homeowner and Alistair Wallace from the Property Factor attended the case management discussion. Reference is made to the terms of the case management discussion note.
7. The application proceeded to a hearing on 11 February 2025. It took place by telephone conference. Both the Homeowner and Alistair Wallace from the Property Factor attended the hearing. Neither party called any witnesses. Neither party lodged any further evidence. The Homeowner was in Spain on that date when she called in. There are restrictions in place in respect of any witness giving evidence in these proceeding while that witness is in Spain. The Homeowner did not therefore give evidence on that date.

## **FINDINGS IN FACT**

8. The Tribunal made the following findings in fact: -
  - a. The property address is 41 Winning Quadrant, Wishaw.
  - b. The Homeowner is Diana Cooper.
  - c. The Property Factor is James Gibb Residential Factor .
  - d. There is a written statement of services for the development.
  - e. The Homeowner notified the Property Factor for the purposes of section 17 (3)(a) of the Act on 1 April 2024.

- f. The Homeowner emailed the Property Factor on a number of occasions from 18 February 2022 requesting that Property Factor intimate a claim to the insurance company for loss of rent.
- g. The Homeowner asked the loss adjusters whether the loss of rent could be included as part of her earlier claim. They confirmed in 2022 that they were separate matters.
- h. In 2022 the Homeowner asked Columbus Facilities Maintenance to provide a report which confirmed that the water damage had been caused by storm damage.
- i. On 27 May 2022 the Property Factor advised the Homeowner that the report prepared by Columbus Facilities Maintenance confirmed that they had found no evidence of storm damage.
- j. On 29 June 2022 the Homeowner emailed the Property Factor expressing concern regarding the terms of the Columbus Facilities Maintenance's report; asking the Factor to confirm where they were with her claim for loss of rent; noting that the Factor had told her they were going to authorise and instruct Columbus Facilities Maintenance to carry out the work suggested to rectify the lack of ventilation.
- k. In August 2022 the Factor confirmed to the Homeowner that the vent works were completed and the report on the internal repairs would be sent to the insurers, and they would follow this up for loss of rent.
- l. The Homeowner made a stage 1 complaint on 26 October 2022 and she received a response to that complaint on 19 January 2023.
- m. In response to the stage 1 complaint, the Property Factor advised that the vent works would be carried out in January 2023. The vent works had not therefore been carried out in August 2022 as previously advised.
- n. The Homeowner submitted a stage 2 complaint on 17 February 2023 and received the response on 31 January 2024.
- o. In June 2023 the Homeowner carried out repair works to the communal property herself.
- p. In a letter of 28 September 2023, the Homeowner wrote to the Property Factor advising that Columbus attended in January 2023, but the only work they completed was to install a loft hatch in the ceiling of the landing; that there was no visit by Priority Roofing; that by mid-March 2023 the water ingress was getting worse; that by June 2023 the Homeowner decided to carry out the water ingress works herself and she advised she had completed them.

- q. On around July 2024 insurance claims for loss of rent and the reinstatement works carried out by the Homeowner have been submitted to the insurance company for the development of which the property forms part and are being considered by the insurance company.
- r. The title deeds contain a deed of conditions which sets out communal areas within the property and responsibilities of owners towards the share of costs.

## **DISCUSSION**

- 9. The Homeowner's complaint is that there had been a fire at the property in December 2020, it caused a lot of damage, and the property was uninhabitable. An insurance claim was made and the repair work was completed in around February 2022.
- 10. In February 2022 the Homeowner discovered a problem with the roof; it appeared to be leaking; the ceilings in the bathroom and both bedrooms were damp and had started to crack; and there was a secondary problem with water coming down the walls upstairs. She advised the Factor of this leak. She asked them to intimate an insurance claim for the repairs to the roof and to repair the ceilings. She noted she could not rent out the property in that condition. She also wanted to claim for lost rent.
- 11. The Homeowner states that since February 2022 she had sent numerous emails to the Factor. They did not reply to her emails. She had not made any progress and had an empty flat until December 2022. She had not been provided with the insurance claim reference number, so she was unable to claim any further loss of rent. She states there has been a breakdown in communication. She subsequently carried out repairs herself to the roof.
- 12. On 31 January 2024 the Factor wrote to the Homeowner in relation to the stage 2 complaint confirming their final decision and advising that in reference to the claim for loss of rent between February 2022 and November 2022, the Factor was unable to progress this with insurers unless evidence was provided by the Homeowner of date stamped photographs of the property showing it as uninhabitable during that period; and with reference to the reinstatement works that the Homeowner had carried out privately, in order to raise this as a new claim, the insurer would require time stamped photographic evidence of the internal damage to the property as well as invoices for the completed works.
- 13. On 12 March 2024, the Homeowner wrote to the Factor with that information in relation to her claim for reinstatement works carried out by her and provided supporting invoices for those works.

14. On 1 April 2024, the Homeowner wrote to the Property Factor confirming which sections of the code and which of the duties the Homeowner considered the Factor to have breached.
15. In the Homeowner's application she advised that the Factor had ignored major points of her complaint, failed to disclose reports, and failed to resolve the issue of loss of rent.
16. She stated this affected her by having lost her hundreds of hours' worth of time; she had lost over £4000 in rental income; she had had no proper service for over 2 years, and she had spent almost £5000 repairing and reinstating what is actually communal property.
17. She advised an apology would be useless in resolving the problem; the Factor keeps apologising and making the same mistakes again. The best resolution would be that they accepted they had made a huge error in February 2022 in failing to lodge the insurance claim and failing to send anyone to assess the problem. The only resolution she sought was payment for the loss of rent totalling £4,032 or ensuring the communal insurers pay that sum; an acceptance there had been no proper service from February 2022 for over 2 years and refunding 2 years' service fees; and payment to her of the £4,814.14 she had spent in repairing the communal roof and reinstating the interior, or ensuring that the communal insurers pay that sum.
18. The Homeowner had submitted a copy of the title deeds, they set out amongst other rights, rights of common property to parts of the building; a burden of common maintenance; and the right to appoint a Factor.
19. The Homeowner also submitted the written statement of services by James Gibb Residential Factor ; the insurance process; and the complaints process.
20. The Homeowner lodged a copy of her stage 1 complaint dated 26 October 2022, she included emails referring to her asking the Factor on 18 February 2022 to instigate an insurance claim for her for the repair of the roof and thereafter remedial work to repair the ceilings. She advised she could not rent the property in that condition. She complained that she had sent numerous emails to the Factor and spoken to them on the phone, but no progress had been made. She stated she still had an empty flat, no rental income and no insurance claim reference number.
21. On 19 January 2023 the Property Factor wrote to the Homeowner providing their stage 1 complaint response. They advised that they had raised a job line with Northwest Roofing on 23 February 2022 following the report of the water ingress within the Homeowner's property. Northwest Roofing reported back to them on 17 March 2022 confirming they would carry out repairs on 1 April 2022. After attending site on 7 April 2022, they advised they were unable to access the roof as it was unsafe. A report was

compiled by Columbus Facilities Maintenance on 31 May 2022 advising what they thought the roofing issue was. They provided a quotation for the works at that time. Columbus Facilities Maintenance were instructed to proceed with their quote for work on 22 June 2022. The Factor advised in their stage 1 response that they had arranged for Columbus Facilities Maintenance to do the work in terms of the quote; they had arranged to attend to do the works on 16 January 2023. The Factor then received contact from the tenant that they were still receiving water ingress. The Factor advised they had now instructed one of their roofing contractors Priority Roofing to attend and provide their opinion on the issue. Once Priority Roofing had been at the property they would report back to the Homeowner and also notify Columbus Facilities Maintenance that the reinstatement works can commence. They confirmed that some of the information had not been acted upon by their previous development manager, given that they were unable to comment on why the matters were not progressed. They recognised their development manager had failed to ensure that the Homeowner had been kept up to date with progress being made on specific work instructions. They offered £30 as a gesture of goodwill.

22. The Homeowner advised as of 17 February 2023 that she was not satisfied with the stage 1 complaint response. She set out that the main point of her complaint was the failure by the previous development manager to lodge and resolve her claim for loss of rent with the communal insurers. She further advised that the second paragraph of the stage 1 response contained information that was new to her and confirmed that the development manager had not been keeping her up to date with what was happening. For example, she advised that all the homeowners were aware that the roof was asbestos given that the Factor had carried out a roof survey in 2017. She advised that the 4th paragraph of the response contained information which contradicted an e-mail she had received on 30 August 2022 from the former development manager which had told her that the external work to the vents had been completed, but the stage one response demonstrated that this was not true. The Homeowner said that the property had been uninhabitable from 18 February 2022 until the beginning of November 2022. She confirmed again that the main issue of her complaint related to the fact she could not rent her property out from February until the beginning of November 2022 because it was uninhabitable. She advised that her claim for loss of rent should have been lodged with the communal insurers by the previous development manager as long ago as 18 February 2022. She confirmed and noted that the copy emails which she enclosed showed that the development manager had been promising to do so. She asked that the matter be addressed with the insurers.

23. On 20 September 2023 the Homeowner wrote again to the Property Factor. She advised at that stage that nothing had happened at the Factor's end. Columbus had attended sometime in January 2023 but the only work they did was to install a loft hatch in the ceiling of the landing. No actual work to remedy the water ingress was actioned. She noted that the Factor's letter of 19 January 2023 had mentioned a potential visit by Priority Roofing, but nothing had ever materialised. She advised by mid-March the water ingress was getting worse by the day. She went on to confirm that given the failure of action, she had taken matters into her own hands and carried out the repair works herself and she advised that she considered this reinstatement work should be covered by the communal buildings insurance policy.
24. In the Homeowner's application, she provides a number of emails showing correspondence between herself and the Factor. In summary the emails show continuing correspondence from the Homeowner asking for confirmation that the insurance claim has been made for the loss of rent, asking for details of who is dealing with the insurance claim and for a policy number. The Homeowner on a number of occasions also asked for information regarding the repair work being carried out and for copies of reports regarding the repair work.
25. During 2023 the Factor was updating the Homeowner regarding her stage 2 complaint. The Factor also appeared to be attempting to deal with the complaint at that time and was keeping the Homeowner up to date with matters relating to the insurance claim. The Factor had requested on several occasions that the Homeowner provide copies of photographs of the before and after of the property in respect of the water ingress. It is not clear if any photographs were provided by the Homeowner at that time.
26. Later in 2023 the Homeowner had been chasing the Factor for a response to the stage 2 complaint and had been advised at that time that the person dealing with it was no longer with the Property Factor. It took some time for confirmation to be provided as to who was now dealing with her complaint.
27. The Property Factor provided a response to the stage 2 complaint by letter of 31 January 2024. It addressed her claim for loss of rent and for the reinstatement works she had carried out privately. It admitted some service issues and offered £60 as a refund against the service charge. The stage 2 went into no detail regarding the failure by the Factor to effect any repairs to the water ingress.
- On 13 March 2024 the Homeowner wrote to the Property Factor attaching emails, photographs, invoices and bank payments. This information was in relation to the claim for reinstatement works.

28. In the Property Factor's written submission to the Tribunal dated 26 July 2024: They summarised their understanding of the complaint, the resolution sought and their final position. The Factor set out a summary of the complaint, in four separate points:-

- a. That the Homeowner's complaint is that James Gibb did not lodge an insurance claim for water ingress to the property in February 2022;
- b. The Homeowner claims that the property was uninhabitable and that they have lost rental income which the building insurers should reimburse;
- c. The Homeowner has received poor service from James Gibb regarding this matter since February 2022;
- d. The Homeowner has incurred costs to arrange repairs privately.

29. The Property Factor set out a background with a timeline of actions taken and they also set out the findings of their investigation into the Homeowner's complaint. In conclusion, the Property Factor recognised that the matter has been prolonged and caused frustration. They accepted some correspondence could have been dealt with better and in a more timely manner. They offered to credit the Homeowner's management account to the sum of £250 (the total costs for service charges over a period of two years would be £297.45). They confirmed that the details for the reimbursement of the repair costs have been passed to the insurer for consideration. The insurers will consider the loss of rent claim. The Homeowner has contact details and claim details in order to discuss the matter directly with insurer and it is at the discretion of the insurer whether these costs will be accepted.

30. At the case management discussion, the Homeowner confirmed that she had had a chance to read the Property Factor's written submissions, and she considered there were only a few points they were now in dispute about. She confirmed that the Property Factor's increased offer for compensation would be acceptable to her to resolve the matter if the insurance company also reimbursed her for her claims. She confirmed

that she agreed that the Property Factor's assessment of the four points of complaint satisfactorily summarised what the issues were.

31. She noted the letter of 19 July 2024 from the Factor to the insurers and she noted that a claim had now been made. She advised that she had sent the information to the Factor in March 2024.
32. She noted that there was a reference to an email of April 2022. She advised she had not seen this e-mail before and referred to the temporary repair to the roof of £3,500; she stated she would have paid this had she been aware of it.
33. She acknowledged that the Factor had accepted the failures had occurred, but she queried that the Factor did not accept that their practice was as poor as she considered it was.
34. She had reached the point with emails batting back and forward and she had been getting nowhere, so she decided to carry out the repairs herself; she considered she had no choice. She accepted that she cannot recharge the other homeowners for the work she had done.
35. The Homeowner advised she not been consulted in terms of repairs in February 2023. The property sat within a block of 6 flats. The property had been built around 1976 and by the end of 2019 leaks were starting to appear in the roof and the roof was reaching the end of its life. It was accepted that something would have to be done about the property's roof.
36. She considered that all of the alleged breaches of the code and Property Factor duties set out in her application still had to be determined and she considered the Factor had breached each of those sections of the code and duties.
  
37. The Property Factor advised that an insurance claim for the water ingress was lodged in August 2022, however they had not submitted further information, and the claim had been closed at that time. More recently the Factor had gone back to the insurer to reinstate the claim, the claim is now being considered by the insurer, and the Factor advised that it was for the insurers to decide if it was a valid claim. The insurers had to determine if the property was uninhabitable and why that was; this was why the Factor had been asking for so much information to provide to the insurers.
38. The Factor considered it was unlikely that the insurers would pay for the roof repairs, however the Factor had sent on all the information the Homeowner had provided to them.
39. The Factor was asked about the email in April 2022 regarding the roof repairs. The Factor advised that he recalled discussion about communal repairs, and in February

2023 communication was issued to all owners suggesting that roof repairs should be carried out. The Factor was unaware why there was nothing progressed in April 2022 regarding communal repairs then.

40. The Factor advised that they had attempted to resolve matters with the Homeowner however she had been unhappy with the resolution proposed and referred the matter to the Tribunal. The Factor accepted that there had been some delay in addressing matters and they had offered slightly less than two years' service charge payments by way of compensation to the Homeowner.
41. The Factor had not been aware that the owner had carried out any repairs until they had been completed, and the Factor had confirmed that due to the problems of ingathering funds from other owners in the development, they would not be able to recover any of those costs for the Homeowner.

## **DECISION**

### **42. Overarching standards of practise**

#### **2 You must be honest open and transparent and fair in your dealings with Homeowners**

43. The Tribunal finds there has been a breach of this overarching standard. The Factor's themselves admit that their practice could have been better. There was evidence of a failure to respond to a number of the emails from the Homeowner. In addition, there was also evidence that the insurance claim was not submitted in February 2022 as requested by the Homeowner. If there was no basis to submit it, then there was also no clear advice on that by the Factor to the Homeowner. On the contrary, the email of August 2022 suggested a claim had been made. There was a lack of response to the Homeowner's requests for copies of reports; and also, a failure to confirm as to when works would be carried out. That said the matter may have been compounded in terms of the Homeowner's frustration in relation to the dealings that she also had with Columbus who appeared to have carried out work which she did not consider to be done to a competent standard. These matters were connected.
44. The Tribunal does note that the Property Factor did correspond to an extent with the Homeowner. Work was done in terms of obtaining reports and endeavouring to have work carried out. However, it does appear overall that the standard of work done by the Property Factor was not complete and there had been a failure to respond honestly and openly to the Homeowner.

**3 You must provide information in a clear and easily accessible way**

45. The Tribunal finds there has been a breach. There was evidence that there had been a failure to provide responses to emails from the Homeowner, for example the Homeowner made numerous requests for the name and contact details of who in the insurance company was dealing with her claim for loss of rent, but there was no response to that request in 2022.

**4 You must not provide information that is deliberately or negligently misleading or false**

46. The Tribunal finds there has been a breach. There was evidence that this had happened on at least one occasion, for example when the Homeowner had been advised that the repair work had been carried out in August 2022. The Factor in January 2023 advised this work would be done in January 2023. The Homeowner noted in February 2023 that she had been told that this work had been done in August 2022.

**6 You must carry out the services you provide to Homeowners using reasonable care and skill and in a timely way including by making sure that staff have the training and information they need to be effective.**

47. The Tribunal finds there has been a breach. It is still not clear when the first insurance claim was submitted, however the Factor confirmed it had been closed due to a failure to provide information; that another claim had to be made shows failure of reasonable care and skill. There was also a failure to keep the Homeowner up to date with what was happening with the claim and to provide information in relation to the claim. There was failure to ensure the repair work was carried out to the property and to keep the Homeowner informed about what was happening in a timeous manner.

**8 You must ensure all staff, or any sub-contracting agents are aware of relevant provisions in the code and your legal requirements in connection with your maintenance of land or in your business with Homeowners in connection with the management of common property**

48. The Tribunal does not find this section to be breached, as the Homeowner has not directed the Tribunal to what she says the breach is.

**11 You must respond to inquiries and complaints within reasonable timescales and in line with your complaints handling procedure**

49. The Tribunal finds there is a breach in relation to this section. The original stage 1 complaint was made on 26 October 2022. It was responded to on 19 January 2023. A stage 2 complaint was made on 17 February 2023. The stage 2 complaint response was provided on 31 January 2024. While the Tribunal accepts that the Property Factor had corresponded with the Homeowner a number of times seeking further time to deal with the complaint it considers the complaint could have been determined sooner without the need for the further investigation. Further, later in 2023 the Homeowner had to chase the Factor to find out what was happening with her complaint.

**The written statement of services (all sections)**

50. The Homeowner has provided no detail of why she says all sections of the written statement of services are breached. The Tribunal notes that the Homeowner has confirmed and submitted a copy of the written statement of services provided by the Factor and accordingly, the Factor has a written statement of services. There was no submission that the Homeowner had not been provided with a copy of the written statement of services or that she was otherwise not able to obtain a copy of it. The Tribunal makes no finding of any breach under this section of the code.

**The communications and consultation**

**2.3 The written statement of services must set out how Homeowners can access information documents and policies and procedures.**

51. The Homeowner does not explain in what way the Factor's written statement of services did not set out how a Homeowner could access information, policies and procedures. The Tribunal does not find any breach under this section.

**2.4 information or documents must be made available to Homeowner by the Property Factor under the code, on request the Property Factor must consider the request and make the information available unless there is good reason not to**

52. The Homeowner does not explain what information has not been made available by the Factor under the code. Accordingly the Tribunal does not find any breach under this section.

**2.6 A Property Factor must have a procedure to consult with all Homeowners and seek Homeowners consent in accordance with the provisions of the deed of condition or provisions of the agreed contract service before providing work or services which will incur charges or fees in addition to those relating to the core service exceptions to this are where there's an agreed level of delegated authority the written procedure must be made available if requested by a Homeowner.**

53. The Property Factor's written statement of services deals with maintenance and response arrangements in Section 4. At section 4.4 on major projects, it confirms that major projects are defined as significant works whose costs exceed our normal limit of delegated authority as defined in section 2.4. The rest of that section deals with how a major project will be progressed.

54. While there are provisions regarding how major projects will be pursued and there is reference to how owners will decide whether or not they wish to proceed with the major project, the Tribunal finds there to be a lack of clarity about how consultation will take place with Homeowners and their consent will be obtained before instructing works. The Tribunal finds a breach under this section of the code.

**2.7 A Property Factor should respond to inquiries and complaints received orally and in writing within the timescales confirmed in their written statement of services. Overall a Property Factor should aim to deal with enquiries and complaints as quickly and fully as possible and keep the Homeowners informed if they are not able to respond with an agreed timescale.**

55. The correspondence submitted by the Homeowner demonstrates that she had to send a number of emails chasing the Factor for responses in relation to her insurance claim, reports and repair works. These complaints went on for a number of months. The Tribunal finds there to be a breach under this section of the code

### **Financial obligations**

**3.4 A Property Factor must provide to Homeowners in writing at least once a year a detailed financial statement showing a breakdown of charges made and**

**a detailed description of the activities and works carried out which are charged for.**

56. The Homeowner did not direct us to any part for complaint where she states she has been not received a detailed financial statement from the Property Factor. The Tribunal do not find a breach of this section of the code

### **Insurance**

**5.6 If applicable a Property Factor must have a procedure in place for submitting insurance claims on behalf of Homeowners and for liaising with the insurer to check it claims are being dealt with promptly and correctly. This information must be made available if requested by a Homeowner. If Homeowners are responsible for submitting claims on their own behalf a Property Factor must take reasonable steps to supply to Homeowners all information that they reasonably require in order for Homeowners to be able to do so.**

57. The Homeowner has submitted a copy of the Property Factor's communal insurance cover and claims process. Accordingly, the Tribunal finds that the Property Factor did have a procedure in place for submitting insurance claims on behalf of Homeowners.
58. The Factor's communal insurance cover and claims process provides information on how a Homeowner can make a claim. It confirms that to make a communal claim the Homeowner has to contact their property manager right away. The property manager will instigate the claim with the insurers as well as arrange for repairs.
59. Accordingly, the Tribunal finds that the Property Factor does have a procedure in place for submitting insurance claims on behalf of Homeowners. However, that process does not set out, in what way, they will liaise with the insurer to check if the claim is being dealt with promptly and correctly.
60. We also find that insurance claim information was not made available when requested by the Homeowner. There is evidence of the Homeowner making numerous requests to the Property Factor seeking information in relation to her insurance claim for a number of months during 2022, but there was no confirmation in relation to policy number or the person dealing with the claim despite the Homeowner requesting this information on a number of occasions. The Tribunal finds that there is a breach of this section.

**5.7 A Property Factor must take reasonable steps to keep Homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matters themselves if required.**

61. The Tribunal finds there to be a partial breach under this section. The Homeowner asked the Property Factor to submit a claim for water ingress in February 2022, but as already noted no information was provided to the Homeowner regarding the progress of her claim, nor was sufficient information provided to allow her to pursue the matter herself. That appears to have continued to be the case until June 2023. In June 2023 the Property Factor wrote to the Homeowner advising about matters relating to the insurance claim and indicating that information was being sought from the insurance provider. The Factor asked the Homeowner to provide this information. It would appear that the Homeowner did not provide the information to the Factor at that time and for some time thereafter.
62. The Tribunal finds that from February 2022 until June 2023 the Factor did not take reasonable steps to keep the Homeowner informed of the progress of their claim or provide the Homeowner with sufficient information to allow them to pursue it themselves.

**Carrying out repairs and maintenance**

**6.4 Where the 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 threshold below which specific progress reports are not required.**

63. The Tribunal finds there has been a breach under this section of the code. It appears that there was a failure to properly communicate with the Homeowner in relation to the original roof report, which was obtained in April 2022. The Tribunal does not know whether or not a majority of the Homeowners would have consented to the repair works, paid for them and whether they would have been carried out. However, it is clear that reports instructed about whole roof repairs or specific area repairs were not provided to the Homeowners in April 2022.
64. In relation to the works to the vents which were to be carried out. It is unclear why the Property Factor advised the Homeowner in August 2022 that these works had been done when in fact they had not taken place. Those works were apparently never carried out, even after January 2023 when the Factor again said they would be done.

65. The Tribunal finds therefore that the Property Factor did not have these repairs carried out in an appropriate timescale. We also do not consider that the Property Factor kept the Homeowner properly informed of the progress of this work. The Tribunal finds there to be a breach under this section of the code.

**6.7 It is good practice for periodic property visits to be undertaken by suitable qualified and trained staff or contractors and or a planned programme of cyclical maintenance to be created to ensure that property is maintained appropriately**

66. The Homeowner's complaint does not direct us to where she says there has been a breach of this section of the code. Accordingly the Tribunal do not find a breach to be established in terms of 6.7.

**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 in order to remedy the defects in any inadequate work or service that they have organised on behalf of Homeowners**

67. In relation to this section of the code, it is unclear who the Homeowner considers the Property Factor was being directed to continue to liaise with, given the lack of specification of her complaint the Tribunal do not find a breach under this section.

**Complaints resolution (all sections).**

**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 that the Property Factor must provide Homeowners with a copy of its complaint handling procedure on request. Section 7.1 goes on to set out what the complaints procedure must include.**

68. The Homeowner does not specify which parts of Section 1 she says the Property Factor has breached. The Homeowner has provided a copy of the complaint procedure. The tribunal finds that the Property Factor has therefore got a complaints handling procedure and it appears that it complies with the bullet points in Section 1 in terms of the matters it includes.

69. Section 7.1 requires that the procedure should be applied consistently and reasonably.

70. The Homeowner does not make any submission that the procedure has not been complied consistently. Given the length of time, it has taken for complaints to be dealt with, and given evidence submitted by the Homeowner shows that she was chasing up a response to her complaints, the Homeowner's complaint that the procedure has not been applied reasonably is upheld. The Tribunal finds a breach in part in relation to this section.

**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**

71. The Tribunal does not find a breach under this section; the Property Factor has confirmed their response at stage 1 and stage 2 in writing.

**7.3 A Property Factor must not charge Homeowners for handling complaints unless explicitly provided for in the property titles**

72. The Tribunal does not find a breach under this section. There is no evidence that the Property Factor has made such a charge.

**7.4 A Property Factor must retain all correspondence relating to Homeowners' complaints for at least three years from the date of the receipt of the first complaint.**

73. The Homeowner has provided no evidence that the Factor has failed to do this, and the Tribunal find no breach under this section.

**7.5 Where the Property Factor has taken over the management of property and land owned by Homeowners from another Property Factor the previous Property Factor must cooperate with the current Property Factor to ensure the exchange of all necessary and relevant information.**

74. For the duration of the complaint made by the Homeowner, James Gibb have been the Factor and therefore this section of the code does not apply. The Tribunal does not find any breach under this section.

**7.6 Complaints that have arisen in connection with issues that arose during the appointment of a previous Property Factor should be dealt with by that Property Factor**

75. For the duration of the complaint made by the Homeowner, James Gibb have been the Factor and therefore this section of the code does not apply. The Tribunal does not find any breach under this section.

76. The Homeowner also considered that there has been a breach of the Property Factor's duties in relation to the written statement of services

**1 Introduction**

77. This is an introduction section in the written statement of services. The Homeowner does not explain why she says this section is breached. The Tribunal does not find any breach under this section of the Property Factor's duties.

**3.2 The core services provided cover the maintenance management repair and insurance applicable as detailed in section 03 of your development schedule.**

78. This is an explanatory section and it does not contain specific duties; the Tribunal does not find any breach under this section.

**4.1 routine maintenance**

79. This section sets out what services will be provided. The Homeowner does not specify which of these sections she says have been breached by the Property Factor, as there is no specification to this complaint, the Tribunal does not find there to be a breach.

**4.3. Related to emergency works**

80. This section does not specify a duty upon the Property Factor and accordingly the Tribunal does not find a breach of this section.

**4.6.1 Response times**

81. We find there to be a breach of this duty. There is evidence that quotations obtained were not provided to homeowners for their consideration. There is also evidence that repairs which cost less than the level of delegated authority, for instance to the air vents, were not carried out within the seven days. It appears to the Tribunal that there was a failure to keep the Homeowner advised of progress for repairs. While we note that the Property Factor set out that time scales for the delivery of all quotations will be dictated by the complexity of the works required, in this case, for example, the failure to provide the quotations from April 2022 is inexplicable. The Tribunal finds that there is a breach of this duty.

#### **4.6.2**

82. While it is clear that the Homeowner notified the Property Factor about repairs, it is not clear that these were notified as emergency repairs. The Tribunal is unable to find there to be a breach under this section of this duty.

#### **4.7**

83. Routine property inspections will be made by the development manager at a frequency detailed in section 06 of the development schedule. The Homeowner did not provide a copy of section 06 of the development schedule. The Tribunal cannot make any finding in relation to whether or not there were routine property inspections at the property. The Homeowner does not direct us to where she says more frequent visits should have been required due to ongoing problems. The Tribunal notes that the Property Factor was sending out contractors to investigate the water ingress and so, it does not find that a breach of the Property Factor's duty has occurred under this section.

#### **5.11. Income recovery**

84. The Homeowner does not explain in what way she considers that the Property Factor has breached this section of their written statement of services. This section relates to recovery of late and defaulting payers. The Tribunal does not find any breach under this section of the code.

## **6 Communication arrangements**

### **6.1.1 General Communications**

85. The Tribunal finds that there has been a breach under this section. While there appears to be an automatically generated e-mail sent to a Homeowner on receipt of an e-mail from them, that email contains no additional information for the Homeowner. There were a number of emails that were not responded to timeously. We consider that there is a breach of this section.

## **7.0 Complaints**

### **7.4 Stage 1 and 7.5 Stage 2**

86. The Homeowner does not explain in what way she considers that the Property Factor has breached this section of the written statement of services. Her application states that all emails and letters during the time the complaint was at stage 1 and 2, together with responses to stage 2 are totally unacceptable, have ignored major points, failed to disclose reports and failed to resolve the issue of loss of rent.

87. The Tribunal considers that the Property Factor has a stage 1 and stage 2 complaints process and that the Property Factor dealt with the complaint at stage 1 and stage 2.

88. However, the investigation process at stage 1 and stage 2 took longer than 25 working days. There was some discussion with the Homeowner to advise that the period had to be extended, however overall we find that there was a failure to properly keep the Homeowner up to date in relation to what was happening. The Tribunal finds a partial breach under Section 7.4 and 7.5.

## **Block insurance**

### **8.17**

89. Handling of insurance claims will be managed as described in section 13 of the development schedule. For communal claims the schedule states that in such circumstances a Homeowner should call their property manager right away if within working hours and the property manager will instigate the claim with insurers as well as arrange temporary or final repairs, depending on circumstances. The Tribunal finds there has been a breach under this duty as the property manager did not appear to instigate the claim timeously with the insurers or arrange repairs timeously.

## **The majority of the paragraphs of customer complaints**

90. The Homeowner does not set out which parts of the customer complaints section that she considers the Property Factor has breached and accordingly, the Tribunal does not uphold this part of her complaint.

## **DECISION**

91. The Homeowner advises that an apology would be useless and irrelevant. She advises that the Property Factor keeps apologising and making the same mistakes again. The best resolution would be if the Property Factor accepted they had made a huge error in February 2022, with the development manager at that time failing to lodge an insurance claim and failing to send anyone to assess the problem. She says the only resolution that should flow from this failure compounded by all other failures since that date would be either paying her £4,032 for loss of rent or ensuring that the insurers pay her that sum; accepting she had no proper service from February 2022 for over 2 years and refunding her two years' service fees; and either paying her £4,814.14 that she had spent in repairing the communal roof and reinstating the interior, or ensuring that the insurers pay her that sum.
92. The Property Factor in response notes in relation to the Homeowner's complaint that James Gibb did not lodge an insurance claim for water ingress to the property in February 2022. They advise that the initial findings from contractors Northwest Roofing and Columbus did not identify any storm damage to the roof. They accept a claim should have been lodged at that time for at least the internal damage. The claim was lodged in August 2022. They say while some repairs to the roof were attempted, it is the Factor's view that a permanent solution is required and that would require major funding from owners and was unlikely to progress.
93. The Homeowner claims that the property was uninhabitable, and they have lost rental income which the building insurance should reimburse. The Factor's response to this is that this is a decision for the insurers to make and they have provided the Homeowner with the information required to progress the matter with the insurer.
94. The Tribunal considers that the Homeowner has received poor service from the Property Factor regarding this matter since February 2022. The Factor accepts

themselves that there have been some instances of poor service and have reflected this in their general goodwill gesture offers.

95. The Homeowner has incurred costs arranging the repairs privately. Any communal repairs completed by the owner were carried out without giving prior notice to the Property Factor or the other owners, that she intended to do the works. It seems the owner assumed or was resigned to the fact that she was unlikely to obtain agreement or funding from other owners to do these communal roof works, and so decided to proceed to do them at her own cost. As there was no consultation with other owners, the Factor says that they are unable to retrospectively recharge the other owners who would have been liable for a share of the costs. They note that the insurers may decide to reimburse any costs that would be considered insurable under the policy.
96. The Factor recognises that the matter has been prolonged and understands it caused frustration to the owner. They accept some correspondence has not been dealt with correctly and in a timely manner. In relation to the service issues the owner has experienced they are offering a credit of the management charges to the sum of £250. They note that this is slightly less than their fee for two years.
97. The Tribunal would first confirm in terms of applications under the Property Factor's (Scotland) Act 2011 it does not determine claims for breach of contract or reparation for loss and make awards for those matters. It is not therefore in a position to order payment for loss of rent or the cost of repair works against the Property Factor. Separately, these matters are now being considered by the insurers in terms of the claim which has been made by the Homeowner. If the Homeowner's claim with the insurers is unsuccessful then she may be able to pursue a claim against the Factor and/or the other owners in terms of what is set out in the title deeds. Such matters are outwith the jurisdiction of this tribunal.
98. The Tribunal considers breaches of the code of conduct and Property Factor's duties, and make orders to try and ensure that property factors meet minimum standards of practice set out in the Code and adhere to their own duties.
99. In this case the Homeowner agreed the 4 points set out by the Property Factor were the issues in this case.
100. In relation to the first, second and fourth points the Property Factor has now lodged insurance claims on behalf of the Homeowner for the water ingress to the

property, the lost rental and the cost she has incurred to arrange repairs privately. It will be up to the insurance company to determine whether they will pay out on all or any of these matters. These are not therefore matters which the Tribunal requires to make an order in relation to, as the action of lodging the insurance claim has been executed by the Property Factor already. If there are losses arising out of any of these three points then any action would fall within the jurisdiction of the sheriff court as they would be claims for breach of contract and or damages. The Tribunal does not have jurisdiction to determine such matters. The Tribunal considers that resolution has been made in as much as the claims have now been intimated to the insurance provider for determination. We make no order in respect of these three points.

101. Turning to the third point, the Homeowner has received poor service from the Factor regarding this matter since February 2022. The Tribunal finds there has been ongoing poor service, as noted in the breaches set out above. The Tribunal considers that the conduct of the Factor would have caused the Homeowner ongoing frustration and inconvenience. It also imposed on her time and we consider that she did spend a good deal of time trying to sort this matter out. We consider that the communication from the Factor was wanting over a long period on a number of different fronts as set out above. We consider that the Homeowner was entitled to expect that either her insurance claim was submitted timeously or, she was notified as to the reason why it was not going to be submitted. Until the middle of 2023, the Homeowner had not had confirmation about what was happening to her claim.

102. In addition, we consider that the Homeowner was entitled to have the repairs carried out in a timeous fashion or, to be notified as to the reason why they would not be carried out. Again, there was no satisfactory response to her regarding the repairs, and this appears to have been ongoing until at least January 2024.

103. The Tribunal note that in August 2022 the Homeowner was advised that works have been carried out to address the water ingress by putting in air vents and further the Factor and the third party contractor were dealing with her insurance claim, neither of these actions appeared to have been true.

104. There is a clear pattern of correspondence from the Homeowner to the Factor seeking information, advice and resolution to her complaint which was not properly responded to and on occasion was quite frankly incorrect. We do not consider that the Factor has acted professionally in dealing with the Homeowner during much of 2022 and 2023. There appears to be a lack of effort or understanding on the part of the

Factor in relation to properly addressing matters with this Homeowner in respect of the roof repairs, lost rent and her insurance claim. It was not clear to the Tribunal, at the date of the case management discussion or the hearing, whether Priority Roofing had attended at the property or whether Columbus had installed the air vents at the property. There were delays in responding to the complaints.

105. We consider that the Property Factor would have carried out some services to the property as agent for the Homeowner and on that basis, we are prepared to agree that a payment of £250 towards the service charge over a period of two years from February 2022 is reasonable.

106. Further, we consider that the conduct of the Factor from February 2022 would have caused inconvenience and stress to the Homeowner. We consider that the inconvenience and stress was over a fairly long period of time around two years and was for a number of different issues. We consider that the Homeowner expended a lot of her own time in fruitlessly chasing up the Factor. Given all of the breaches that we have identified, and as we agree that this has caused the Homeowner inconvenience and stress, then we also propose to make an award of £1,000 to the Homeowner as compensation for her inconvenience and stress.

107. Accordingly, we would propose to make the attached Property Factor enforcement order.

#### **PROPERTY FACTOR ENFORCEMENT ORDER**

108. See proposed order attached to this decision

#### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party**

**must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Melanie Barbour

**21 May 2025**

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**Legal Member/Chair**

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**Date**