



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

### **Decision on Homeowner's Application: Property Factors (Scotland ) Act 2011 Section 19**

Chamber Ref: FTS /HPC/PF/23/2448

Re: Property at Flat 1/1, 1 Central Avenue, Broomhill. Glasgow G11 7AQ ("the Property")

Parties: Mr Martin Jarvie, Flat 1/1, 1 Central Avenue, Broomhill, Glasgow, G11 7AQ ("the Applicant")

Lorimer Stevenson, CoVault, 1 Redwood Crescent, Glasgow G74 5PA ("the Respondent")

Tribunal Members :

Valerie Bremner (Legal Member ) and Nick Allan ( Ordinary Member )

#### **Decision**

The Tribunal determined that the Respondent has failed to comply with the the Code of Conduct for Property Factors 2021 in that they have failed to comply with overarching standard of practice 11, paragraphs 2.1,2.4,2.5,2.7 and 3.1 of the Code.

The decision of the Tribunal was unanimous.

#### **Background**

1.On 25<sup>th</sup> September 2023 the Applicant lodged an application with the tribunal under Rule 43 of the first tier tribunal rules of procedure. This application was accepted by the tribunal on 13th October 2023 and a case management discussion was initially fixed for December 2023 but postponed until 15th March 2024 at the request of the Respondent.

2.The application discussed on 15<sup>th</sup> March 2024 set out that property factor had breached the 2021 code of conduct in terms of overarching standards or practice 1, 2,3,4, 5, 6, 9 and 11. The application referred to breaches of the code in relation to code Paragraphs 2.1, 2.4, 2.5, 3.1, 3.3, 3.4, 4.9, 6.1, 6.3, 6.4, 6.6, 6.7, 6.8 and 6.9 of the code. It was also referenced an alleged breach of Section 7.2 in respect of complaints resolution. The application also specified that the Property Factor had breached the property Factor duties.

#### **3.Documents lodged with the Tribunal**

- a) Application C2 ( September 2023)
- b) Written Statement of Services
- c) Notification Letters and complaint letter
- d) Document What is Your Complaint
- e) Emails between parties re complaints between November and December 2022
- f) Written Representations from the Applicant dated 16<sup>th</sup> November 2023
- g) E mails between the parties January to April 2022
- h) Further written representations from Applicant dated 16<sup>th</sup> February 2024
- i) Roof Quotation dated 22<sup>nd</sup> July 2021
- j) Roof Survey 19<sup>th</sup> July 2021
- k) Further written representations from Applicant dated 13<sup>th</sup> March 2024
- l) E mail from Applicant dated 15<sup>th</sup> April 2024
- m) E mail from Applicant dated 17<sup>th</sup> July 2024 with emails dated between July and November 2022
- n) E mail from Applicant with summary of responses and Notification Letter
- o) Further representations from homeowner dated 14<sup>th</sup> November 2024
- p) Survey photographs
- q) Further representations from Applicant dated 24<sup>th</sup> December 2024
- r) Written representations from Property Factor dated 29<sup>th</sup> November 2023
- s) Written representations from Property Factor dated 12<sup>th</sup> March 2024.
- t) Written representations from Property Factor dated 14<sup>th</sup> March 2024
- u) Written representations from Property Factor dated 26<sup>th</sup> November 2024
- v) Written representations from Property Factor dated 6<sup>th</sup> January 2025
- w) Letter to Owner from Factor dated 10<sup>th</sup> August 2021.
- x) Two Client Factoring Invoices dated 9/3/23 and 5/7/23
- y) Glenbuild Invoice dated 1<sup>st</sup> November 2021
- z) Glenbuild invoice part paid dated 9<sup>th</sup> December 2021.
- aa) Foreman signed checklist dated 10<sup>th</sup> December 2021
- bb) E mail requesting part payment
- cc) Letter to Owner from Factor dated 12<sup>th</sup> October 2021.
- dd) Letter to Owners from Factor dated 29<sup>th</sup> October 2021
- ee) Welcome Letter to owner from Factor
- ff) Letter to owners re roofworks dated 10<sup>th</sup> August 2021

4. The Applicant Mr Jarvie had made a formal complaint to the Property Factor and in this he had explained that repairs to the roof of the property had been agreed by homeowners to be carried out but not managed properly by the Property Factor and this he said, had led to the work not being carried out by the building contractor as per the agreement. Further the property factor had paid the building contractor despite homeowners raising concerns with them regarding the work. Mr Jarvie alleged further that the contractor had been paid by the Property Factor without the knowledge or consent of the homeowners. He said there was no record of completion of the work or photographs to confirm that the work had been done. Further the building contractors had been paid without a written guarantee for the work being issued. Mr Jarvie indicated there were still issues with the roofing works and that the Property Factor did not manage the issues and simply passed them to the building contractor who made little or no attempt to respond. Mr Jarvie in his complaint called on the Property Factor

to disclose any payments or commission or other benefits which the property Factor might have received from the building contractor.

5. In his complaint Mr Jarvie also mentioned that calls to the Factor were not answered or the correct person was not available and promises to call back were not kept. He indicated further that emails went unanswered or when they were answered inadequate or misleading explanations were given. He considered that queries or concerns raised by owners regarding the roof works were ignored or not resolved. He believed that Property Factor staff were inexperienced and did not have the skills to deal with a property of this nature.

6. In response to this complaint the property factor had refunded management fees to homeowners and had indicated in correspondence with Mr Jarvie that they would instruct solicitors to raise an action at their cost to ensure that the building contractor provided the correct guarantee for the work.

7. At the case management discussion in March 2024 Mr Jarvie attended and represented himself and Mr Paul McKee attended on behalf of the Property Factor. There was a discussion on the application and the various alleged breaches of OSP, 2021 code and duties. Given that many alleged breaches were not accepted the Tribunal determined to fix a hearing on matters and this was fixed for 2<sup>nd</sup> August 2024. In advance of the hearing the Tribunal issued a Direction regarding the notification which had been sent to the Property Factor and other matters. The Respondent had mistaken the date of the hearing and did not attend and after discussion the Tribunal determined to postpone the hearing. During the Hearing on 2<sup>nd</sup> August 2024 there was discussion as to notification and it appeared that the Applicant had notified the Property Factor using a template letter for the 2012 code and this had been done in error as the Tribunal had provided him with the incorrect form. Mr Jarvie indicated that since he regarded this as a technicality only, he would send the correct notification form to the Property Factor after the hearing. It also came to light at this Hearing that the Tribunal had been working from an application form which had been superseded and replaced by the Applicant in September 2023 and this form contained additional alleged breaches of the code at paragraphs 2.6, 2.7, 4.6, 6.6, 6.10 and 6.12.

8. The Hearing was adjourned to 29<sup>th</sup> November 2024 and on that date, it was noted that the Applicant attended the hearing by video conference, but the Respondent had indicated that they would not be attending and wished to rely on their written representations. It was further noted that the Respondent had not responded to the issue regarding notification using the correct template and had not objected to this being done using the correct form. The Tribunal was prepared to proceed on all the matters raised in the application having been satisfied that the Property Factor had been aware of the complaints in detail in the notification and had not raised any issues about the wrong template being used initially and the correct overarching standards of practice had been referred to in the initial notification as well as the correct alleged code paragraph breaches, simply the wrong form had been used and this had been corrected by the Applicant. The notification regarding the Property Factor Duties had been made correctly.

9. After the Hearing the Tribunal issued a Direction to allow the Property Factor to put their position regarding the additional code breaches not previously discussed at the case management discussion, further information on a work sign off and for the Applicant to give details as to compensation he was seeking and for both parties to respond as required to each other's representations. The Tribunal also required parties to advise if the matter could then be dealt with without the need for a further hearing and noted that if no response was received on this point, it would be assumed that no further hearing was required. Both parties responded giving further information.

## **Alleged Breaches of Overarching Standards of Practice and the 2021 Code : Parties Positions**

### **10. Overarching Standard of Practice 1**

**“You must conduct your business in a way that complies with all relevant legislation**

The Applicant's position was that the Factor had not acted in terms of their professional statutory obligations although he did not point to the terms of particular legislation which he said had not been complied with. He referred to the Construction (Design and Management) Regulations 2015 which he said they had not complied with but did not elaborate on how they had failed in this regard.

The Property Factor's position was that they had not failed in this matter.

### **11. Overarching Standard of Practice 2**

**“You must be honest, open, transparent and fair in your dealings with homeowners”.**

The Applicant's position was that the Property Factor had not acted impartially (fairly) in this situation ignoring the concerns of the homeowners. He indicated further that the factor had not been honest or open in their actions when questioned on the payment to the roofing contractor. He said that the Factor was asked direct questions on whether the roofing company had been paid and if so, why they had been paid. He said that a response to these queries was never provided by the Factor. He referred to example correspondence provided by him from April and May 2022 seeking confirmation as to whether Glenbuild had been paid.

The Respondent accepted some issues with communication but said they had issued a large number of communications but accepted some emails were missed.

### **12. Overarching Standard of Practice 3**

**“ You must provide information in a clear and accessible way”.**

The Applicant indicated that his position on this was the same as that set out for OSP 2 with the same examples of emails referred to.

Again, the Respondent accepted some issues with communication but said they had issued a large number of communications but accepted some emails were missed.

### **13.Overarching Standard of Practice 4**

**“ You must not provide information which is deliberately or negligently misleading or false”.**

The Applicant indicated that the Factor had provided information that was negligently misleading or false when they reported on a meeting with the roofing contractor with statements made that were incorrect and not as per the signed agreement. In relation to this the Applicant referred to an email dated 6<sup>th</sup> April 2022 headed “Glenbuild Meeting”.

The Property Factor denied this allegation.

### **14.Overarching Standard of Practice 5.**

**“You must apply your policies consistently and reasonably”**

The Applicant Mr Jarvie referred to the policies outlined by the Property Factor in their Written Statement of Services and said when reviewed that these indicated inconsistency and unreasonable actions. He referred to section 2 of a table of comments and references to earlier representations which he had lodged. He referred to inconsistencies in attending meetings, response times for repairs and maintenance, accounting and billing and referred to emails lodged where he said concerns had been raised about works not being carried out. He also suggested that management fees had been taken without the service being provided as per the written statement of services. He referred to a lack of competitive quotes being obtained and as far as the roof work was concerned, he said that homeowners could not check the scope of work done against invoices as these had not been seen but he understood that some of the work had not been done. He complained that when the work had been completed by Glenbuild that they had paid them without sight of a completion document or completion photos. He said that the current Factor had contacted homeowners regarding remedial work required for the roof including a skylight fitted with poor quality materials which would not last.

The Factor disputed that they had retained management fees and provided a copy of the owner's account showing a full refund of management fees for their time in management of the development. They also refer to a copy of the welcome letter provided to the Applicant at point of handover to demonstrate information being given at the appropriate time. The Factor's position was that the homeowner was aware along with his spouse of the basis on which the Factor had accepted instructions to act following an early meeting of the appointment group and it was known that the owners were distinctly unhappy with their previous management firm, actioning their removal. They also had commissioned roof repairs amongst the owners themselves, prior to the appointment of the factor, further demonstrating existing distrust within their community. The particular firm ( All Areas Contracts Ltd) was understood by the factor to have a direct connection with one of the owners. The work was not completed despite owners paying a contractor significant sums of money directly. It was only because of this failure that the factor indicated that they were asked to manage the

repair process with a recommended contractor. The Factor's position was that they were appointed on the basis the owners were overseeing full roof repairs to which the factor would not require to engage. Had they known they were required to do that they said they would not have considered quoting for management.

The Factor's position was that the contractor (Glenbuild Roofing] was also appointed on the basis of active water ingress. The factor pointed out that they invested considerable time attempting to chase the previous contractor (All Areas Contracts Ltd) appointed by the owners before engaging a new contractor to take up the works. Despite this they agreed to help owners by overseeing the roof repair but due to their previously poor experiences the owners had asked the factor to recommend a contractor who met with owners and whom owners specifically mandated to carry out the works. They were not requested to obtain any further quotes due to the background and the owners' desire for the works to commence with haste. The property factor therefore refuted the suggestion that the homeowner had asked for further quotes or did not support Glenbuild Roofing from carrying out the works on commencement. As far as attendance at meetings was concerned the factor's position was that they visited the development on eight occasions during the works alone. This included several on site meetings between owners and contractor, spot checks of the contractors and inspections. The factor's position was that they more than adequately covered their visit requirements under the written statements of service which they believe provided an extremely high threshold of service compared to the industry standard. Again, they pointed out that no fee was incurred by owners for their services. They also confirmed there was no connection between the directors and the contractors other than that of a commercial nature with Glenbuild roofing having carried out other roofing works under the instruction of the factor at other developments which they managed at the time. The factor in the representations refuted what they described as unsubstantiated comments made from contractors about the condition of the roof. To avoid this, the factor had offered to fund a full roof survey to compare the exact specification of the works against the completed project. Their position was that the Applicant homeowner had stated that he did not wish to engage with other owners as this was his complaint about the service which he felt the factor had provided. The factor's position was that owners did not wish to spend money on a surveyor to manage the project primarily highlighting the money to which they had individually lost when instructing their own contractor and the guarantee being in place. The Factor raised the issue of the fact that the homeowner now wished extensive additional roof works to be carried out funded by the factor. He pointed out that the nature of the complaint appeared to have changed significantly despite the fact that the guarantee was now in place for the works completed.

## **15.Overarching Standard of Practice 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 Applicant's position on this was that the property Factor staff lacked reasonable care and skill, and he said he would contend that certain of their staff were not qualified to manage such a situation, that their employees also lacked information, and this directly led to creating and then compounding the situation. He referred to emails that he had lodged with the tribunal and said that staff did not keep appropriate records that were not able to manage or challenge the roofing contractor on behalf of

the homeowner.

This alleged breach was denied by the Property Factor, but they accepted that the number of staff engaged with the property did not make for efficient management, they said this was due to staffing issues.

#### **16. Overarching Standard of Practice 9**

**“You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code’s requirements”.**

The Applicant’s position is as set out at OSP 6 above. The Respondent indicated that the Property Factor used software that allowed users to share notes regarding dealings with property management.

#### **17. Overarching Standard of Practice 11**

**“ You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.**

The Applicant’s position was that the Factor consistently ignored both phone calls and emails, not complying with response times in their written statement of services. The Applicant referred to his submission on the written statement of services and set out in addition that no response was received to printed communication at all, emails elicited no response or a response outwith timescales and no regular updates were given on ongoing matters, nor all efforts made to ensure that homeowners were fully informed. In this regard he referred to an email dated 2<sup>nd</sup> November 2022 seeking the roof works guarantee and referring to previous messages sent.

The Respondent denied a breach of OSP 11 but accepted that some emails had been missed by them.

#### **18. Paragraph 2.1 of 2021 Code**

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

The Applicant’s position was that throughout the period that the Factors were managing the property, the communication was non-compliant, consistently missing the stated response times and not adhering to the code. Homeowners were not given access to information when requested eg. photographic documentation of the completed roofing works was requested but was never received in addition the Applicant said that homeowners were not given access to information to ascertain whether a Property Factor had met its obligations. He said that an example of this was confirmation of whether the roofing company being paid in full and this query he said was consistently ignored.

The Respondent’s position that they disagreed in relation to alleged breaches of Section 2 of the code of conduct. At the case management discussion in March 2024 which Mr McKee attended he disagreed regarding communication during the works

and the suggestion that queries had not been responded to. He said that during the works owners had been on site and had made decisions. He disputed that the Property Factor was in breach of sections 2.1, 2.4 and 2.5 of the code of conduct but accepted that the roofing contractor had been paid without consultation in terms of Section 2.1 of the code.

#### **19. Section 2.4 of 2021 Code**

**“Where information or documents must be made available to homeowner by the property factor under the code on request, the property factor must consider the requests and make the information available unless there is good reason not to”.**

The Applicant's position here is that homeowners were not given access to information to ascertain whether the property factor had met its obligations. An example was confirmation of whether the roofing company had been paid in full when this was requested. The query was consistently ignored. In this regard the Applicant referred to examples of emails that he had provided where this information was requested.

The Property Factor accepted a partial breach of paragraph 2.4 of the code and said There had been a breach but not in the entirety of this section of the code. He said that after the work there had been communication regarding payment. He did not accept what had been said in relation to sign off of the roof work and said that the property factor had the same problems with contractors as the homeowners had.

#### **20. Section 2.5 of 2021 Code**

**“A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out of hours emergencies including how a homeowner can contact out of hours contractors”.**

The Applicant's position as regards this paragraph was that emergency contact details were not provided until the 1st of July 2022 upon his specific request. In support of this the Applicant submitted an e-mail dated 1st July 2022 from an administrator at the Property Factor attaching contact information for the Property Factor.

The Respondent's position as regards paragraph 2.5 was that they denied a breach of the code and said that Homeowners received a standard information pack, and all of the information was there. This pack was not produced in evidence, only a welcome letter with no emergency contact details.

#### **21. Paragraph 2.6 of the 2021 Code**

**“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 is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.**

The Applicant did not set out any specific complaint in relation to this paragraph.

The Respondent's position in relation to this paragraph was that owners were formally presented with three options and asked to advance fund the works. They lodged an e-mail confirming this and submitted that this demonstrated the process undertaken and the owners were suitably consulted, voted and agreed on the course of action they wished to take. Active ingress from the failed previous works were a key reason for the need to appoint quickly, with owners presented with the option to either carry out temporary repairs or instruct larger repairs with haste. Each homeowner was furnished with a copy of the written statement of services with an information pack. This detailed authority to act and delegated authority information. The Respondent's position was that they did not believe that the homeowner had queried receipt of this.

#### **22.Paragraph 2.7 of the 2021 Code**

**"A property factor should respond to enquiries and complaints received orally and in writing within the timescales confirmed in their WSS. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale. The application referred to examples of emails which he said set out the position in relation to this paragraph.**

The Respondent's position is that at this time they accepted they had failed to respond to all of the homeowner's communication within the listed timeframe. They did note the owner did receive a significant number of responses from their team both verbal and written but certain emails were missed.

#### **23.Paragraph 3.1 of the 2021 Code**

**"While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements or bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.**

The Applicant's position was that the property factor did not protect homeowners' funds. In an e-mail at the end of February 2022 he said they were specifically requested by the homeowners not to release funds to the roofing contractor until the final figure had been reviewed and agreed and the guarantee put in place. The Applicant suggested that they did not provide clarity or transparency when questioned on whether the roofing contractor had been paid in full (despite the previous request of homeowners]. The Applicant referred to emails of 15th March 2022 and 16th May

2022 and said that this query was consistently ignored.

The Applicant's position on this was that there was an agreed scope of services and that this had not been followed through.

The Respondent's position at the case management discussion in March 2024 was that Mr McKee accepted in terms of this paragraph that the agreed scope of services had not been followed through by the property factor.

#### **24.Paragraph 3.2 of the 2021 Code**

This was the subject of an amendment to the application without objection as this had been notified to the Property Factor but wrongly included in the form as paragraph 2.2

**The overriding objectives of this section are to ensure Property factors protect homeowners' funds provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor make a clear distinction between homeowners' funds for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.**  
**The Applicant's position on this paragraph was the same as that which related to paragraph 3.1 of the code, and he pointed to e-mail examples which he said supported his position.**

The Respondent's position was that no breach of the code was accepted in relation to this paragraph.

#### **25.Paragraph 3.4 of the 2021 Code**

**"A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), 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.**

The Applicant's position on this paragraph was that no detailed invoices were received. He said that this related to the roof situation and the process of accounting for homeowners. He said this was sporadic and it was not clear in the billing what was paid for. He said invoices were rolled into one and he felt there was a lack of management in this area

The Respondent's position was that there was no breach of this paragraph of the code.

#### **26.Paragraph 4.6 of 2021 Code**

**"A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe".**

The Applicant's position was that homeowners were never made aware of payment requests from the roofing subcontractor. He said homeowners were never made

aware of payments being made to the roofing contractor until after the payments had been made. He said homeowners were never given the opportunity to question whether these payments were proportionate to the work carried out and in accordance with the agreed scope of works. He gave examples of correspondence in which he indicated his position was supported.

The Respondent denied a breach of this paragraph of the code.

#### **27.Paragraph 4.9 of the 2021 Code**

**“A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.**

The Applicant's position was that the issues in relation to this part of the same as those raised in paragraphs 4.6 above. He said that the roof repair having been carried out and the fact that these repairs have been paid for without the knowledge or consent of the homeowners or with the appropriate guarantee for the work being obtained, meant that the cost of remedial works required were not known to him as a homeowner and he had not been kept up to date with possible costs.

The Respondent's position was that there was no breach of this paragraph of the code.

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#### **28.Paragraph 6.1 of the 2021 Code**

**“This section of the code covers the use of both in-house staff and external contractors by property factors. Whilst 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 Applicant's position in relation to this paragraph was that he did not believe the repairs instructed by the property factor were done to a good standard, particularly the roof light. This roof light was originally set out in the quote for a provisional sum, there was never any design given for the roof light, it has been laid too flat, and materials are not fit for purpose. As part of the agreed scope of works the roofing contractor noted that samples would be provided. No samples were ever provided. Both the factor and the roofing contractor were consistently queried on this but neither readily acknowledged the concerns. The Applicant pointed to e-mail correspondence which he said supported his position as well as the roof quotation and the survey photographs.

The Respondent denied that there was a breach of this paragraph of the code.

#### **29.Paragraph 6.3 of the 2021 Code**

**“A Property Factor must have in place procedures to allow homeowners to notify them all matters requiring repair, maintenance or attention”.**

The Applicant's position on this paragraph was the same as he had outlined on paragraph 6.1 above.

The Respondent denied a breach of the code in relation to this paragraph.

### **30.Paragraph 6.4 of the 2021 Code**

**“When 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 Applicant's position was that except for the short time that Andrew Fisher was the property manager the homeowners were not informed of the progress of the works. He said that the factor was never proactive in contacting the homeowners, only acting when prompted to do so. As part of the agreed scope of works the roofing contractor noted a programme of works will be provided and this was not provided.

The Respondent denied a breach of this paragraph of the code.

### **31.Paragraph 6.6 of the 2021 Code**

**“A property factor must have arrangements in place to ensure that a range of options on repair are considered and where appropriate, recommending input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors including cases where they have decided not to carry out a competitive tendering exercise or use in house staff. This information must be made available when requested by a homeowner”.**

The Applicant's position on this paragraph was that no professional advice was ever sought by the property factor who relied on the survey provided by the roofing subcontractor and then subsequently liaised direct with the roofing subcontractor. No range of options were ever considered. This applies to both pre contract and then also during the contract when the works were not carried out as per the agreed scope of works.

The Respondent's position on this paragraph is that the factor was specifically asked on this occasion to recommend a contractor that they had had a positive experience with. This related to the failings with the previous contractor appointed by the owners directly. The decision to appoint Glenbuild roofing was exclusively the owners' decision. They acted as a quorate group to provide instruction for them to commence works. The contractor was recommended based on their experience in similar large projects, availability and as a reputable firm carrying out regular works for Historic Scotland. Owners were also keen for works to progress swiftly because of previous issues. The factor also confirmed that they had agreed to assist owners in the project

despite not being appointed to do so originally or collecting any fee for the works. Owners were recommended to employ a building surveyor to undertake the works at the first owners meeting to discuss the works. They stated they were satisfied with a guarantee to protect the project. As a company the factor would as standard obtain 3 quotes for all major works and where their preference was accepted, appoint a building surveyor to manage the project and provide sign off. This is the only major roofing job completed by their company which did not engage with an independent surveyor. They did not believe they could force owners, and the final decision lies with them. They confirmed that they had received no requests from owners prior to the work commencing suggesting otherwise to what they had set out as their position to the Tribunal.

### **32.Paragraph 6.7 of the 2021 Code**

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

The Applicant's position was that no periodic visits were proactively undertaken nor was there ever a planned programme of cyclical maintenance. He said that in terms of the written statement of services in the section on inspections, visitations and meetings a number of activities were promised by the factor to be undertaken. He said that he would contend that suitably qualified or trained staff or people with appropriate professional expertise were not involved in the management of the property.

The Respondent's position is that they were not in breach of this paragraph of the code.

### **33.Paragraph 6.8 of the 2021 Code.**

**“A property factor must take reasonable steps to appoint contractors who have public liability insurance”**

The Applicant's position on this was that as part of the agreed scope of works the roofing contractor noted public liability or employers' liability insurance documentation would be provided but this was never provided. The Applicant pointed to a roof quotation which he had lodged in support of his position on this paragraph. He said the lack of appropriate documentation had contributed to the inability to enforce the guarantee.

The Respondent's position was that there was no breach of the code in relation to this paragraph.

### **34.Paragraph 6.9 of the 2021 Code.**

**“If applicable documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by homeowner”.**

The Applicants' position on this paragraph of the code was that this was a direct appointment based on the recommendation of the Factor, and there was no

competitive tender.

The Respondent's position was that there was no breach of the code in relation to this paragraph.

### **35.Paragraph 6.10 of the 2021 Code**

**"A property factor must disclose to homeowners, in writing any Commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the Factor or a person in control of the business, in connection with the contract".**

The Applicant's position on this point therefore was that the factor was asked about this on 17th August 2023 in his property factor code of conduct letter to them, but he had not received any response since that date.

The Respondent's position on this paragraph was that there was no commission or payment collected from the contractor or the owners with reference to the job, or indeed in their role as factor of this development at any time. They said there was nothing to disclose.

### **36.Paragraph 6.12 of the 2021 Code**

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

The Applicant's position on this paragraph was that after the works the factor provided information that was negligently misleading when they reported on a meeting with the roofing contractor with statements made that were incorrect and not as per the signed agreement. The Factor did not acknowledge or make any attempt to resolve this. The Applicant said further that after the works the homeowners were not given access to information when requested, for example photographic documentation of the completed roofing works was requested and had not been provided. The Applicant again referred to the fact that the property factor paid the roofing contractor in full without the written guarantee being issued. That guarantee is part of the signed agreement, and an appropriate guarantee was not in place. Post works the homeowners continually requested this. The factors were not proactive in obtaining this, taking nearly a year and issued incorrect guarantees a number of times in the period further highlighting incompetence. The Applicant's position was that there continued to be issues owners have with the roofing works and the factor. When the factor was the property manager at the property, they did not manage these issues. Rather they passed the issue straight to the roofing contractor who made little or no attempt to respond.

The Respondent's position on this paragraph was that they could demonstrate ongoing attempts to contact the contractor in writing following the works. They said they even employed their own solicitor to engage with the contractor to recover the relevant warranty for the owners. This was again they said at their own cost. Given the

difficulties retrospectively in contacting the contractor it should also demonstrate they said that there was no personal relationship between the parties. When this was received each owner was fully furnished with a copy of the guarantee for the works from the contractor.

### **37.Paragraph 7.2 of the 2021 Code**

**“When a property factors in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing”.**

The Applicant said he had nothing to add in respect of this section as the property factor was no longer the manager of the property this having been confirmed in writing to them in March 2023.

The Respondent's position was that there was no breach of this paragraph of the code.

### **38.Property Factor Duties**

In his notification letter to the property factor the Applicant set out that the property factor had failed in relation to their written statement of services that is in relation to what they set out they would offer by way of inspections visitations and meetings, response times, maintenance response times, maintaining the property accounting and billing, fees, and professional insurance. He said that there were no bi monthly visitations, no site reports, no attendance at contractor meetings, no response to emails and calls either at all outwith with the allocated time scales, no regular updates, appointed contractors did not respond or attend when an issue was raised. No competitive quotes were received, complaints regarding works were ignored or not investigated impartially. It was said that no out of hours emergency contact was provided. In terms of contractor invoices these were not checked against agreed works. No additional invoices were provided for extensive advanced works. On the question of management fees, the Applicant suggested these were taken without the service being provided as per the written statement of services. As far as professional insurance is concerned, he called on the property factor to provide evidence of insurance.

The Respondent denied a breach of the Property factor duties.

### **39.Further Representations of Parties**

The Factor's position was that they had raised with owners the issue of employing a third party surveyor to oversee works in the event the contractor did not re attend but this was rejected due to additional cost. A quote was presented for project management and sign off of the work. The Applicant disputes this and said that this was not raised, and no competitive quote was received. He said that Glenbuild carried out a survey as suggested by owners and that this formed part of a quotation sent to owners by the factor.

40.The Factor's position was that they were asked to take over management of the properties and to manage the roof issue. No additional fee was obtained for doing this work and they increased their site visitations during the works with a former director being on site during the works. The Applicant's position was that the former director had attended onsite on a couple of occasions when requested due to homeowner concerns. The Applicant said that no concerns raised by homeowners were properly

recorded by the Factor and not followed up when requested. The Applicant pointed out the fact that the written statement of services said that visits would be made 6 times per year which it was considered would be part of the management fee.

41. The Factor's position was that despite ongoing attempts and the engagement of a solicitor they were unable to obtain the guarantee for the work on completion and this took several months to obtain and was passed to the owners on receipt. The contractor ceased communication on completion of the works, primarily outlining difficulty with owners and additional elements being demanded departing from the original specification. The Applicant's position was that works were not carried out as per the original quote and the factor was made aware of this on a number of occasions during the works and after completion. He said that concerns and questions were ignored and then the Factor paid the roofing contractor in full resulting in an extremely unsatisfactory and distressing situation for the homeowners. He said they had since tried to contact the roofer due to defects, in the hope of implementing the roof guarantee but have been unable to do that. He suggested that defects now have to be paid at additional cost to homeowners. The Applicant gave examples of work not carried out which he said included leadwork around chimneys, plastic gutters instead of Alumasc, no curved gutter, design of rooflight never confirmed, relaying of felt around rooflight, infilling of stonework with lime mortar, no insurance documentation, programme or samples were provided as per the quotation and no site welfare facilities were provided. He referred to emails lodged, and quotation and cost apportionment also lodged, and survey photographs lodged.

42. The Factor had submitted that they used RPM software, an industry standard package which is fully interchangeable meaning notes, and communication were logged and available for any user to access. The Applicant indicated that he disputed this saying that the Property Manager and Factor personnel changed regularly, and he said it was clear there was no handover and that the factor did not have control of the situation. He referred to an e mail lodged by him.

43. The Factor indicated that they had been open with owners that they should not have paid the contractor before the guarantee was received and that this was an internal error, and they said they offered full apologies to owners. They said this was a primary reason for removing all management charges for their entire period as factor. The Applicant indicated that he believed this trivialised the error made despite homeowner concerns and was professionally negligent and contravened their WSS and the code. He said that this had meant that homeowners now had no leverage with the contractor to remedy defects.

44. The Factor disputed that there was further ongoing expense for owners which could apply outside the supplied guarantee for the roof works. They said they had been furnished with completed images of the works completed for owners to view. They repeated that they had recommended the employment of a building surveyor to project manage the works as they had done on several other major roofing projects. The Applicant advised that no images were made available despite requests and asked that the completed images be made available.

45. The Factor had noted that the owners had reached an agreement with Glenbuild to carry out a reduced specification of works to the skylight. They said that owners



were understandably keen to reduce elements of costs for the project. The Applicant's position is that this was incorrect, and the skylight cost was a provisional sum and homeowners had queried this, asking for drawing and specifications early in the process. When the material arrived on site the homeowners queried the suitability of the materials, lack of information and the fact that the provisional sum was never agreed. He referred to the roof quotation in this regard and suggested that when the Factor first made the claims referred to in this paragraph, the homeowners responded refuting this and were ignored by the factor.

46. The factor's position was that the contractor also recorded with them during the works, damage caused to the skylight by owners trying to access the roof when the contractor was not present, but they said they could not confirm or deny this. The Applicant indicated he could not confirm or deny this and asked for evidence to be provided.

47. The Factor indicated that they had little direct engagement with the roofing project or active management of the development but had received information from the contractor and indicated that they had obtained a cost of the project to be independently managed via a named person, but the paperwork could not be located and they concluded it was not circulated to owners in written format. The Applicant denies this was done and indicated that this confirmed their comments regarding their record keeping.

48. The Factor's position was that they have an excellent group of property managers all of whom have been with the company for over a year and that retention of managers was an industry problem. The Applicant indicates that during the time the factor was in place they had 6 property managers.

49. The Factor indicated that in dialogue with the contractor, they denied that the areas of work in question were part of works his company had carried out. The Applicant's position is that the contractor was employed to rectify and complete roof works and that the guarantee covers the whole roof without exclusions.

50. The factor's position was that with the exception of gutters ( to which a downgrade was agreed with owners due to costs ) the works were carried out as quoted. The Applicant denies this and says that these statements are untrue, and correspondence should be shown about this and no update to the scope of works was ever issued.

51. The Factor indicated that they were prepared to instruct ( with owner agreement ) a chartered surveyor at their own cost to review the roof against the specification to confirm or dismiss the position of the contractor. The Applicant indicated that having tried to engage with them for years they did not wish to engage with them now and they wished compensation.

52. The factor's position was that they had already acknowledged failings on this matter and lodged a communication from a property manager at the time to homeowners issued during the works. The letter it was said, referenced an onsite meeting with owners at which consideration to downgrade the gutters took place and further supported the merit of a further visit and they disputed claims that owners did not engage. The Applicant disputed this and said the meeting was a progress meeting and the meeting note does not make reference to any downgrading. He reiterated that

they had an agreed scope of services.

53.The Factor said that they had never employed 6 individuals within their property management team. They did accept that the number of individual employees engaged to deal with the development was not appropriate and for efficient management of the development and that there was a staffing issue. In response the Applicant named 3 property managers and one Director and two staff actively involved

54.The Factor disputed that the full project covered every element associated with the roof and he referred to an email exchange with homeowners who accepted that they were requesting to add additional items to the specification. The factor indicated that they believed it would be unreasonable to ascertain the condition of the roof regarding the Glenbuild work without an independent survey report which they had offered to finance. The Factor commented further on the guarantee which it said is provided by the Confederation of Roofing Contractors (CRC) to cover roof tiles, gutters, flat roofs and roof lights. The Applicant did not comment on the email referred to by the Factor but said that they misunderstood the guarantee and that the Glenbuild guarantee refers to the roof with no exclusions. The Applicant said that the CRC guarantee is only valid if the roofing contractor liquidates.

55.The Applicant lodged final submissions on costs he was seeking by email of 20<sup>th</sup> December 2024 which was unvouched and to be kept confidential. No reason was given for this set of costs to be kept confidential and accordingly having regard to the overriding objective to be fair to both parties the Tribunal has not considered this document as it could not be shared with the other party.

## **Findings In Fact**

56. The Applicant is the homeowner at the property.

57. The Respondent was the property factor for the properties at 1 Central Avenue Broomhill, Glasgow with effect from 23<sup>rd</sup> March 2021 and charged its last management fee to owners for the period up to 31<sup>st</sup> May 2023 when it ceased to be the factor.

58.The Property Factor became involved in the management of the properties at 1 Central Avenue after the homeowners at the address were unhappy with a previous property management firm.

59.Prior to the appointment of the Respondent as Property Factor for the properties at 1 Central Avenue the homeowners had instructed roof repairs which were not completed and all owners had to bear this cost including the Applicant.

60.The Respondent agreed to manage the properties and to manage the roof repair using a recommended contractor.

61.The Applicant understood that the Respondent was managing the roof repair as part of the Factoring services, they were engaged to undertake.

62. The Property Factor understood when they were appointed that property owners at 1 Central Avenue were overseeing the roof repairs directly.

63. The Property Factor later agreed to assist the Homeowners including the Applicant by overseeing the roof repair.

64. The Respondent recommended Glenbuild for the roof repair having been asked by the Homeowners to recommend a contractor to carry out the work on the roof.

65. The Respondent was not asked to obtain other quotes for the work due to the background and the homeowners' requirement for the work to be carried out quickly given the background and active water ingress.

66. The Respondent spent some time trying to chase up the roofing company appointed before they became the factors at the property without success and reported to owners by letter dated 10<sup>th</sup> August 2021.

67. Glenbuild quoted for work at the roof at the property by letter of 21<sup>st</sup> July 2021 and a survey had been included with the quotation.

68. The survey dated 19<sup>th</sup> July 2021 recommended work to ridge tiles and to fix a new ventilated roof system, general tiling works on the main roof, strip out of tiles and laying of underlay and fix new lead, and lead protection, install new lead gutters, retile and fix, secure chimney cans and fix breathable vents to unused vents, turrets to be stripped and timber treatment applied and all gutters to be removed and potentially re used and new rooflight to be removed and replaced.

69. The Glenbuild quotation contained provisional work for rooflights which had to be investigated first to see what work was required.

70. Glenbuild were engaged to carry out the work at the communal roof area at the property.

71. By email of 1<sup>st</sup> November 2021 Glenbuild requested that the Respondent deal with payment for scaffold over hire for the roofing work.

72. The Respondent paid the Glenbuild invoice without reference to homeowners and without their consent and outwith the scope of their services.

73. The Glenbuild invoice was paid by the Respondent in full before the guarantee for the work was obtained.

74. The Applicant did not receive the guarantee for this work for many months after the work was completed and had chased this up by email with the Respondent.

75. Given that the Glenbuild invoice was payable by homeowners including the Applicant who asked about it repeatedly by e mail, the Respondent failed to keep the Applicant informed about a matter which affected his obligations, i.e. the requirement to pay the invoice.

76.The Respondent instructed a solicitor at their own expense to obtain the guarantee for all homeowners at the property at 1 Central Avenue.

77.The Respondent refunded to the Applicant and other owners all management fees paid for their services at the property due to their error in paying the contractor.

78.The Respondent Factor did not receive any commission or payment from the company engaged to carry out the roofing work.

79.The Respondent Factor understood works had been completed by Glenbuild as they received a checklist which had been signed off by a foreman and signed by another individual as quality control and dated 10<sup>th</sup> December 2021.

80.The Applicant raised concerns regarding the roofing work with the Respondent and is of the view that the work done is not in accordance with the scope of works and signed agreement.

81.After the Glenbuild work was finished Applicant wrote to the Respondent on a number of occasions by email raising concerns about the roof work and did not receive a response or if he did this was out with the time scales specified in the WSS.

82.The Applicant emailed the Respondent a number of times regarding outstanding work required on the roof after the work carried out by Glenbuild and was emailing regarding this matter and the question of payment for the works between January and April 2022 without a proper response.

83.On 6<sup>th</sup> April 2022 the Respondent's then property manager emailed the Applicant and other owners regarding issues which they had with the work done by Glenbuild after a site meeting.

84.In this e mail the property manager referred to certain matters not being part of the original quote or said a cheaper option had been agreed or that further information would be required.

85.The Respondent accepts that due to staffing issues a number of different staff were involved with the property's management which they accept is not efficient.

86.The Applicant emailed the Respondent repeatedly regarding whether payment had been made to Glenbuild and set out that payment should not be made until homeowners had a chance to review the work.

87.The Applicant raised queries regarding the guarantee in a number of emails to the Respondent including one in November 2022 and received no response.

88.The repeated requirement to contact the Property Factor over various issues has affected the Applicant's wellbeing and caused stress and inconvenience to him.

## **Reasons for Decision**

### **89.Overarching Standard of Practice 1**

**“You must conduct your business in a way that complies with all relevant legislation**

We do not find a breach made out here as we were not referred in any detail to specific legislation and given any detail as to why OSP 1 had been breached in this way.

### **90. Overarching Standard of Practice 2**

**“You must be honest, open, transparent and fair in your dealings with homeowners”.**

On the evidence provided to the Tribunal we consider that the Property Factor failed to answer queries from the Applicant for some time on the matter of payment to Glenbuild, but we do not find a breach of OSP 2 in this regard as the Property Factor failed to answer rather than answering dishonestly or openly.

### **91. Overarching Standard of Practice 3**

**“ You must provide information in a clear and accessible way”.**

We find no breach of this OSP which is raised on the same issue as was raised for OSP 2 for the same reasons i.e. the Property Factor failed to respond rather than failing to provide information in a clear and accessible way.

### **92. Overarching Standard of Practice 4**

**“ You must not provide information which is deliberately or negligently misleading or false”.**

The Applicant relies on an email report of a meeting sent by the Property Manager in April 2022 to owners after a site meeting regarding the Glenbuild roofing work. In this email we note that the Property Manager quotes the response of Glenbuild on the issues raised. We are aware from his evidence that the Applicant is of the view that the work done by Glenbuild was not as per the signed agreement but on the evidence seen by the Tribunal, we cannot determine what the position is regarding the Glenbuild works and whether they were in line with their quotation and the signed contract or not. Given this on the evidence before the Tribunal we find no breach of OSP 4.

### **93.Overarching Standard of Practice 5.**

**“You must apply your policies consistently and reasonably”**

For this alleged breach the Applicant points to all of his complaints regarding meetings, maintenance, response times, billing for services not rendered, the roof works issue and the paying of the contractor without the consent of owners and without the guarantee, failure to allow owners to see invoices to check scope of works. In the view of the Tribunal the evidence narrated by the Applicant in support of OSP 5 relates to

alleged failings in service delivery and not to application of policies consistently and reasonably and we find no breach of this OSP.

#### **94. Overarching Standard of Practice 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 Applicant’s position is that staff lacked information, did not deal with matters using reasonable care and skill and he believed they may not have been qualified to manage the situation and did not keep proper records to allow them to challenge contractors. Whilst the Respondent accepted that the number of staff engaged with the property did not make for efficient management, they said this was due to staffing issues.

The Tribunal noted there was no evidence before the Tribunal as to what might be a service of reasonable skill and care in this instance and in terms of *Countrywide v Cowan* [2022]UT 23 it was made clear that for a reasonable level of care and skill to be assessed, a court or tribunal must first require to be able to consider what such a reasonable level is and that may require specific evidence which was not before the Tribunal. The Tribunal did not find sufficient evidence re a lack of record keeping or the provision of information by the Respondent’s staff to amount to a breach of OSP 6. We therefore do not find any breach of OSP 6 in this application.

#### **95. Overarching Standard of Practice 9**

**You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code’s requirements”.**

The Tribunal did not find that there was sufficient evidence before it to suggest this OSP had been breached, and no finding of a breach is made regarding OSP 9. The Applicant believed that proper records were not kept but the Tribunal did not find there was evidence to substantiate this view.

#### **96. Overarching Standard of Practice 11**

**“ You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.**

The Applicant relied on the fact that he made enquiries regarding the roofing work and production of the guarantee and raised concerns and received no answers. He produced e mails from November 2022 where he was chasing for answers to matters, he had raised which were not answered at all or the response took a significant time. He further stated that phone calls were ignored. The Respondent denied a breach of this OSP.

The Tribunal found that there was a breach of this OSP in relation to contact the Applicant made regarding the missing guarantee for the Glenbuild work having seen emails from the Applicant over a period of time which were not properly addressed or

on occasions not answered.

**97. Paragraph 2.1 of 2021 Code**

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

The Tribunal finds that the Property Factor failed to consult with owners before paying Glenbuild and as such failed to consult homeowners properly in breach of this paragraph. The consequence of this failure was that the work was done, and no guarantee was provided to homeowners in case of any issues with it. The Tribunal notes this failure was accepted by the Respondent and finds a breach of this paragraph of the code.

**98. Paragraph 2.4 of the 2021 code**

“Where information or documents must be made available to homeowner by the property factor under the code on request, the property factor must consider the requests and make the information available unless there is good reason not to”.

The Applicant complained that information was not given to allow him as a homeowner to know if he had met his obligations. He referred to his request to know if payment had been made to Glenbuild and the fact that he had to ask many times for this. The Respondent accepted a breach of this section as far as the payment issue was concerned and the Tribunal on the evidence before it found a breach of this paragraph to that extent.

**99. Paragraph 2.5 of 2021 Code**

“A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out of hours emergencies including how a homeowner can contact out of hours contractors”.

The Applicant lodged an email requesting emergency contact details from the Factor which he did not receive until July 2022. Whilst the welcome letter produced had contact details it had nothing for out of hours emergency contacts and the WSS referred to the fact that this service was offered and as such the Tribunal on the evidence before it found that the contact information for emergencies was not provided until July 2022 and the Respondent had failed to provide this before that date and is therefore in breach of this section to that extent.

**100. Paragraph 2.6 of the 2021 Code**

“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 is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

No specific complaint as raised by the Applicant under this paragraph. The Tribunal accepted on the evidence before it that the Respondent had not obtained other competitive quotes for the roof work given the homeowners' desire to move with haste given the water ingress and the background with the previous work done on the roof.

The Tribunal found no breach of this paragraph of the code.

#### **101. Paragraph 2.7 of the Code**

"A property factor should respond to enquiries and complaints received orally and in writing within the timescales confirmed in their WSS. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale. The application referred to examples of emails which he said set out the position in relation to this paragraph.

The Respondent accepts that they failed to respond to the Applicant within the listed timeframe although they are of the view that he did receive a lot of information from them.

The Tribunal finds a breach of this paragraph to the extent admitted by the Respondent.

#### **102. Paragraph 3.1 of the 2021 Code**

"While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements or bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

The Applicant complained regarding the payment to Glenbuild without reference to him as a homeowner and referred to a specific email in which the Respondent was asked not to pay for the work until the work had been reviewed.

The Respondent accepted that in making payment they had acted outwith the scope of services offered and the Tribunal found on the evidence before it that there was a breach of this paragraph of the code.

#### **103. Paragraph 3.2 of the 2021 Code**

The overriding objectives of this section are to ensure Property factors protect homeowners' funds

provide clarity and transparency for homeowners in all accounting procedures



undertaken by the property factor

make a clear distinction between homeowners' funds for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.

The Applicant's position on this paragraph was the same as that which related to paragraph 3.1 of the code, and he pointed to e-mail examples which he said supported his position.

The Respondent's position was that no breach of the code was accepted in relation to this paragraph.

The Tribunal found there was insufficient evidence before it upon which a breach of this paragraph could be found.

#### **104. Paragraph 3.4 of the 2021 Code**

"A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), 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.

The Applicant referred to the same situation with the roof and said that no detailed invoices were received.

The Tribunal found there was insufficient evidence before it upon which a breach of this paragraph could be found.

#### **105. Paragraph 4.6 of 2021 Code**

"A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe".

The Applicant referred to the fact that he and others was not aware of the request by Glenbuild for payment.

The Tribunal did not find sufficient evidence before it to support a finding of a breach of this paragraph as it relates to systems in place and reminders for payment.

#### **106.Paragraph 4.9 of the 2021 Code**

"A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.

The Tribunal did not find any breach of this paragraph given that the complaint made by the Applicant related to payment without authority of homeowners rather than any failing in relation to any debts or other aspects of this paragraph.

#### **107.Paragraph 6.1 of the 2021 Code**

"This section of the code covers the use of both in-house staff and external contractors by property factors. Whilst 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 Applicant believes that the repairs to the roof were not done to a good standard. His evidence suggests some aspects of the work were not done properly but the Respondent denies this and points to a completion sign off checklist lodged by them. The ~~Tribunal did~~ Tribunal did not consider there was ~~sufficient evidence~~ sufficient evidence before it ~~to make~~ to make any finding of a breach under this paragraph.

#### **108. Paragraph 6.3 of the 2021 Code**

“A Property Factor must have in place procedures to allow homeowners to notify them all matters requiring repair, maintenance or attention.

The Applicant's position on this paragraph was the same as he had outlined on paragraph 6.1 above.

The Tribunal did not consider that there was evidence before it to support a finding of a breach of this paragraph.

#### **109. Paragraph 6.4 of the 2021 Code**

When 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 Applicant's position was that the Respondent was not proactive and only acted when prompted and he complained that a programme of works was not provided for the roof work.

The Tribunal has seen evidence of contacts made by the Respondent and invoices and letters issued. Regarding the programme of works It was not clear if this was the fault of the contractor, or the Respondent and the Tribunal found no breach in terms of this paragraph.

#### **110. Paragraph 6.6 of the 2021 Code**

“A property factor must have arrangements in place to ensure that a range of options on repair are considered and where appropriate, recommending input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors including cases where they have decided not to carry out a competitive tendering exercise or use in house staff. This information must be made available with requested by a homeowner”.

The Applicant's position on this paragraph was that no professional advice was ever recommended by the property factor who relied on the survey provided by the roofing subcontractor and then subsequently liaised direct with the roofing subcontractor. No range of options were ever considered. This applies to both pre contract and then also during the contract when the works were not carried out as per the agreed scope of works.

The Tribunal found no breach of the code here given that it accepted the evidence of

the Respondent in relation to why no other quotes were obtained for the roof work and accepted that the Respondent believed the work was completed as they were sent a sign off for the work.

#### **111. Paragraph 6.7 of the 2021 Code**

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

The Applicant’s position was that no periodic visits were proactively undertaken nor was there ever a planned programme of cyclical maintenance. He said that in terms of the written statement of services in the section on inspections visitations and meetings a number of activities were promised by the factor to be undertaken. He said that he would contend that suitably qualified or trained staff or people with appropriate professional expertise were not involved in the management of the property.

The Tribunal considered there was insufficient evidence before it to support a breach of this paragraph.

#### **112. Paragraph 6.8 of the 2021 Code.**

“A property factor must take reasonable steps to appoint contractors who have public liability insurance”

The Applicant’s position on this was that as part of the agreed scope of works the roofing contractor noted public liability or employers’ liability insurance documentation would be provided but this was never provided. The Applicant pointed to a roof quotation which he had lodged in support of his position on this paragraph. He said this had contributed to the inability to enforce the guarantee.

The Tribunal found there was insufficient evidence to find a breach of this paragraph. It was simply not known if the contractor appointed had PI insurance.

#### **113. Paragraph 6.9 of the 2021 Code.**

“If applicable documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by homeowner

The Applicant’s position on this paragraph of the code was that this was a direct appointment based on the recommendation of the Factor, and there was no competitive tender.

The Tribunal accepted the evidence and representations of Mr McKee on this point and accepted that it had been agreed by homeowners to proceed on the recommendation of the Respondent without other quotes given that there was water ingress which needed attention and given the issues with the previous roof work.

#### **114. Paragraph 6.10 of the 2021 Code**

“A property factor must disclose to homeowners, in writing any Commission, administration fee, rebate or other payment or benefit that is paid to them or anyone

in control of the business or anyone connected with the Factor or a person in control of the business, in connection with the contract.

The Applicant had queried this, and the Respondent has confirmed there was no such payment and there was no evidence to contradict that before the Tribunal. The Tribunal found no breach of this code paragraph.

#### **115.Paragraph 6.12 of the 2021 Code**

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

The Applicant referred to the roof work done and the issues around whether it was done properly and whether reports regarding the work made after a meeting were misleading, the issues around the payment of the invoice and the failure to obtain the guarantee.

The Tribunal took the view that these matters were addressed in other paragraphs of the code and the guarantee had been provided to homeowners although it had taken some time for that to happen. The Tribunal accepted that the Property factor had made efforts to secure the guarantee after the error in making payment for the work without it.

#### **116. Paragraph 7.2 of the 2021 Code**

“When a property factors in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing”.

The Applicant did not set out anything specific in relation to this alleged breach and the Tribunal found no breach of this paragraph on the evidence before it.

#### **117.Property Factor Duties**

The Applicant set out a number of issues which he said breached the Property Factor duties. These had all been raised in relation to the 2021 Code of Conduct. In terms of s17(5) of the Property Factors (Scotland) Act 2011 these duties are defined as “duties in relation to the management of the common parts of land owned by the homeowner”. This is broadly framed but is distinctly separate from the code and the Tribunal came to the view based on the evidence presented that the matters raised by the Applicant in this application were matters which had been properly raised and considered in terms of the overarching standards of practice and the 2021 Code itself. The Tribunal therefore found no breach of duties in this application.

118. The tribunal accepts that the issues around the communal roof repair at the property have been deeply concerning for the Applicant, a source of stress, inconvenience and a source of great frustration for him. The tribunal formed the view that he was a credible witness in relation to the matters he raised but they were areas where the tribunal considered that there simply was no evidence or insufficient

evidence to support some of the assertions made. The tribunal could not determine based on the evidence before it if Glenbuild had completed the roof work as required and whether any work was outstanding. This meant that if further work is required at the property, it was not possible for the tribunal to determine if this was as a result of any failure on the part of Glenbuild or the Property Factor. We also found Mr McKee for the Respondent to be a credible witness and we accepted the basis on which the roofing work quote was sourced and accepted without other quotes being considered and that the Factor had been provided with evidence to suggest the roof work was completed.

### **Property Factor Enforcement Order**

The Tribunal therefore proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice. The Tribunal notes that there is no longer a Factoring relationship in place and that management fees had been refunded. The payment of the invoice without authority led to the homeowners having work done without a guarantee in place and this is a significant breach although the Respondent did pursue and obtain the guarantee ultimately at their own expense. We accept that having to repeatedly contact the factor regarding the payment and the missing guarantee would have affected the Applicant's well-being and caused stress and inconvenience to him as mentioned in his application and in evidence. There are issues in relation to response times for enquiries and communication and acting within the scope of the services provided which are addressed in the proposed PFEO.

# V Bremner

Chairperson of the tribunal  
Decision 15th July 2025

## 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