



**Statement of Decision with Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 17 of the Property Factors  
(Scotland) Act 2011 (“the Act”) and Rule 24 of The First-tier Tribunal for  
Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the  
Rules”)**

**Reference number:** FTS/HPC/PF/24/3638 (“the Application”)

**Re:** Flat 4/2, 25, St Andrews Square, Glasgow, G1 5PQ (“the Property”)

**The Parties:**

Mr. Michael Sweeney, residing at the Property (“the Homeowner”)

Hacking and Paterson Property Management Services having a place of business at 1, Newton Terrace, Glasgow G3 7PL (“the Property Factor”)

**Tribunal Members**

Karen Moore (Chairperson) and Peter McEachran (Surveyor and Ordinary Member)

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 at OSPs 2 and 4, Section 2, Communications and Consultation at 2.1, 2.4 and 2.7 and Section 6 Carrying out repairs and maintenance at 6.6  
and

did not fail to comply with with the Section 14 duty in terms of the Act in respect of compliance Property Factor Code of Conduct 2021 at OSP 1, Section 1 Written

Statement of Services at E17; Section 2 Communications and Consultation at 2.6 and Section 6 Carrying out repairs and maintenance at 6.1, 6.4, 6.7 and 6.9.

The Tribunal proposed to make a Property Factor Enforcement Order.

## **Background**

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the 2021 Code of Conduct for Property Factors ("the "2021 Code").
2. The Application comprises the following documents (i) First-tier Tribunal standard application form, Form "C2" (ii) copy statutory intimation letter from the Homeowner to the Property Factor (iii) copy correspondence between the Parties (iii) copy of the Property Factor's written statement of services Property Claims (iii) copy correspondent with Wiseman Associates; (iv) copy correspondence with Glasgow City Council; (v) copy land certificate for the Property and (vi) copy photographs of the Property.
3. Application complains of the following breaches of the 2021 Code:- OSPs at OSP 1, 2, and 4, Section 1 Written Statement of Services at E17; Section 2, Communications and Consultation at 2.1, 2.4, 2.6 and 2.7 and Section 6 Carrying out repairs and maintenance at 6.1, 6.4, 6.6, 6.7 and 6.9.

## **CMD**

4. The Application was accepted by the Chamber and a Case Management Discussion (CMD) took place on 17 April 2025 at 10.00 by telephone conference call. The Homeowner, Mr. Sweeney, was present on the call and was unrepresented. He was supported by a friend, Miss Moore. The Property Factor was represented by Mr. Kingham, one of their directors.
5. At the CMD, Mr. Sweeney explained that the development of which the Property forms part comprises three blocks of sixteen flats. His issue with the

Property Factor is that the Property Factor treated a water ingress repair which affects the balconies of flats 4/2 and 3/2 in block 20 St Andrews Square as a common repair to all three blocks and not as a private repair between these two flats. Mr. Sweeney pointed out that the titles state that the balconies are not common property. Mr. Sweeney explained further that the Property Factor originally treated the water ingress repair as being the liability of 20 St Andrews Square but later changed to treating it as the liability of all three blocks. He pointed out that when he purchased his flat in 2022, there had been no mention of the repair and that the repair had expanded to a much larger repair. He stated that the Property Factor applied to Glasgow City Council for a Missing Shares payment.

6. For the Property Factor, Mr. Kingham stated that he did not believe that the Property Factor had breached the Code.

7. The Tribunal adjourned the CMD to a Hearing and issued the following Direction:

*“The Property Factor is to submit to the Tribunal and the Homeowner:*

*a) A timeline of all events from the date of the receipt of the first report of water ingress into Flat 3/2, 20 St Andrews Square up until the date of the CMD.*

*The timeline should include a note of all correspondence and telephone calls with all homeowners, insurers and contractors and a brief note as to the event.*

*The timeline should include the event in respect of which the Property Factor decided that the water ingress was not a private repair between Flats 3/2 and 4/2, 20, St Andrews Square but was common to the three blocks in the development.*

*b) Copies of all correspondence with Wiseman Associates which should include copies of the instructions to Wiseman Associates;*

*c) Copies of all correspondence with Glasgow City Council in respect of the “Missing Shares Application” for the Property which should include copies of the information provided to that Council in respect of the application;*

*d) If the firm of solicitors who acted for the seller of the Property in the sale to the Homeowner requested factoring information, a copy of that request and a copy of the Property Factor’s reply.*

2. Both Parties are directed to have regard to Practice Direction No.3 and the "Guidance to Tribunal Administration and Parties Documentary Evidence". Documents being lodged should be paginated (page numbers) and with an indexed inventory (list of contents).

3. Both Parties are advised that personal or sensitive data may be redacted from documents."

8. The Property Factor did not comply fully with the Direction. The Property Factor submitted some of the materials required by the Direction. However, the following materials were not submitted by the Property Factor:

- i) a note on the event in respect of which the Property Factor decided that the water ingress was not a private repair between Flats 3/2 and 4/2, 20, St Andrews Square but was common to the three blocks in the development;
- ii) a complete set of correspondence with Wiseman Associates, and, in particular, the initial instructions to Wiseman Associates;
- iii) a complete set of correspondence with Glasgow City Council in respect of the "Missing Shares Application, and, in particular, the information provided to that Council in respect of the application;
- iv) a copy of the request from the firm of solicitors who acted for the seller of the Property in the sale to the Homeowner and a copy of the Property Factor's reply, stating that they did not believe they were authorised to disclose the communication without explaining why this should be

9. It is the Tribunal's view that the omitted information goes to the heart of the Homeowner's complaints. The Property Factor submitted a written statement and timelines not required by the Direction and used their own version of labelling productions. They did not paginate the materials lodged. The approach adopted by the Property Factor was not helpful and, at one point, the Tribunal adjourned the Hearing in order to ensure correct identification of documents referred to by Mr. Buchanan in his evidence.

## **Hearing**

10. A Hearing of evidence took place on at Glasgow Tribunal Centre on 27 October 2025 at 10.00.conference call. The Homeowner, Mr. Sweeney, was

present and was unrepresented. He was supported by a friend, Ms. McLeod. The Property Factor was represented by Mr. Buchanan, one of their directors, supported by his colleague, Ms. Haddow

11. The Tribunal heard evidence in respect of each Code complaint in turn

***OSP1. You must conduct your business in a way that complies with all relevant legislation.***

12. Mr. Sweeney confirmed that his complaint in this regard related not to legislation but to the Property Factor's dealings in respect of the title deeds. With regard to the Missing Shares legislation, Mr. Sweeney accepted that it was the local authority who had duties in respect of the relevant legislation. Mr. Sweeney accepted that he was mistaken in respect of the purpose of this part of the Code and so withdrew this part of his complaint.

***OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.***

**Homeowner's Evidence**

13. Mr. Sweeney's evidence was as set out by him at the CMD and in the Application. His complaint is that the Property Factor treated a water ingress repair which affects the balconies of flats 4/2 and 3/2 in block 20 St Andrews Square as a common repair to all three blocks and all sixteen properties in the development not as a private repair between these two flats as provided for in the title deeds which state that the balconies are not common property. Mr. Sweeney referred to the copy Land Certificate lodged by him.

14. Mr. Sweeney explained that he first became aware of the balcony repair when he received the Property Factor's letter of 8 December 2023 (production P15 as lodged by the Property Factor) which enclosed a report by Wiseman Associates dated October 2023. The letter explained that the earlier belief of the Property Factor was that the repair work was the responsibility of the homeowners at 20 St Andrews Square alone, and, that a review of the title

deeds had established that the repair cost should be split amongst all of the homeowners in 20, 25 and 30 St Andrews Square.

15. Mr. Sweeney's evidence was that, in spite of contacting the Property Factor to dispute that the repair is common to all homeowners and providing the Property Factor with advice from his solicitor, the Property Factor maintained that the repair work was common to all three blocks.
16. Mr. Sweeney stated that it was not until he received the Property Factor's response to the Direction that he became aware of the full history of the repair and of the correspondence with some of the homeowners in Block 20. Mr. Sweeney stated that his main complaint was that, historically, the balcony damage had been contained to the owners in Block 20 and the Property Factor then changed that view and stated that the repair was common to all owners, without explanation. Mr. Sweeney's view was that the Property Factor had been influenced by two of the homeowners in block 20 who are solicitors. His view was that, when these owners realised the cost of the repair, they persuaded the Property Factor that the repair was common to all owners.
17. He further complained that the Property Factor applied to Glasgow City Council under the Missing Shares Scheme on an incorrect basis as the category of repair was not covered by that scheme.

#### **Property Factor's Evidence.**

18. For the Property Factor, Mr. Buchanan's position was that it was not for the Property Factor to decide on the costs and repairs as this is something which falls to the homeowners. He stressed that the Property Factor acted in accordance with the homeowners' instructions. Mr. Buchanan stated that it was reasonable for the Property Factor to take the fact that the majority of homeowners had paid their shares of the repair work as an instruction from the collective of homeowners that the repair was common to all.
19. Mr. Buchanan stated that it was the homeowners and the surveyor who assessed that the repairs were common to the whole development and that it this was the choice of the homeowners and not the Property Factor. He pointed out that Glasgow City Council agreed with the Property Factor that the repair was common to all of the homeowners.

20. Mr. Buchanan stated that it is open to homeowners to obtain their own legal advice as this is not the role of the Property Factor and that the Property Factor advises homeowners to do so.

21. In answer to questions from the Tribunal, Mr. Buchanan stated that there had been no meeting with the homeowners, and no vote was taken in respect of the works recommended by Wiseman Associates. He stated, again, that the Property Factor took the instruction from the homeowners as a whole by virtue of the majority of the homeowners making payment of their shares of the works and so agreeing to the works.

22. Mr. Buchanan agreed that the homeowners in blocks 25 and 30 had not been consulted on or involved in the instruction to Wiseman Associates and that the work had been put out to tender and the tenders evaluated without their knowledge. He agreed that two of the homeowners who are solicitors had approached the Property Factor with an interpretation of the title deeds but disputed that this had influenced or guided the Property Factor.

23. Mr. Buchanan accepted that, in one of the email chains lodged by the Property Factor, P14, between an associate director of the Property Factor and one of the two aforementioned solicitor homeowners, the director writes that he has read the relevant deed of conditions and agrees totally with that homeowner in respect of interpretation the title deeds on common ownership.

24. Mr. Buchanan was unable to explain at what point, in what way and by whom the “review” referred to in the Property Factor’s letter of 8 December 2023 was carried out. He confirmed that the Property Factor had not taken legal advice, under explanation that this is not a role for the Property Factor.

***OSP4. You must not provide information that is deliberately or negligently misleading or false.***

**Homeowner’s Evidence**

25. Mr. Sweeney’s evidence was broadly the same as his evidence in respect of OSP 2. In addition, he stressed that one of the two solicitor homeowners had issued a letter to all homeowners in January 2024 “coercing” the homeowners to agree to the works a common to all in the development. Mr. Sweeney pointed out that this letter was on the Property Factors headed paper but had

been distributed by the solicitor homeowner. It was Mr. Sweeney's view that the letter had been written or drafted by that solicitor homeowner and not by the Property Factor and so was forged.

26. Mr. Sweeney referred the Tribunal to Documents 4 and 5 lodged by him as part of the Application and pointed out that the responses given by Ms. Friel on behalf of the Property Factor were misleading and inaccurate. He stressed that, in particular, there are contradictions in respect of the legal advice followed by the Property Factor. He noted that Ms. Friel appears to state that the Property Factor had the Deed of Conditions reviewed by a lawyer who gave an opinion on the content. Although, he had asked specific questions in respect of the lawyer who gave the opinion, Mr. Sweeney stated that he had not been given an answer. He, again, stated that it was not until he received the Property Factor's response to the Direction that he became aware of all that had taken place.

#### **Property Factor's Evidence.**

27. For the Property Factor, Mr. Buchanan's position was that Ms. Friel's emails were poorly worded. Mr. Buchanan stressed that it was not for the Property Factor to obtain legal advice or interpret the title deeds as this is something which falls to the homeowners. Mr. Buchanan stated that none of the Property Factor's staff is legally qualified and that they act in accordance with the homeowners' instructions.

28. Mr. Buchanan stressed that, in any event both Glasgow City Council and Wiseman Associates agreed that the repair is common to all homeowners and not just to those who share ownership of the balcony in question.

29. Mr. Buchanan could not shed any light on the "forged" letter and was not aware of it being sent. He was, however, aware of a similarly worded letter issued by the Property Factor at the same time.

30. Mr. Buchanan strongly refuted that the Property Factor had been deliberately or negligently misleading or false in their dealings with Mr. Sweeney.

**Section 1 Written Statement of Services at E17 which states :"Declaration of Interest. a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the property factor is an owner or acting as a landlord but not where it is undertaking letting agency work in respect of a property). If no interest is declared, then this must be clearly stated.**

#### **Homeowner's Evidence**

31. Mr. Sweeney's evidence was that he had asked for confirmation in respect of interests which the Property Factor might have as he had been told on more than one occasion to consult his own solicitor. He accepted that he had no specific point in this respect.

#### **Property Factor's Evidence.**

32. For the Property Factor, Mr. Buchanan's position was that Mr. Sweeney was mistaken in his reading of this part of the Code and referred the Tribunal to Clause 6.1 of the WSS. Mr. Buchanan stated that Mr. Sweeney had asked if with the property factor to confirm if anyone within the organisation had a yet to be disclosed vested interest in having the proposal approved and this was out with the scope of E 17.

**Section 2, Communications and Consultation at 2.1 which states: " 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."**

#### **Homeowner's Evidence**

33. Mr. Sweeney's position was that this part of his complaint is centred on the way in which the Property Factor has corresponded with him in respect of his core complaints under OSPs 2 and 4. Mr. Sweeney stated that better communication by the Property Factor might have resolved matters and his frustration at the way he had been treated.

#### **Property Factor's Evidence.**

34. For the Property Factor, Mr. Buchanan's position was that the Property Factor had communicated fully with Mr. Sweeney from the letter of December 2023 up to and including correspondence in July 2024 and so had complied with this part of the Code.

***Section 2, Communications and Consultation at 2.4 which states “Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.”***

#### **Homeowner's Evidence**

35. Mr. Sweeney's position was that this part of his complaint is, again, centred on the way in which the Property Factor has corresponded with him in respect of his core complaints under OSPs 2 and 4. Mr. Sweeney stated that the Property Factor did not provide him with the information he requested.

#### **Property Factor's Evidence.**

36. For the Property Factor, Mr. Buchanan accepted that the Property Factor had not compiled fully with this part of the Code.

***Section 2, Communications and Consultation at 2.6 which states “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.”***

### **Homeowner's Evidence**

37. Mr. Sweeney's position was that this part of his complaint is, again, centred on the way in which the Property Factor acted in respect of his core complaints under OSPs 2 and 4. Mr. Sweeney stated that the Property Factor did not consult with homeowners other than those in Block 20.

### **Property Factor's Evidence.**

38. For the Property Factor, Mr. Buchanan stated that this part of the Code did not apply as the Property Factor had dealt with the repair work as part of their Core Services and that no additional fee had been charged.

***Section 2, Communications and Consultation at 2.7 which states: “A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.”***

### **Homeowner's Evidence**

39. Again, Mr. Sweeney's position was that this part of his complaint is centred on the way in which the Property Factor corresponded “as fully and quickly” in respect of his core complaints under OSPs 2 and 4. Mr. Sweeney stated that the Property Factor did not reply “fully.”

### **Property Factor's Evidence.**

40. For the Property Factor, Mr. Buchanan's position was similar to that in respect of the complaint under Section 2.1 and that the Property Factor had communicated fully with Mr. Sweeney. Mr. Buchanan stated that Mr.

Sweeney's complaint was that he was not happy that the collective of homeowners agreed that the repair work was common and that the Property Factor had followed the collective instruction.

***Section 6 Carrying out repairs and maintenance at 6.1 which states: "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."***

### **Homeowner's Evidence**

41. Mr. Sweeney's position was that the Property Factor does not have building trade skills and has no practical experience in managing work of this kind. Mr Sweeney stated that the previous repairs and testing to track ingress going back to 2021 had been confined to Block 20. It was his view that the water ingress appeared to be from the coping stones which had not been maintained properly. Mr. Sweeney maintained that the Property Factor had not dealt with this quickly enough and had allowed the problem to become worse

### **Property Factor's Evidence.**

42. For the Property Factor, Mr. Buchanan's position was that water ingress can be a complex issue to resolve and that the Property Factor had acted properly in dealing with the repair work. He refuted that there was any evidence of a failure to comply with this part of the Code.

***Section 6 Carrying out repairs and maintenance at 6.4 which states: "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.”*

43. Mr. Sweeney's position was that the Property Factor acted in a reactive way as they instructed tradesmen and then carried out a survey and investigation.

#### **Property Factor's Evidence.**

44. For the Property Factor, Mr. Buchanan's position was that the Property Factor had complied with this part of the Code as the work had been completed in appropriate timescales. His position was that this part of Mr. Sweeney's complaint was in relation to the time taken for the collective of homeowners to be made aware of the repair works rather than repair timescales.

**Section 6 Carrying out repairs and maintenance at 6.6 which states:** *6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the 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 if requested by a homeowner.*

#### **Homeowner's Evidence**

45. Mr. Sweeney's position was that the Property Factor did not make a range of options available to the homeowners as a group. His position was that the Property Factor should have held a meeting with the homeowners as a whole and that different instructions might have been given. Mr. Sweeney's position was that the homeowners did not willingly agree to that works but paid their shares to avoid additional costs which the Missing Shares Scheme would incur.

#### **Property Factor's Evidence.**

46. For the Property Factor, Mr. Buchanan's position was that the Property Factor had complied with this part of the Code by recommending that Wiseman Associates be appointed and, from that, the collective of homeowners instructed the works.

**Section 6 Carrying out repairs and maintenance at 6.7 which states:** *"It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works."*

#### **Homeowner's Evidence**

47. Mr. Sweeney's position was that, to his knowledge, the Property Factor did not carry out regular inspections at the development.

#### **Property Factor's Evidence.**

48. For the Property Factor, Mr. Buchanan's position was that there is no obligation on the Property Factor in terms of the Code to carry out regular inspections. However, he pointed out that the Property Factor had carried out a programme of monthly inspections since February 2023. Mr. Buchanan accepted, however, that homeowners were not notified of the inspections nor were they notified of the inspection outcome.

**Section 6 Carrying out repairs and maintenance at 6.9 which states:** *"If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner."*

#### **Homeowner's Evidence**

49. Mr. Sweeney's position was that the Property Factor did not provide him with a copy of the Wiseman Associates Report when requested by him.

### **Property Factor's Evidence.**

50. For the Property Factor, Mr. Buchanan referred the Tribunal to Ms. Friel's emails of July 2024 and stated that the Wiseman Associates Report had been provided to Mr. Sweeney.

### **Summing Up**

#### **Homeowner.**

51. In summing up, Mr Sweeney stated that he had found the whole experience frustrating and considered the Property Factor's approach in using or misusing, in his view, the Missing Shares Scheme heavy-handed and unfair. He stated that he considered the wording of the Council's letters to be coercing and threatening. He stated that better communication and respect from the Property Factor could have gone a long way to making matters better or to resolving matters.

52. In answer to questions from the Tribunal. Mr Sweeney confirmed that he had paid his share of the repair without the Missing Shares Scheme being followed. He stated that he had done this as he realised that the Missing Shares Scheme would have been more costly and so took a practical approach. Mr. Sweeney stated that it was his understanding that most of his co-owners took the same approach and paid up rather than be subject to further costs.

### **Property Factor**

53. For the Property Factor, Mr. Buchanan stated that he acknowledged the distress and inconvenience caused to Mr. Sweeney but stressed that this is the nature of co- ownership. He stated that the Property Factor could have done better in respect of communication but had to stick to the letter of the law and had to act for the collective homeowners.

54. In answer to questions from the Tribunal, Mr. Buchanan stated that reference to the collective homeowners was the majority of the homeowners of all of the properties in the development and appreciated that there were subgroups of

homeowners in respect of each block and in respect of ownership of mutual property such as the balconies.

**Further evidence available to the Tribunal.**

55. In addition to the evidence at the Hearing, the Tribunal had the benefit of the Application with supporting documents, the Property Factor's written submission and productions lodged in response to the Direction and a further production lodged by the Property Factor.

**Tribunal's assessment of the evidence.**

56. The Tribunal found Mr. Sweeney to be truthful and straightforward in his evidence and that he did not exaggerate his position. The Tribunal found that he maintained control of himself in spite of the palpable frustrations. The Tribunal found him to be both credible and reliable.

57. Mr. Buchanan explained that he has not been involved personally in the matter and so his evidence was based on the Property Factor's records.

58. The Tribunal found Mr Buchanan's evidence to be unreliable in respect of the legal or other advice followed by the Property Factor. His evidence at the Hearing directly contradicted the numerous emails of his colleagues in that regard.

59. On more than one occasion, Mr Buchanan stated that he found the Homeowner's application challenging in its format and stated that he and his colleagues found the content confusing. The Tribunal did not accept this criticism of Mr. Sweeney to any extent. Mr Sweeney used the correct version of the Tribunal Chamber's template application form and completed each section as required. Mr Buchanan, again, on more than one occasion, referred to Mr. Sweeney's Application as "accusation" and "allegations" despite being warned by the Tribunal that the Application is a complaint which Mr. Sweeney is entitled to bring to the Tribunal. The Tribunal viewed Mr. Buchanan's use of this terminology to be an attempt to undermine the veracity of Mr. Sweeney's evidence. At the close of the proceedings and in response to Mr. Sweeney's position that he felt coerced by Glasgow City Council's approach in respect of paying a share of the repair bill against his own judgement and wishes, Mr. Buchanan volunteered "Glasgow City Council is not in the business of coercing

anyone". The Tribunal found this to be an unnecessary, unhelpful and irrelevant comment.

60. Having regard to the way in which the Property Factor had responded to the Direction and the way in which evidence was put forward on behalf of the Property Factor, the Tribunal found the Property Factor to have behaved unprofessionally, throughout. Accordingly, the Tribunal found Mr. Buchanan's evidence to be unreliable.

### **Findings in Fact.**

61. The Tribunal found the following facts established on the balance of probability:

- i) The Parties are as set out in the Application;
- ii) The Property Factor had been in correspondence with the homeowners of 20 St Andrews Square regarding water ingress at balcony since 2021;
- iii) Initially, the Property Factor treated the balcony water ingress as a repair common to the homeowners of flats 4/2 and 3/2 of 20 St Andrews Square;
- iv) The Property Factor later treated the water ingress as a repair common to all of the homeowners in 20 Saint Andrews Square
- v) The Property Factor, on behalf of those homeowners, appointed Wiseman Associates;
- vi) Wiseman Associates began technical and investigatory work in respect of effecting a repair to the balcony water ingress issue
- vii) Wiseman Associates carried out a tender exercise in respect of that repair;
- viii) Around mid-2023, the Property Factor changed their view and treated the balcony water ingress as a repair common to all of the homeowners in the development at 20, 25 and 30 Saint Andrews Square;
- ix) The Property Factor did not seek legal advice in respect of the status of the balcony water ingress repair on behalf of any of the homeowners;

- x) The Property Factor had regard to advice given to them by two homeowners of 20 Saint Andrews Square who are solicitors;
- xi) The Property Factor was influenced by this advice;
- xii) The Homeowner first became aware of the balcony repair when he was notified by the Property Factor in a letter of 8 December 2023 that a tender for the works had been carried out and tenders had been evaluated ;
- xiii) In the letter of 8 December 2023, the Property Factor expressed a view on the titles stating that the titles had been reviewed and that it had been established that the repair was common to all of the homeowners in the development;
- xiv) This statement or versions of it was repeated in subsequent correspondence issued by the Property Factor;
- xv) The Homeowner gave his own view and that of his solicitors that the repair was not common to all of the homeowners in the development but was common to the owners of flats 4/2 and 3/2 of 20 St Andrews Square;
- xvi) The Property Factor rejected the Homeowner's view without investigation;
- xvii) In or around January 2024, the Property Factor made application to Glasgow City Council in terms of Section 50 of the Housing (Scotland) Act 2006, known as the Missing Shares Scheme;
- xviii) Glasgow City Council wrote to the Homeowner in this regard
- xix) The effect of Glasgow City Council's correspondence led the Homeowner to pay a share of the balcony repair against his will;
- xx) The Homeowner requested information and documentation in respect of the balcony repair from the Property Factor;
- xi) The Property Factor did not provide the Homeowner with the information requested by him.

### **Issue for the Tribunal**

62. The issue for the Tribunal is: did the Property Factor breach the 2021 Code as set out in the Application?

63. Although the matter of interpretation of the definitions contained in the titles to the Property featured in the proceedings and in the evidence before the Tribunal, it is not the role of, nor within the jurisdiction of, the Tribunal to make a formal determination in respect of interpretation. A Declarator in this respect is a matter for a higher court on petition from the Parties, if they so wish. Therefore, the Tribunal did not consider the relevance of the definitions contained in the title deeds. No evidence was led in respect of the cause or nature of the water ingress and so the Tribunal did not consider the repair itself to any extent. The Tribunal considered the way in which the Property Factor acted in their dealings with Mr. Sweeney.

**Decision of the Tribunal and Reasons for the Decision.**

***OSP1. You must conduct your business in a way that complies with all relevant legislation.***

64. As Mr. Sweeney accepted that he was mistaken in respect of the purpose of this part of the Code, the Tribunal found that the Property Factor had not failed to comply with this part of the Code.

***OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.***

65. The Tribunal accepted Mr. Sweeney's evidence in its entirety and found that the Property Factor has not been honest, open transparent and fair in their dealings with them. The Property Factor did not, at any time before replying to the Tribunal Direction, give Mr. Sweeney a full and clear explanation as to why they changed tack in respect of their categorisation of the repair. The Property Factor has still not been open and transparent in this regard.

66. The email correspondence by Ms. Friel to Mr. Sweeney in July 2024 is evasive and does not provide Mr. Sweeney with straight and honest answers. The email chain of 7 December 2023 to 12 January 2024 (production P39 as lodged by the Property Factor) is similarly evasive and fails to answer Mr. Sweeney's direct questions, despite stating that she understands that homeowners have questions and concerns. Ms. Friel's email of 12 January

2024 is misleading as it gives an inaccurate and unsubstantiated interpretation of the title deeds. Ms. Friel invites Mr. Sweeney to take legal advice but ignores that fact that he has done so and holds a differing view. Mr. Hamilton of the Property Factor expresses similar views in his email of 21 May 2024 to Mr. Sweeney (Property Factor's production P21).

67. The correspondence lodged by the Property Factor at Production P14 and as part of their correspondence with Glasgow City Council in or around May 2024 (neither numbered nor paginated by the Property Factor) refer to one of the solicitor homeowners by his first name and show that the solicitor homeowner's views and representations to the Property Factor are being given credence and weight, unlike the views of Mr. Sweeney. The Property Factor was not fair to Mr. Sweeney in this respect.
68. The Tribunal had regard to Mr. Buchanan's firm and unequivocal position that is not for the Property Factor to decide on the costs and repairs as this is something which falls to the homeowners and that it is reasonable for the Property Factor to take the fact that the majority of homeowners had paid their shares of the repair work as an instruction from the collective of homeowners that the repair was common to all. The Tribunal's view is that, whilst it is for homeowners to make decisions on costs and repairs, it is the common law duty of a property factor as agent for the homeowners to advise the homeowners to enable the homeowners to make informed decisions. By failing to provide Mr. Sweeney with full background information and, in particular, by failing to explain their change of view in respect of categorising the repair, the Property Factor did not provide this agency to Mr. Sweeney and so was not fair to him. The Tribunal notes from Mr. Buchanan's evidence and Ms. Friel's correspondence that the Property Factor caveats this duty by stating that it is for homeowners to take their own legal advice. In this case, there was little purpose in Mr. Sweeney taking advice as the Property Factor ignored it without explanation.
69. With regard to the Property Factor taking payment of shares as an instruction from the collective of homeowners, the Tribunal notes that no explanation was provided to Mr. Sweeney that this was the approach taken and no reference is made to this approach in the Property Factor's WSS, nor is there provision in the Land Certificate as lodged by Mr. Sweeney.

70. The Tribunal notes that Mr. Buchanan's evidence is that the Property Factor is not appointed to act in terms of the title deeds. However, the Code, by which the Property Factor is bound, expects property factors to have regard to title deeds.

71. The Tribunal notes that the Code, in its introductory paragraphs, states that its purpose is : *"The Code sets out minimum standards of practice for registered property factors, encouraging transparency in the way that they conduct their business in connection with the management of common property or the maintenance of land as detailed in the homeowner's title deeds."*

72. Regardless of the Property Factor's position on who instructed whom, the Property Factor is bound by the Code.

73. The Tribunal finds that the Property Factor has failed to comply with this part of the Code.

***OSP4. You must not provide information that is deliberately or negligently misleading or false.***

74. The Tribunal accepted Mr. Sweeney's evidence in its entirety. The Tribunal repeats its findings and reasoning in respect of OSP2, particularly in respect of the email correspondence by Ms. Friel to Mr. Sweeney in July 2024, the email chain of 7 December 2023 to 12 January 2024 (production P39 as lodged by the Property Factor) and Mr. Hamilton's email of 21 May 2024. The Tribunal's view is that these emails are not simply "poorly worded" as described by Mr. Buchanan but are intentionally misleading and inaccurate to the extent of being falsehoods.

75. Although, Mr. Buchanan stressed that it was not for the Property Factor to obtain legal advice or interpret the title deeds as this is something which falls to the homeowners, it is clear from the correspondence that the Property Factor did take a view on the interpretation of the title deeds and of the legal responsibilities of homeowners and it is clear that their view was influenced by the homeowners of Block 20 who are solicitors. It is both misleading and false for the Property Factor to hold out otherwise.

76. Mr. Buchanan, in his evidence, stated that Glasgow City Council agreed with the Property Factor that the repair is a common repair and the timeline with

that Council which the Property Factor submitted highlights a statement by that Council that the Council is comfortable with the repair being common. There is no evidence to suggest that the Council took advice or guidance from anyone other than the property factor and the solicitor homeowner and so this evidence is of little value, other to underpin the deliberately misleading nature of the Property Factor's approach.

77. The Tribunal finds that the Property Factor has failed to comply with this part of the Code.

**Section 1 Written Statement of Services at E17 which states :**"Declaration of Interest. *a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the property factor is an owner or acting as a landlord but not where it is undertaking letting agency work in respect of a property<sup>[51]</sup>). If no interest is declared, then this must be clearly stated.*

78. The Tribunal notes that, in his Application, Mr. Sweeney refers to this as an element of OSP2. The Tribunal did not hear evidence of this in respect of OSP2 and so deals with the complaint here.

79. The Tribunal had no direct evidence of a specific breach of this part of the Code and so finds that the Property Factor complied with this part of the Code.

**Section 2, Communications and Consultation at 2.1 which states:** " *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.*"

80. The Tribunal accepted Mr. Sweeney's evidence in its entirety. The Tribunal repeats its findings and reasoning in respect of OSP2 and OSP4, particularly in respect of the lack of information given to Mr. Sweeney until the Tribunal process began.

81. The Tribunal finds that the Property Factor has failed to comply with this part of the Code.

**Section 2, Communications and Consultation at 2.4 which states “Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.”**

82. The Property Factor having accepted Mr. Sweeney's position, finds that the Property Factor has failed to comply with this part of the Code.

**Section 2, Communications and Consultation at 2.6 which states “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.”**

83. The Tribunal accepted the Property Factor's position that this part of the Code did not apply as the Property Factor had dealt with the repair work as part of their Core Services. Therefore, the Tribunal finds that the Property Factor complied with this part of the Code.

**Section 2, Communications and Consultation at 2.7 which states: “A property factor should respond to enquiries and complaints received orally and/or in**

***writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.”***

84. The Tribunal accepted Mr. Sweeney's evidence that the Property Factor did not deal with his correspondence fully. The Tribunal repeats its findings and reasoning in respect of OSP2 and OSP4, particularly in respect of the lack of information given to Mr. Sweeney until the Tribunal process began.
85. The Tribunal finds that the Property Factor has failed to comply with this part of the Code.

***Section 6 Carrying out repairs and maintenance at 6.1 which states: “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.”***

86. The Tribunal had no direct evidence of a specific breach of this part of the Code and so finds that the Property Factor complied with this part of the Code.

***Section 6 Carrying out repairs and maintenance at 6.4 which states: “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.”***

87. The Tribunal had no direct evidence of a specific breach of this part of the Code and so finds that the Property Factor complied with this part of the Code.

**Section 6 Carrying out repairs and maintenance at 6.6 which states:** *6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the 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 if requested by a homeowner.*

88. The Tribunal accepted Mr. Sweeney's evidence in respect of this part of the Code. The Property Factor presented Mr. Sweeney with a *fait accompli* and made no attempt to offer or discuss alternative solutions.

89. The Tribunal finds that the Property Factor has failed to comply with this part of the Code.

**Section 6 Carrying out repairs and maintenance at 6.7 which states:** *"It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works."*

90. The Tribunal accepted the Property Factor's position that inspections have been carried out and so finds that the Property Factor complied with this part of the Code.

**Section 6 Carrying out repairs and maintenance at 6.9 which states:** *"If applicable, documentation relating to any tendering or selection process*

***(excluding any commercially sensitive information) must be made available if requested by a homeowner.”***

91. The Tribunal accepted the Property Factor’s position that a copy of the report was given to Mr. Sweeney and so finds that the Property Factor complied with this part of the Code.

### **Property Factor Enforcement Order (PFEO)**

92. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states “*(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it … decide … whether to make a property factor enforcement order.”*

93. The Tribunal’s view is that the Property Factor has not served Mr. Sweeney well from their first contact with him in December 2023 and throughout the Tribunal process. The Tribunal had no hesitation in finding that a PFEO should be made.

94. Although not bound by the outcomes sought by Mr. Sweeney when deciding on the PFEO, the Tribunal notes that as the repair matter has been completed and paid for, the matter is closed to that extent.

95. The Tribunal accepted without doubt that that Mr. Sweeney paid his share of the repair to avoid further costs and accepted his extreme frustration and exhaustion in dealing with the Property Factor. Accordingly, the Tribunal considers it fair that the Property Factor should refund to him the cost of the repair paid by him and should compensate him for his suffering. The Tribunal considers a sum of £2,000.00 to be reasonable.

96. Section 19(2)(a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2)(a) of the Act, the Tribunal issues separate Notice to the Parties.

97. This decision is unanimous.

## **Right of Appeal**

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

Signed

Karen Moore, Chairperson

25 November 2025