



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

Chamber Ref:FTS/HPC/PF/23/2204

Flat 9, 10 Fenwick Road, Giffnock, Glasgow, G46 6AN ('the Property')

Peter Davidson residing at Flat 9, 10 Fenwick Road, Giffnock, Glasgow, G46 6AN ('the Homeowner and Applicant')

Redpath Bruce Property Management ('the Factor and Respondent')

Tribunal members:

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

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with OSP6 and sections 6.1 and 6.4 of the 2021 Code of Conduct.

The decision is unanimous.

Background

1. The Homeowner is heritable proprietor of the property Flat 9, 10 Fenwick Road, Giffnock, Glasgow, G46 6AN ('the Property'). He purchased the Property on 23rd June 2022.
2. Redpath Bruce are factors of the Property. They were registered as a property factor on 7th December 2012 and started factoring the Property in 2014.
3. The Homeowner submitted an application to the Tribunal dated 20th October 2023. He applied to the Tribunal for a determination that the Property Factor had failed to comply with the Property Factor's duties and specified sections of the Property Factor Code of Conduct 2021.
4. By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 6th November 2023 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 2nd July 2023 and 26th October 2023) to a Tribunal.

5. The First Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 8th February 2024 at 10am

The Factor was represented by Stuart McMillan, a Director of Redpath Bruce.

The Homeowner did not attend and had advised the Tribunal by letter dated 7th December 2023 that he would be unavailable.

The First Case Management Discussion was continued. The Factor was invited to produce the survey reports on the Property referred to by both parties and the letter by R & RS Mearns Solicitors to the Factor dated 22nd June 2022.

6. Following the First Case Management Discussion the Factor sent the Tribunal a copy of the survey report by Mackinnon & Co dated 22nd February 2023 together with a copy of the letter from R and RS Mearns Solicitors to Redpath Bruce dated 13th June 2022.

7. The Second Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 29th May at 10am. The detail is included at paragraph 11.

8. Direction.

Following the Second Case Management Discussion the Tribunal issued a Direction to the parties asking them to confirm if the 2017 survey by Redpath Bruce referred to by the parties was in fact the survey dated 9th March 2015. The Homeowner replied to the Direction explaining that the date 2017 was referred to in the Factor's Minute of the meeting that took place on 15th March 2023. He referred to the following quotation from the Minute: 'Given the current condition of the roof covering, we would anticipate that the roof will require replacement within the next 5-10 years.' Sally MacFarlane, a Director of the Factor, replied to the Tribunal by email dated 11th June 2024 stating that they do not hold a 2017 survey report and the reference to 2017 is an error and the reference should be to the report dated 9th March 2015 which has been produced. The Tribunal considered the responses to the Direction and noted that the quotation regarding the life of the roof that had been referred to by the Homeowner was detailed at page 2 of the report by Redpath Bruce dated 9th March 2015. Consequently, in this decision any reference to the 2017 report has been corrected to the 2015 report.

9. Both parties had lodged written representations and productions with the Tribunal.

9.1 Written Representations by the Homeowner:

The Factor has taken an unreasonable amount of time (over eight months) to make an appropriate repair to his roof that would have allowed him to live in his flat. He has not been able to live in his flat because of this delay as water still comes in. He reported severe rain water ingress and damage to two of his ceilings as far back as 2nd November 2022. The few attempts to repair never lasted longer than fifteen minutes with the roofers saying that's all they can do, as the roof needs a proper repair.

He made an official complaint to the Factor on 15th April 2023.

When he was buying the Property in June 2022 his solicitors asked the sellers' solicitors for any information regarding the roof. The Factor wrote a letter to the sellers' solicitor stating 'There was no common building defects, maintenance issues or pending matters (letter attached). However, the Factor did not declare to anyone that they had a surveyors report dated 2015 which stated that the roof would require to be replaced within the next 5-10 years. If he had been informed of this survey he may not have proceeded with the purchase and would definitely not have paid £10,000 over the asking price as he did.

After receiving the keys in July 2022 he embarked on a complete renovation of the flat. New windows, new heating, new wiring, new kitchen etc. His intention was to move in before Christmas and everything was on schedule. However, on 2nd November 2022 two of his ceilings were damaged due to water ingress from the roof. The Factor was informed and from then their failed attempts to repair the roof followed.

The builder who was doing the renovation to the Property covered the attic space with tarpaulins to help catch the rain water. During his time working there he emptied the rain water from the tarpaulins.

He pressed the property manager Leanne Drummond for a proper repair as the initial repair of a plastic paint did not help at all.

He found out in early November that the other block, block eight, had also been having its own water problems and their repairs had been quoted for and approved and the work was to be started in January 2023.

He requested that his block ten should be included in the same repair scheme due to the severe water damage being caused to his Property. His Property was, he considered, more badly affected. It would have been more practicable to have the same company do both repairs at the same time while they had men and scaffolding on site.

The Factor said that to include block ten along with block eight another vote would be required and then funds would need to be gathered in full before any work could be authorised. They said this would be unlikely to be done in 2022.

On 3rd November and several times thereafter he offered a solution to provide the Factor with the total amount of funds necessary in advance for them to repair block ten along with block eight to facilitate a speedy repair and stop further damage being inflicted to the Property. He said he could wait to be paid back whenever each owner pays their share. The idea was rejected by the Factor so they left him to wait in the hope that the next repair would stop the ingress of water. That also failed and so did the next “half hearted” attempt. Hardly surprising as no roofer spent more than ten or fifteen minutes on the roof.

The Factor stopped pre Christmas for the holidays until 9 January and the roofers called out between the holidays never spent more than fifteen minutes trying to fix the problem. In January his third ceiling was damaged. This time it was the kitchen ceiling and cabinets of a new bespoke fitted kitchen that was also damaged. It cost around £14,000.

He had to arrange for his builder to rig up plastic sheeting covering the entire kitchen diverting the incoming water into buckets to protect the kitchen units from further damage. He told the Factor but they could only sympathise.

The Factor informed him that they had issued Torrance Builders with the go ahead to make a proper repair to his roof section in the new year and that funds would in turn be sought from the owners and he would have to wait until that process played out in 2023.

Over the Christmas holidays, although his flat was uninhabitable, he had to travel there daily to empty the buckets catching the rainwater. He called the holiday emergency repair number because it was so bad and the roofer attending would only try wrapping some of the broken tiles in plastic. That did not work either. That was their last attempt to repair.

Talking to neighbours on his daily visits to empty his water buckets he was told that over the last five years they had all paid over £10,000 on roof repairs. One neighbour recalled that the roof was due to be replaced in a few years anyway.

As the neighbours were about to spend £20,000 or so on roof repairs in January he suggested the owners should meet to discuss this on 3rd January 2023.

At the unofficial owners meeting on 3rd January 2023 he suggested they get quick quotes for new roofs to give them an idea and present them to Redpath Bruce before they commence the new repairs. Spending so much again on repairs in his opinion should be questioned especially by the Factor since they were already within their own surveyor’s report timescale that stated new roofs would be required within the next 4 years at the latest.

At no point were the proposed repairs cancelled, certainly not by the Homeowner. Quotes for a new roof were received within days and presented to neighbours and the Factor on their return to work in early January. The total cost was under £100,000 for both roofs.

He invited every approved supplier from the Factor's list but everyone refused to quote. However, two reputable quotes were received.

One of the Factor's approved suppliers was Torrance, they claimed by email on 10th January that they had already received the go ahead from the Factor to carry out the repairs. They said 'if this has now to be cancelled and a reroof priced they would need instruction from the Factor.' His reply to them on 10th January said 'no the repairs are not cancelled. It was a request from the owners to consider a complete re roof. However, he will not interfere with Torrance and the Factor. When are you scheduled to start?'

He was desperate to have his roof fixed and move back into his Property. He heard nothing back for a long time.

However, the Factor claims that these repairs were stopped by the majority on 3rd January (they emailed him Minutes taken by Mr Frew). Until then he was unaware that Mr Frew had taken notes. He was never sent any minutes and certainly would not have agreed with the contents if he had seen them. His view is at odds with Mr Frew. The last thing he would agree to would be to stop the repair of his own roof. The quotes he received to re roof both blocks only took him several days to gather so he did not interfere with any repair schedules.

At the owners meeting on the third of January he only questioned if it was sensible to continue paying for on going repair costs when a new roof was looming large as detailed in the Factors surveyors report of 2015.

When the Factor returned to work in January 2023 he sent them the reroofing quotes that he had received and took no further part in the process. He was expecting them to consider the options, repairs v new roofs, but he was not expecting his roof repair to be abandoned for any reason.

He has both pleaded and demanded that the Factor make his roof watertight for eight months, but they say the repairs were put on hold on 3rd January and again on 15th March by the majority of owners until a decision was made. He argued against this saying that no individual should be made to suffer unnecessary damages whilst waiting a prolonged time for the Factor to come to a conclusion. He kept requesting that they attempt a repair to his roof but they said repairs were put on hold by the majority.

The Factor simply ignored his requests to make the roof water tight and allow him to live in his Property. They only focused on the possibility of a new roof and that has

been the case all of the time. No other attempts were made to repair his roof after the first few failures. He was left to suffer and unable to live there.

On 6th June at an owners meeting arranged by the Factor there were two options on the agenda following the latest survey. The choices were new roofs or repair work only.

The new roofs option was voted against immediately as the cost was almost double the two quotes he had presented in January.

The repairs were the only option left. However, the new quote was three times more expensive than previously proposed. The Factor simply stated that this was the new surveyor's price and the new cheapest option. The Factor's survey of 2015 stating a new roof would be required within the next four years at best was ignored by the majority because the new roof quote was unaffordable and the Factor took no view on the matter.

At the meeting he told his fellow owners that he had made an official complaint to the Factor regarding their unreasonable behaviour response of the past eight months. He asked the Factor again to make his roof water tight and challenged their reason for not doing so over the past six months. Everyone was surprised to learn that his roof had not been made watertight to allow him to live there and they were even more surprised there had been no suggestion that any one of them had been involved in stopping his repair being made to the section of roof above his Property.

This reaction from the owners has resulted in some action. AGM roofing are to repair the roof section above his Property on 23rd June. It seems that he can finally move into his Property in 24th June.

The repair attempt should have been made six months ago.

He feels that the Factor has been reluctant at worst to organise a proper repair to his Property. He questions if this was because he challenged their service as far back as November 2022 and highlighted their past two surveys to their embarrassment.

Survey One: New roofs would be required by 2025.

Survey Two: All past roof repairs have been to a very poor standard.

The Factor's refusal to ensure that a proper repair was made to the roof section above his Property for eight months is indefensible. They have effectively kept him from living in his Property because the complete kitchen had to be totally covered for its protection. The quote he has for the repair to his kitchen is just under £7000. This work could not commence until the roof was watertight.

On 22nd June 2023 the Factor wrote to advise owners that the major roof repairs agreed to at the recent meeting would be set in motion when the 17 owners each

remitted £5755.74. Work would start within 4-6 weeks after receiving the remittances and would take a further 6-8 weeks after that.

Until these major repairs are completed in October/ November he welcomed the repairs instructed for 23 June to make his roof water tight and to allow him to move into his Property. He questioned why this could not be instructed six months earlier and attributed this to the totally unreasonable behaviour by the Factor.

Unfortunately, the repairs scheduled for 23rd June were rained off. He had to cancel moving into his Property. The Factor said it would be best and prudent not to remove the plastic sheeting from his Property.

On 4th July 2023 he was messaged advising that a repair of flashbands would be attempted later that week, weather permitting.'

9.2 Written Representations by the Property Factor:

The Factor is appointed by the collective group of owners within the development at Carlton Court, 8-10 Fenwick Road, Giffnock. The Factor's written statement of services states:

Repairs and Maintenance

- Arranging common repairs and maintenance by instructing contractors and service providers on behalf of the homeowners, which may be subject to the availability of homeowner funds.
- Entering into contracts where appropriate with contractors and service providers ie for gardening, lift maintenance, cleaning, utilities etc and arranging the employment and remuneration of on site staff.
- When requested, investigating any complaints of unsatisfactory work and making every effort to resolve these complaints.
- Where appropriate, obtaining competitive quotations from several tradesmen and seeking the authority of homeowners before proceeding.
- Provision of advice on maintenance, repairs and improvements if necessary.

Furthermore, with reference to the Written Statement of Services the following is stated;

'Appointment of Contractors as Agent for Homeowners

All routine instructions to contractors are given by us as an 'Agent' on behalf of the homeowners. We will only instruct contractors on your behalf who have provided the necessary public liability insurance. We accept no responsibility for defective workmanship or for works performed to an unacceptable standard. However, should you contact us and inform us that you are dissatisfied with the standard of completed

work, we will contact the contractor on your behalf and make every effort to resolve the issue to your satisfaction.

Generally, when issues are reported to the Factor, relating to damage to either a common area within a private apartment, but potentially linked to a common source, it is necessary for the cause to be established. Having reviewed their records they note that various contractors and service suppliers have been appointed by their firm on behalf of the owners in an effort to identify the cause of the water ingress, to provide advice and input on potential solutions, to carry out works that may in turn help to alleviate and resolve the water ingress from occurring. Furthermore, more recently and also historically, homeowners have engaged with consultant building surveyors for advice in relation to the maintenance of the building and particularly the roof.

Details of work carried out during the period:

Repair Date	Contractor	Total (£)	Description
13.8.22	Hightower	450	Gutter cleaning
18.8.22	AGM Roofing	336	Roof repair
25.8.22	Hightower	65	Unblock gutter downpipe
18.9.22	AGM	600	Roof repair
7.10.22	AGM	348	Roof repair
3.11.22	AGM	144	Gutter repair
13.11.22	AGM	396	Roof repair following water ingress
14.11.22	AGM	264	Roof repair following water ingress
19.12.22	Torrance	216	Temporary Roof repair following water ingress
30.12.22	Northwest	270	Roof tile repair
31.12.22	Gilmour	627.36	Emergency call out water ingress
19.1.23	AGM	300	Secure loose tiles/ water ingress repair
22.2.23	Mackinnon	900	Roof condition survey
24.5.23	Mackinnon	1260	Roof repair tender process exercise

26.6.23	McMaster	177.48	Roof repair
24.7.23	AGM	600	Repair defective roof tiles
27.9.23	McMaster	178.80	Attempted roof repair- block 10
13.10.23	McMaster	367.44	Attempted roof repair

In most instances unless works are being supervised or have been specified in advance by way of a building surveyor or consultant, any advice given or works carried out are on the basis of the findings and recommendations of the individual contractor appointed on behalf of the owners.

Over the course of the period in question, whilst concurrently engaging with contractors and service suppliers on their behalf, they have also communicated with the group of homeowners and in particular approval was recently sought to progress with a specific repair to areas above the homeowners' property on the basis of advice provided by appointed consultants, Mackinnon and co. The Homeowners opted to proceed with the appointment of a surveyor to lead on a scheme of works. Whilst the surveyor recommended a large scale roof repair homeowners opted for a scheme of repairs.

Initially they had been unable to secure full funding. However, agreement was received from homeowners to meet the shortfall as well as utilisation of the contingency fund to speed up the process of the works being instructed. Concurrently, payment of the non payers share was received and the contractor MacMaster was instructed to proceed. They are waiting for confirmation that the works have been completed.

10. Findings in Fact.

10.1 The Homeowner is heritable proprietor of the property Flat 9 (First floor flat), 10 Fenwick Road, Giffnock, which he purchased on 23rd June 2022.

10.2 Redpath Bruce are factors of the Property.

10.3 The roof is a common part of the buildings of two blocks comprising 17 flats in total known as Carleton Court, 8 and 10 Fenwick Road, Giffnock.

10.4 The Factor's issued a roof condition report dated 9th March 2015.

10.5 The Factor and the homeowners were not actively considering or acting on the 2015 roof condition report in 2022.

10.6 The Homeowner's Property suffered water ingress due to defects in the communal roof from November 2022 until June/July 2023.

10.7 Repairs were carried out to the Roof, following instruction by the Factor, as follows:

AGM Roofing & Construction Ltd 13th and 14th November 2022.

Torrance Roofing and Building Services 19th December 2022.

Northwest Roofing and Building maintenance Limited. 30th December 2023.

Gilmour Building Services 31st December 2022

AGM Roofing & Construction Limited 19th January 2023.

Thomas McMaster & Son Ltd 26th June 2023.

10.8 A residents meeting took place on 3rd January 2023 and emergency repairs to the roof were placed on hold following that meeting until June 2023.

10.9 The Factor managed the process of arranging the major repair to the communal roof during 2023.

10.9.1 The Factor instructed a survey of the roof by MacKinnon & Co in February 2023.

10.9.2 The Factor arranged the tender exercise for the major roof repair in May 2023.

10.9.3 The Factor ingathered 16/17 owners' contributions to the major roof repair.

10.9.4 In December 2023 the Factor obtained the missing share from East Renfrewshire Council.

10.9.5 The major repair works to the roof were carried out between November 2023 and April 2024.

11. Detail of the Second Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 29th May at 10am

The Homeowner attended and the Factor was represented by Stuart McMillan, a Director of Redpath Bruce.

11.1 At the start of the Case Management Discussion Mrs Taylor advised that Homeowner that it is a requirement of section 17(3) of the Property Factors (Scotland) Act 2011 that the Homeowner has notified his complaints to the Factor. She explained that whilst the Homeowner has provided the Tribunal with a copy of the email he had sent to the Factor dated 18th October 2023 notifying the Factor of the Code of Conduct complaints detailed in his application she had not seen any evidence that the property factor duties complaints had been notified to the Factor.

The Homeowner accepted that this was correct and withdrew this part of his application.

The Homeowner had been advised that evidence of prior notification to the Factor of his complaints was required in a letter from the Tribunal dated 24th October 2023.

11.2 The detail of the Homeowner's application and the parties' representations in relation to the detailed complaints are as follows:

OSP 2 You must be honest, open, transparent and fair in your dealings with homeowners.

The Homeowner's complaint:

The Factor's survey dated 2015 stated that the roof would need to be replaced within the next 5-10 years. They did not declare this vital information to the Homeowner at the time of his purchase of the Property.

Mr Wooley asked the Homeowner if he had obtained an independent survey of the Property at the time of his purchase. The Homeowner advised that he had not obtained such a report and had relied on the Home Report. He did not think that the surveyor who had prepared the Home Report had gained access to the attic of the Property although confirmed that access to the roof space was readily available from his flat.

The Factor's response:

Some roof repairs works were carried out to the Property following the report dated 2015. He did not believe that the Factors were under an obligation to disclose a historic roof report to a purchaser or the purchaser's solicitor. The Seller of the Property would have been aware of the existence of the 2015 report and the Homeowner could have asked him if such a report existed.

The Tribunal's Decision:

The Tribunal considered the terms of the letter from R & RS Mearns, Solicitors, to the Factor dated 13th June 2022 and noted that the letter asked the Factor to 'confirm details of any common repairs that are proposed, outstanding or being considered by the co proprietors, of which you are aware and also confirm details of any common building defects, maintenance issues or pending matters of which they are aware, where estimates are being obtained for consideration of the co proprietors. The Factor had replied stating 'There are no building defects, maintenance issues or pending matters which they are aware of where estimates are being obtained for consideration of the co proprietors'.

The Homeowner has not suggested that the Factor's response to R and RS Mearns was incorrect. The Homeowner's complaint is that the Factor should have disclosed

a historic survey report dated 2015 which stated that the roof would need to be replaced within 5-10 years.

No evidence was produced to the Tribunal that estimates were being obtained in relation to the roof report dated 2015 or that the co proprietors were still giving consideration to the terms of the 2015 report. The Minute of the meeting dated 15th March 2023 refers to the 2015 report (wrongly referred to as the 2017 report) and states that most owners voted in 2017 to complete patch repairs. The Tribunal find that the 2015 report was historic and was not being given active consideration by either the Factor or the co proprietors. R and RS Mearns did not ask the Factor if any such report existed. The Factor's response to R and RS Mearns's letter dated 13th June 2022 was factually correct. The Tribunal find that the Factor is not under an obligation to disclose a historic roof report to a purchaser or the purchaser's solicitor in a situation where the Factor was not specifically asked if such a report existed. The Homeowner could have instructed his own independent survey to satisfy himself on the condition of the Property, including the roof, before he purchased the Property but he chose not to. The Homeowner's solicitor could have included a clause in the contract for purchase of the Property requiring the seller to confirm that he was not aware of any defects in the Property. The Tribunal have not been provided with details of the missives for the Homeowner's purchase of the Property. The Tribunal determine that the Factor did not breach the terms of OSP 2 by not disclosing the terms of the 2015 survey to the Purchaser before the Purchaser's purchase of the Property.

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

The Homeowner's complaint:

The Factor failed to be honest and transparent when he was buying the Property 2022. The letter the Factor sent to the Homeowner's solicitor dated 22nd June 2022 states:

'There are no common building defects, maintenance issues or pending matters which we are aware of where estimates are being obtained for consideration by coproprietors.'

This was false.

The Factor's response:

At the hearing Mr McMillan advised that he did not believe that the Factors had provided information that was false.

The Tribunal's Decision:

The Homeowner considers that the Factor's statement that '*There are no common building defects, maintenance issues or pending matters which we are aware of where estimates are being obtained for consideration by coproprietors*' is factually incorrect as the 2015 survey report states that the condition of the roof coverings will require replacement within the next 5-10 years.

Whilst the Tribunal accepts that the 2015 survey report is evidence that the roof coverings were defective in 2015 no evidence has been provided to the Tribunal that the 2015 roof survey report was still being considered and being acted on at the time the Homeowner purchased the Property in 2022. No evidence has been provided that the Factor was obtaining estimates in 2022 for the defects identified in the 2015 report, as already determined under OSP 2.

Consequently, the Tribunal determine that the Factor has not failed to comply with OSP 4 in relation to the Homeowner's complaint.

OSP 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.

The Homeowner's complaint:

The Factor commissioned a survey with Mackinnon and co in March 2023. The report stated '*Numerous historic patch repairs to the roof tiles evident across the roof slopes. These have been carried out to a very poor standard*'.

Clearly these historic poor standards of repair would have had a negative effect on the roofs that had already been identified as requiring replacement between 2020 and 2025. They should have been fully aware of this before their survey of March 2023.

The amount of repair call outs and significant costs incurred in recent years was described to him by fellow owners and it continued the entire last year.

The service provided by the Factor has not been of reasonable care and has not been done in a skillful or timely way. The attempts to make repairs over almost a year have failed in every situation since November 2022 resulting in severe damage to his Property. He believes it was negligent of the Factor not to have in place a plan to deal with the required new roofs that needed to be replaced per the survey of 2015. Owners who lived in the Property in 2015 have said very little was explained to them and owners after 2015 were not informed of the problem and had no idea of the looming issue.

It should not have taken the Factor a year and a half to have the roof of his Property properly repaired. He had sent the Factor over thirty emails advising that water was

coming through the roof of his Property but the Factor had only made four attempts to complete the repairs. The Factor did not make a real effort to fix the problems with the roof. If his Property had been a boat it would have sank.

In connection with the Minute of the meeting of the residents of Carleton Court on 3rd January 2023 he has only recently seen this Minute and advised that it is not an accurate record of the matters that were decided at the meeting.

The Factor's response:

Mr McMillan accepted that it was understandable that the Homeowner was frustrated that it took over a year and a half for the roof of his Property to be properly repaired. The Factors did instruct repairs to the roof during this period. The Factor relies on the contractors they employ to complete the repairs to an acceptable standard. The Factor is not responsible for the quality of repairs that are carried out to the Property. The report on the roof that the Factor had obtained in 2015 stated that the roof would need to be replaced in the next 5/10 years. This work was not instructed. Works that were carried out to the roof after that time were reactive temporary repairs. Roof repairs were carried out to the Property earlier in 2024 and cost approximately £65,000. The repairs took time to be completed as it was necessary to have a survey carried out, to collect funds from owners and attend to issues relating to the fact that several owners did not pay the contribution they were liable to pay. The process was started in 2023 and was completed in April 2024. The works that were carried out were not full replacement of the roof as this had been rejected by the owners. The works involved carrying out substantial repairs to the defective sections of the roof.

The Homeowner had reported problems with water ingress to the roof of his Property in November 2022. The Factor had obtained estimates for the repairs. A residents' meeting took place on 3rd January 2023. The Factor was not present at the meeting but had been provided with a copy of the Minute of the meeting. The Minute recorded that the owners meeting had decided to postpone two repairs that had been arranged for the roofs of Blocks 8 and 10 as they wanted to investigate the cost of replacing the roofs of both blocks. The Factor had instructed emergency repairs to the communal roof when owners had reported that there was water ingress. He acknowledged that some of the emergency roof repairs that had been carried out that had not completed to an acceptable standard. The Factor was unable to complete more substantial repairs to the roof until the estimates had been approved and the funding was in place.

The Tribunal's Decision:

The Tribunal acknowledged that the Homeowner made three separate complaints under OSP 6. They considered each in turn.

The First Complaint is that historic roof repairs had been carried out to a poor standard. The Tribunal find that the Factor is not responsible for poor standard of workmanship by contractor they employ to carry out roof repairs. The Factor's Written Statement of Services specifically states that the Factor '*accepts no responsibility for defective workmanship or for works performed to an unacceptable standard*'. The Tribunal determine that the Factor has not breached OSP 6 in relation to roof repairs being carried out to a poor standard. Clause 6.12 of the Code of Conduct requires the Factor to liaise with third parties to remedy defects if they are requested to do so by Homeowners. The Homeowner's application does not include a breach of section 6.12 of the Code of conduct.

The Second Complaint is that it should not have taken the Factor over one and a half years to carry out repairs to the roof of the Property that the Homeowner had reported in November 2022. The Tribunal reviewed the documents that the parties had provided to the Tribunal and established the following summary timeline of events in relation to the roof repairs:

Timeline (summary)

Email Date	Content of Email	Repair details/ Invoice date
2 nd November 2022	Email from HO to PF advising that the ceilings have been damaged due to water damage from roof and urgent action is required.	13 th November 2022 AGM Roofing (roof repair following water ingress)
13 th and 14 th November 2022		Repair by AGM Roofing & Construction Ltd roof repair following water ingress (value £396 and £264)
2 nd December 2022	Email from HO to PF offering to pay for the roof repair to speed up the process.	
5 th December 2023		AGM Roofing damaged roof tiles sealed
7 th December 2022	Letter from PF to HO with details of four estimates for roof repairs defined as major works, majority vote required to proceed and then full funding by owners.	
8 th December 2022	Email from HO to PF requesting emergency roof repair	

19 th December 2022		Torrance, temporary repair 10 Fenwick road (value £216)
30 th December 2022	Email from HO to PF advising that water ingress is ongoing.	
30 th December 2022		Northwest Roofing Roof tile repair (value £270).
31 st December 2022		Gilmour Building Services Emergency call out water ingress to flat 6, Block 10 (value £627.36)
3 rd January 2023	Owners Meeting	
3 rd January 2023	Email from HO to NW roofing advising that the emergency meeting had decided to pause everything and request a quote for reroofing.	
10 th January 2023	Email from PF to HO Torrance had been instructed to carry out temp roof repair. They had replaced roof tiles but the repair had been unsuccessful.	
12 th January 2023		Invoice from North West repairing roof tiles above HO's Property.
16 th January 2023	Letter from PF to HO referring to owners meeting of 3 rd January. Funds to be collected for large scale repairs/ re roof. In the meantime they acknowledged that no further works were to be instructed.	
19 th January 2022		AGM Roofing Secure loose tiles/ water ingress repair (value £300)
20 th January 2023	Email from HO to PF Northwest carried out a repair at the end of 2022. Three tiles wrapped in plastic and they never came back. He is draining water from a bucket every time it rains.	
20 th January 2023	Owners meeting to discuss roof repairs. Unanimous agreement to instruct a surveyor.	

24 th January 2023	Letter from PF to HO they have the agreement of 10 owners to proceed with repair.	
1 st February 2023	Email from HO to PF HO spoke to Northwest. His ceiling is still dripping.	
3 rd February 2023	Letter from PF to HO. Surveyor is proposing to survey the roof and proceed to tender. They propose to instruct MacKinnon and will use contingency to pay their fee.	
10 th February 2023	Email from PF to HO confirming that MacKinnon have been instructed to do roof survey.	
2 nd February 2023	Letter from PF to HO advising that NW will attend to attempt a further repair but they cannot guarantee it will work due to the condition of the roof.	
22 nd February 2023	Roof Condition Report by MacKinnon & Co	
6 th March 2023	Email from HO to PF refers to roof still not being watertight.	
15 th March 2023	Residents Meeting approved tender process.	
24 th March 2023	Email from HO to PF refers to large amount of water on tarpaulins in the roof space.	
11 th April 2023	Email from HO to PF refers to tarpaulins having to be drained.	
14 th April 2023	Email from the HO to the PF refers to water still coming into the Property.	
19 th April 2023	Email from PF to HO she cannot guarantee that the works will be completed by June. Had they proceeded with the larger scale repairs the works would have been completed but at the meeting of owners on 3 rd January they agreed to stop works to consider reroofing project. She cannot instruct repair of his roof as the owners instruction to proceed was superseded by the meeting and decision to have the building surveyed.	
23 rd April 2023	Email from HO to PF. At the owners meeting there was no decision to stop repair works. The work was only to be paused while they sought costs for both roofs.	

9 th May 2023	Email from the HO to the PF refers to rain water still coming into the Property when it rains.	
24 th May 2023		Mackinnon & Co roof repair tender process exercise.
6 th June 2023	Email from the HO to the PF refers to the roof not being watertight.	
6 th June 2023	Owners meeting Complete reroofing rejected.	
15 th June 2023	Email from PF to HO AGM to provide quote for temporary repair.	
15 th June 2023	Email from HO to PF refers to water coming into his flat when it rains and water ingress has continued for eight months,	
22 nd June 2023	Letter from PF to HO requesting payment of share of cost of works to proceed with roof repairs.	
26 th June 2023		Thomas McMaster Roof repair (value £177.48)
29 th June 2023	Email from the HO to the PF refers to repairs still not having been done to the roof.	
29 th June 2023	Email from PF to the HO explaining that the roof needs to dry out before the repair can be completed.	
7 th July 2023	Letter from PF to HO requesting consent to use contingency fund towards major roof repairs.	
24 th July 2023		AGM Roofing (work instructed 20 th June 2023) Repair defective roof tiles of roof above HO's Property (value £600)
15 th August 2023	Letter from PF to HO They have received 15 out of 17 repairs and cannot proceed until 100% received.	
27 th September 2023		McMaster Attempted roof repair to

		Homeowners property (value £178.80)
13 th October 2023		McMaster attempted roof repair (£367.44)
19 th October 2023	Owners meeting (1 of 17 shares has still to be paid)	
6 th December 2023	Letter from PF to HO. Missing share has been paid by East Renfrewshire Council and a report from Craig McMaster on the progress being made re the roof repair. He hoped to have the repair to Block 10 completed before Christmas.	

The Tribunal find that the repairs instructed by the Factor over the period of time from November 2022 to December 2023 were both reactive repairs resulting from immediate water ingress and proactive repairs in terms of arranging for the major roof repair to be carried out including arranging a survey of the roof, the tender exercise, securing contributions from owners, securing the missing share from East Renfrewshire Council and instructing the repairs.

The Tribunal also find that the water ingress to the Homeowner's roof was first reported to the Factor by the Homeowner to the Factor in November 2022. The repair works to the roof were completed in April 2024.

The Homeowner had provided the Tribunal with a copy of the title sheet for the Property (Title number REN83883). The general obligations on the Factor in relation to repairs of the Property are set out in the Deed of Conditions for the development (Deed of Conditions registered 13th April 1995 by McCarthy and Stone). Clause Fifth (b) states:

'The Factor shall have full power and authority to instruct and have executed from time to time such works for the repair, maintenance or renewal of the Common Parts or any part thereof ... provided always that in the case of a major repair (being a work the cost of which is estimated by the Factor to exceed £1700 (to be increased annually by RPI) the Factor shall, before instructing the same report the matter to the proprietors and such work shall only be undertaken if authorized by a majority of the proprietors...'

In addition, the Factor's Written Statement of Services details the Factor's procedures regarding common repairs.

In relation to Emergency Roof repairs the Factor states that contractors will be instructed within 24 hours, albeit the timescales cannot be guaranteed.

In relation to the Major Roof Repairs the Factor will obtain competitive quotations and ingather funds before the works are instructed.

The Factor has power to instruct non major repairs to common parts of the Property in terms of Clause Fifth of the Deed of Conditions referred to above, provided it falls within the specified cost ceiling. The emergency repairs required to the roof to stop water ingress into the Homeowner's Property fall within the definition of emergency repairs. The Homeowner states that the Factor took too long to complete these repairs. The timeline set out above includes details of when the Homeowner reported to the Factor that there was water ingress to his Property, when repairs were carried out and the value of the repairs. The value of all of the emergency roof repairs carried out was below the threshold of £1700 (increased by RPI) specified in the Deed of Conditions.

The timeline shows that no emergency roof repairs were carried out to the common roof above the Homeowners Property between mid January 2023 and June 2023 despite the fact that the Homeowner reported to the Factor that his Property was suffering from water ingress through the roof above his Property during this period. The Factor explained that roof repairs were halted during this period due to the agreement reached by the majority of homeowners at the residents meeting on 3rd January 2023. The Minute of the meeting records that no further works were to be instructed pending the collection of funds for the large scale repairs to the roof. The Homeowner was advised of this in the letter from the Factor to the Homeowner dated 16th January 2023 which states 'We have also been advised that no further works are to be arranged until such times as an agreement on how to move forward has been achieved, which is acknowledged.'

The Tribunal find that the Factor should not have stopped the emergency roof repair during the period mid January to June 2023, notwithstanding the agreement reached by the majority of the owners at the meeting on 3rd January 2023. The Factor did not require the prior approval of homeowners to instruct repairs up to the value of £1700 (increased by RPI) as stipulated in the Deed of Conditions. Indeed, the Factor eventually instructed the temporary repair in June 2023 without securing the specific authority of the majority of homeowners.

Consequently, the Tribunal determine that the Factor did not instruct the emergency repairs to the communal roof between mid January 2023 and June 2023 in an appropriate timescale and they determine that the Factor has breached OSP6 of the 2021 Code of Conduct in relation to the emergency repairs required to the communal roof referred to in the Homeowner's application.

In connection with the major repairs to the roof the Tribunal acknowledge the Factor obtained the approval of the majority of owners, instructed a surveyor, obtained quotations for the proposed works and ingathered funds. The Factor progressed the major roof repair once the missing share had been paid by East Renfrewshire

Council. The Tribunal determine that the major repairs to the roof were carried out in an appropriate timescale as the Written Statement provides that funds have to be ingathered before works are instructed. Accordingly, the Tribunal find that the Factor has not breached OSP6 of the 2021 Code of Conduct in relation to the major repairs required to the roof referred to in the Homeowner's application.

The Third Complaint is that the Factor should have arranged a contingency fund for future roof repairs. The Tribunal reviewed the Factor's Written Statement of Services and found that there was no requirement within the Written Statement of Services for the Factor to arrange a contingency fund for roof repairs. In addition, no evidence has been provided to the Tribunal that a majority of homeowners asked the Factor to organise such a contingency fund. The Tribunal determine that the Factor has not breached OSP 6 by not arranging a contingency fund for ongoing roof repairs.

Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

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.

The Homeowner's complaint:

The Factor failed to prevent further damage and deterioration by not making prompt repairs to a good standard. Three ceilings have been damaged and kitchen units amounting to many thousands of pounds. It is unknown how much internal damage has been done to the wood structure of the roof as for over a year rain water has poured into the attic space soaking the wood trusses. They have failed to explain and communicate to all of the owners that timely repairs to make the building water tight is of major importance to the fabric of the overall building and that failure to make watertight for over one year could result in larger scale repairs and expense being necessary. A competent factor would have set up a fund in 2015 to deal with the necessary future roof renewal.

The Factor's response:

The Factor relies on building contractors to carry out adhoc repairs as required. These repairs are temporary in nature. They are not necessarily long terms solutions that would be recommended by a building surveyor. The Factor's Written Statement of Services clearly states that the Factor is acting as agent for the owners and they do not accept responsibility for defective work. If the homeowners are not happy with the standard of a repair that has been carried out to the Property they can seek recompense from the contractor. Mr McMillan explained that short term repairs that are required due to some emergency such as water ingress are managed differently

from long term repairs. Longer term repairs would require the involvement of a building surveyor. When short term urgent repairs are instructed the Factor relies on the particular contractor to do a competent repair.

The Tribunal's Decision:

The Tribunal acknowledged that the Homeowner made three separate complaints under section 6.1 of the Code of Conduct. They considered each in turn.

The First Complaint is that the Factor did not make prompt repairs to a good standard. The Tribunal have already determined this point under OSP 6 above. The Tribunal determine that the Factor did not instruct the emergency repairs to the roof between mid January 2023 and June 2023 promptly, as required by section 6.1 of the Code of Conduct. Consequently, the Tribunal determine that the Factor has breached section 6.1 of the 2021 Code of Conduct in relation to the emergency repairs required to the roof referred to in the Homeowner's application. In connection with the major repairs to the roof the Tribunal determine that the major roof repairs were carried out in an appropriate timescale and accordingly the Factor has not breached section 6.1 of the 2021 Code of Conduct in relation to the major repairs required to the roof referred to in the Homeowner's application.

The Second Complaint is that the Factor failed to explain and communicate to all of the owners the importance of making timely repairs to make the building watertight. The Tribunal determine that Section 6.1 of the Code of Conduct does not place an obligation on the Factor to communicate to all of the owners the importance of making timely repairs to make the building watertight. The Tribunal further determine that the Factor has not breached section 6.1 of the Code of Conduct in relation to the second complaint under section 6.1.

The Third Complaint is that the Factor should have set up a contingency fund to cover the cost of future roof repairs. The Tribunal have already determined this point under OSP 6 above. The Factor has not breached section 6.1 of the Code by not setting up a contingency fund for roof repairs.

Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021):

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.

The Homeowner's complaint:

Inspections and repairs were not done in an appropriate timescale. The first two ceilings were damaged in November 2022 and reported to Redpath Bruce as was the third ceiling in January 2023. Nearly one year later water is still pouring into the flat each time it rains and that timescale is unacceptable in any situation. After each attempt to make a repair he reported back to the Factor that attempts had failed and water was still coming in. If it was not for his own prevention of tarpaulins and buckets in the attic space and plastic sheeting covering the kitchen units that diverts rain water into buckets the water would cause even more extensive damage to his Property and the flats below.

The Factor's response:

Mr McMillan explained that the difficulty in progressing the repair to the roof was due to some owners not wanting to pay for the repairs required. It took time to get to the point where the repair could be instructed as one owner did not pay and an application had to be made to East Renfrewshire Council for payment of the missing share. In connection with the standard of workmanship of the urgent repairs that were carried out he reflected that the contractors are not present to defend themselves.

The Tribunal's Decision:

The Tribunal refers to their decision under the Homeowner's second complaint under section OSP6 of the Code of Conduct and the Homeowner's first complaint under section 6.1 of the Code. The Tribunal determine that the Factor failed to carry out the emergency repair to the roof in an appropriate timescale. Consequently, the Tribunal determine that the Factor has breached section 6.4 of the 2021 Code of Conduct in relation to the emergency repairs required to the roof referred to in the Homeowner's application but not in relation to the major repairs carried out to the roof.

12. Decision

In all of the circumstances narrated above, the Tribunal finds that:-

12.1 The Factor has not failed in its duty under section 17(1)(b) of the 2011 Act, to comply with OSP 2 and OSP 4 of the 2021 Code of Conduct.

12.2 The Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with OSP 6 and sections 6.1 and 6.4 of the 2021 Code of Conduct.

12.3 The Homeowner advised that he considered that the Factor was liable for compensation including:

The additional £10,000 he paid for the Property. He states that had known about the issues with the roof he would have paid the home report value or walked away.

He lost £18,000 income because he was unable to move into his Property because of the delay in making the flat watertight.

He was not able to live in the Property for over seven months because the kitchen had to be covered by plastic sheeting rigged up so that the water drained into buckets. He was concerned about the electrics. He was forced to attend the Property every day or have someone attend on his behalf to empty the rain water from the tarpaulins and buckets in the kitchen and attic. The house was only useable during the summer. As he is regularly out of the country he had arranged for someone to live there on the understanding that they emptied the buckets when it rained. He paid council tax, factors bills and utility bills whilst being unable to live in the Property.

12.4 The Tribunal acknowledged the detail of the Homeowner's claim for compensation. However, the Tribunal can only take account of losses caused by the breaches of the Code of Conduct determined by the Tribunal.

12.4.1 The Factor is not responsible for the fact that the Homeowner considers that he paid £10,000 too much for the purchase of his Property. The Factor provided information regarding common repairs requested by the sellers' solicitor at the time of the Homeowner's purchase of the Property. The Homeowner could have instructed his own prepurchase survey of the roof but he chose not to.

12.4.2 The Homeowner has not provided a breakdown of the losses claimed or receipts or other evidence to support the sums claimed.

12.4.3 The Homeowner has not provided evidence to the Tribunal that the losses claimed are a result of the Factor's breaches of OSP6 or sections 6.1 and 6.4 of the 2021 Code of Conduct due to the delay in carrying out the emergency repair to the roof between mid January 2023 and June 2023.

12.4.4 The email from the Homeowner to the Factor dated 19th May 2023 refers to 'damages that are not covered by insurance'. The Homeowner has not provided details of any insurance claims.

12.4.5 The Homeowner has not provided any evidence that the losses claimed are reasonable and that he took steps to mitigate any losses suffered by him.

12.4.6 The Homeowner has not explained why he does not consider the tradesmen who carried out the ineffective repairs to be partly responsible for any losses he may have suffered.

12.4.7 The Tribunal are not satisfied that the Factor is due to pay the sums claimed by the Homeowner.

12.4.7 However, the Tribunal acknowledge that the Homeowner has suffered stress and inconvenience as a result of breaches of OSP 6 and sections 6.1 and 6.4 of the Code of Conduct due to the delay in having the emergency roof repairs carried out.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

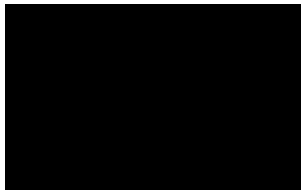
Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'The Factor must pay the homeowner £500 for the inconvenience he had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'

13. Appeals

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



SignedDate 17th June 2024

Chairperson