



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

Decision on Homeowner's Application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS /HPC/PF/23/1336

Re: Property at Flat 3/1, 8 Claremont Street, Glasgow G3 7HA ("the Property")

Parties: Mr Mark Glancy, 3/1 8 Claremont Street, Glasgow, G3 7HA ("the Applicant")

Glasgow West Enterprises Ltd, 5 Royal Crescent, Glasgow, G3 7SL ("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 section 6.4 of the Property Factor Code of Conduct 2021 as required by Section 14(5) of the Act.

The decision of the Tribunal was unanimous.

Background

1. On 26th April 2023 the applicant lodged an application C2 with the tribunal under Rule 43 of the First Tier Tribunal Rules of Procedure. This application was accepted by the tribunal on 15th of June 2023. A case management discussion was first fixed for 14 September 2023 and adjourned to 1st December 2023.
2. The Applicant's complaints concerned issues around water ingress at his property and related to failure to comply with the Property Factor's duties as set out in the Property Factors (Scotland) Act 2011, and failure to follow the 2021 Code of Conduct for Property Factors in relation to Overarching Standard of Practice 6 and paragraphs 6.4,6.5 and 6.6.
3. Before the case management discussion in December 2023 Mr Glancy had e mailed the Tribunal on 19th September 2023 advising that he had had another night of water leaking into his bedroom. He described constant dripping, replacing towels, not much sleep and no response from the Factor all day the day before. Mr Glancy copied to the Tribunal his email to the Property Factor in which he said there had not been water ingress into the flat since March 2023

but there was now (September 2023) significant water leaking into the flat. In this email he mentioned that despite what he described as claims that the issue was resolved there were tarpaulins in the roof space (with insulation stuffed into them to act as a sponge) the amount of water was now significant and was entering his flat again. He described the whole episode as brutal and given the forecast for heavy rain that week he was awaiting with anxiety as to how much of it would come into his bedroom.

4. The applicant attended the case management discussion on 1st December 2023 and represented himself. The Respondent was represented by Ms Donnelly of TC young solicitors and Mr. Hunter Repairs and Factoring manager from the Property Factor also attended the case management discussion

Documents lodged with the Tribunal

- 5a) The Application C2
- b) Supporting emails
- c) Complaint letter response
- d) Written Statement of Services
- e) Property Factor Code of Conduct Notification Letter
- f) Email dated 15th March 2023 indicating breach of Property Factor Duties
- g) Photographs and videos of roof space area and tarpaulin.
- h) E mail dated 19th September 2023 to Property Factor, Solicitor and Tribunal
- i) Written Representations from Respondent dated 7th September 2023
- j) First Inventory of Productions for Respondent
- k) e mail from Applicant re video evidence
- l) Roofing Advisors Report dated 28th February 2025
- m) Second Inventory of Productions
- n) Third Inventory of Productions
- o) Timeline of leaks
- p) Direction responses after December 2023, March 2024 and January 2025.
- q) Title Deeds
- r) Annual Information Sheet Dated 30th August 2023
- s) Share apportionment delegated authority
- t) Factoring statements and invoices with Annual Information statements
- u) Quotes re water ingress dated October and November 2022 and January 2024
- v) Summary of works
- w) Roof condition reports dated January and June 2023
- x) Roof repairs report dated November 2023
- y) Loft inspection report dated 1st December 2023
- z) Roofing Advisers Loft Report dated 28th February 2024
- aa) Drone report dated June 2024
- bb) Maintenance Job sheet
- cc) Tarpaulin inspections dated June July, August, September and October 2024
- dd) Roof Advisors Inspection Report
- ee) Meeting Invitation and minutes
- ff) Emails dated September 2024

Applicant's Position at Case Management Discussion

5. The Applicant's complaint related to water ingress in the bedroom of his flat which he said dated back to 20th of June 2022. He referred to this as a recurring leak into his bedroom and stated that as of 1st of December 2023 the leak was ongoing. He said that estimated timescales for completion of the repairs were unknown to him. He described rotting wood in the roof space with what he thought could be dry or wet rot. He said there was a tarpaulin catching water in the loft space. He said that Mr. Hunter from the Property Factor had told him this was a temporary fix and Mr Glancy said there had been no progress and no estimated time scale for completion. He understood that one quote had been obtained from a contractor, but this was deemed to be too expensive for the property factor to act upon. He said he understood this was a decision taken by Mr Hunter. The Applicant Mr Glancy also complained about the Factor's emergency arrangements and said these were not fit for purpose. He said it was difficult to get through to the Property Factor and difficult to get anyone to come out when issues were raised. He said that the out of hours contractor had been changed and there was a new emergency contractor who appeared more responsive than the previous one. He said the previous contractor had been unresponsive and unhelpful.
6. Mr Glancy also complained that he asked repeatedly for a Chartered Surveyor to examine the extent of the damage in the roof space area which he understood was involved with the leak at his property. He said that he had limited knowledge of construction and engineering, but the loft space area looked terrible to him. Contractors who had visited the property had told him that this was a scaffolding job, and he was aware that this would involve further costs, and he had asked for copies of all reports and surveys in October 2023. He said he kept being told that these existed but had seen nothing. He said as far as he was concerned that the whole roof needed inspected and what had been done were temporary fixes. He understood initially that the leak was said to have been caused by damaged and cracked roof tiles which he believed had been cracked for some time. He said he thought there was rotting wood in the roof space area and there had now been six or seven seasons of water entering the building. He said that when the temporary fixes have been carried out in the loft space between the roof and the ceiling above his flat. He said his bedroom ceiling was effectively being protected by a tarpaulin in the roof space area.
7. Mr Glancy also referred to Overarching Standard of Practice 6 within the 2021 Code of Conduct and indicated that he considered that in relation to the leak at his property the Factor had failed to carry out the services they provided to him as a homeowner using reasonable care and skill and in a timely way, including by making sure that staff had the training and information they needed to be

effective. He said that if his complaint had been taken seriously in the first place he would not have required to come to the tribunal. He was concerned about the damage in the roof space, the integrity of the building and the ceiling in his bedroom.

8. Mr Glancy further indicated that contractors had told him that going into the loft space was a difficulty, but he said that the loft space is communal and there is a hatch in the close at the top of the stairs. He understood these to be common repairs that were required and said there was significant damage to the internal ceiling in his bedroom. He said there was in fact a hole in the ceiling which he said had become bigger since his first complaint. He said he had refrained from fixing this until the root cause of the problem was fixed.
9. Mr Glancy was asked about his use of the term “dry rot” and said that he used this term as a layperson. He said there were multiple wooden beams in the roof space, some of which were very dry and rotting and some which were soaking wet and rotting. He believed there was an area of rot in the roof space.
10. Mr Glancy had lodged a series of emails along with his application between himself and the Property Factor between April 2022 and April 2023. Mr Glancy also submitted the response he had received to a stage 2 complaint he had made to the Property Factor regarding failure to give updates and to complete the required roof repairs. In this letter it was stated that Mr Glancy had contacted the Property Factor 14 times by e mail and had made several phone calls asking for an update. This complaint had been partially upheld in terms of paragraph 6.4 of the Code in that the Property Factor accepted that they should have been more proactive in updates to him. In the letter partially upholding this part of his complaint Mr Hunter advised that each time Mr Glancy had emailed regarding the leak which had first occurred in June 2022 the Factoring team had passed the concerns to a contractor, but it was accepted that there was a lack of proactive tracking of the repair request with the contractor and follow up updates to Mr Glancy were not given.
11. Other complaints under paragraphs 6.5 and 6.6 were contained within the complaint made by Mr Glancy but were not upheld.
12. Mr Glancy’s application form set out in terms of breach of duty that the Property Factor had failed to identify and repair a major leak in the common loft space above his bedroom. He said they had failed to repair this leak resulting in ongoing and further damage to the common space and his property for over 10 months. He said that they were aware there was a leak and have done since 2022 and have failed to do anything more than empty a tarpaulin that catches the water.

Respondent's Position at Case Management Discussion

13. Ms Donnelly for the Respondent adopted written representations which had been submitted to the tribunal on behalf of the Respondent on 7th September 2023.
14. In terms of the representations submitted in relation to paragraph 6.4 of the 2021 code the Respondent denied a breach of paragraph 6.4 and said that the work instructed to which the application related was within the Respondent's level of delegated authority. In terms of the written statement of services section 3.1 homeowners were notified of the agreed levels of authority via an annual information statement. She confirmed that the delegated level of authority of the property is £200 per unit. The cost of the works instructed was £259.20 including VAT and the Applicant's respective share was £7.13 and therefore came within the level of delegated authority. It was submitted that in terms of Section 5 of the Written Statement of services the Respondent was not obliged to provide job specific progress reports on works within their delegated authority levels.
15. Despite not acknowledging a breach of paragraph 6.4 of the 2021 Code of Conduct the Respondent acknowledged that the service provided to the Applicant was below the standard expected and apologised for the inconvenience occasioned by the Applicant as a result. It was submitted that the Respondent had taken steps to ensure all staff members were aware of the requirement to keep homeowners informed by providing regular updates in order to improve its service going forward.
16. In relation to the alleged breach of paragraph 6.5 of the code in relation to emergency arrangements Ms Donnelly denied a breach of paragraph 6.5. It was suggested that the Respondent has relevant procedures including emergency repairs and out of hours procedures in place as detailed within the written statement of services at sections 5.5.1 and 5.2.
17. Ms Donnelly submitted that out of hours contact numbers could be easily located via the Respondent's website or accessed via their answering machine message when the office was closed. In relation to access the Respondent or their contractor would contact the homeowner resident to confirm access arrangements or schedule a pre-arranged appointment. If access was not obtained a calling card would be left inviting the homeowner or resident to contact the Respondent to reschedule. The Deed of Conditions was referred to and Ms Donnelly had submitted that the Deed of Conditions provided that "the proprietors of the several premises in the said tenement shall be bound to give free access and egress to and from the roof. It was submitted on behalf of the Respondent that it was a matter for the individual homeowners to permit access.
18. In terms of paragraph 6.5 of the Code regarding arrangements to ensure that a range of options on repair are considered and where appropriate recommending the input of professional advice. Ms Donnelly on behalf of the Respondent

denied a breach of paragraph 6.6. It was submitted that the Respondent had relevant procedures in place as detailed within the Written Statement of Services at sections 3.2 and 5. As part of the process it was suggested that the Respondent reviews contractor quotations and seeks comparatives where appropriate. It was submitted that following the initial report of water ingress in June 2022, the matter was raised with City Building the Respondent's response repair contractor at that time. The contractor's process is for quoting works in bulk meant the quote was not forthcoming until January 2023. In the absence of the initial quote in November 22 the Respondent obtained an alternative quote from Alpha Absailing. The cost of works quoted in this quote exceeded the delegated authority. It was submitted that the Applicant had been advised accordingly, and two further quotes were obtained from David Mitchell Builders and City Building. It was submitted that the Respondent had advised the applicant by e-mail that contractors had been unable to attend and quote for the works due to adverse weather over the winter months. On June 29th, 2022, a tarpaulin had been fitted in the roof space as a temporary protective measure until works were instructed and completed.

19. In relation to Overarching Standard of Practice 6 it was submitted within the Respondent's representations that the level of service provided to the Applicant fell below the standard expected and there was an apology tendered for the inconvenience occasioned by the Applicant as a result. It was further explained that upon receipt of the Applicant's initial e-mail reporting the issue in June 2022, that the Factoring Team forwarded this to the Repairs Team who raised the request with the response repair contractor City Building, in accordance with their usual process. The relevant teams did not proactively seek updates from the contractor thereafter. It was explained that the failure to perform to the Respondent's usual service standards was occasioned by a strain in staffing and resources at the relevant time. It was the Respondent's position that turnover in factoring staff required appointment of temporary staff members and as a result the service was below the standard expected. Furthermore, the contractor's processes had led to delays in quotes being provided to the Respondent. An example of this was given in that a quote initially requested in June 2022 was not provided to the Respondent until January 24th 2023 when it had been submitted alongside 12 other quotes relating to separate projects. It was suggested that due to the economic climate the Respondent had found contractors reluctant to quote unless the resulting work was guaranteed, and the Respondent could not provide such guarantees. It was submitted that the Respondent had experienced various issues regarding the contractor's delivery of works. The contractor who had been appointed as repair response contractor had that appointment terminated on 31st July 2023.
20. On behalf of the Respondents was suggested that they had implemented new processes to improve the service going forward. Property Service Officers now take a lead in identifying follow up work required for roof repairs including liaising with contractors regarding completion dates which would be communicated to homeowners. The Respondent's repairs and Factoring Manager had discussed the Written Statement of Services with the factoring team highlighting timescales for responding to enquiries and providing updates to homeowners.
21. Representations have been made on behalf of the Respondents in relation to the property factor duties and whilst it was accepted that regular updates had

not been provided to the Applicant a contractor had been appointed to investigate and had found no leak. A plumber had been requested to attend who encountered access issues. A tarpaulin had been put in place after the initial report of a leak. Comparative quotes were obtained, and work was instructed in January 2023 and the Respondent was advised these had been completed by 2nd February 2023. The Respondent was advised that further water ingress had taken place, and the contractor was contacted and they advised that further work was required which would be completed by April 2023. The Respondent's position was that matters had been resolved before the Tribunal application had been made. In August 2023 the Applicant had advised the Respondent that the issue remained unresolved. The Applicant advised the Respondent by phone that whilst no further water ingress had occurred, he was concerned. A survey of the roof space was instructed and a roof condition report.

22. At the case management discussion in December 2023 Ms Donnelly's position was that issues had been caused by the most recent water ingress, and these were separate from the issues caused by the initial water ingress. She said the cause of the initial water ingress had been repaired and resolved and that the latest matters referred to by Mr Glancy were new matters. She said there had been a roof inspection, that these were done annually and in June 2023 the roof inspection described the condition of the roof as fair with no defects found. On being asked by the tribunal why an initial quote had not been proceeded with it was suggested that this had been above the level of delegated authority, and this had resulted in a delay while another quote was obtained. The quote that had been too expensive had come from Alpha Abseiling and was for £1944.00. Mr. Hunter confirmed that City Building had quoted £216.00 plus VAT for the same work and this quote had been actioned.
23. Ms Donnelly's position was that the Property Factor's position was the original repair had been carried out successfully and there had been subsequent repair issues which Mr Glancy was referring to. The Property Factor had been advised that the repair to the roof tiles had been carried out on 2nd February 2023 She understood this work involved removing damaged tiles and refitting tiles and removing debris.
24. Regarding the issue of the tarpaulin which had been put in place it was suggested that this had not been required until around 29th June 2022. Mr. Hunter confirmed that the use of the tarpaulin had not been billed out to homeowners and Mr Glancy had not been billed for the cost of the tarpaulin since November 2023.
25. In relation to Overarching Standard of Practice 6 Ms Donnelly had confirmed that no breach was admitted but it was acknowledged that Mr Glancy was not satisfied with the service provided. While she said there may have been failures, she submitted that the service did not below the required standard. Her submission was that the Respondent had used reasonable skill and care, and the tribunal would need to hear what constituted reasonable skill and care across the sector.

26. Given that there was no acceptance or any part of the application by the Respondent the Tribunal determined to fix a hearing and to allow the Applicant to lodge photographs and videos in relation to his complaints and for the Respondent to lodge quotes, all survey reports, representations regarding the initial repair, documentation regarding homeowners shares at the property and running costs for the building.

27. The Tribunal fixed a Hearing for 1st March 2024, and this took place at Glasgow Tribunal centre. The Applicant Mr Glancy attended along with his wife, and Ms Donnelly attended on behalf of the Property Factor. Mr Hunter was also in attendance as before.

28. The Tribunal was advised that further work had been carried out and instructed. Work outstanding related to sarking boards in the roof space and for the Respondent it was suggested that the work already carried out had addressed the water ingress above the Applicant's property. The tarpaulin had been replaced by a fresh one and it was suggested it contained "old water" but it had been agreed that the tarpaulin would be left in place for a further week to see if the problem was fixed.

29. The Tribunal was advised that work carried out between the case management discussion in December 2023 and the hearing on 1st March 2024 had been carried out by Eagle Contracts on the roofing and timber struts and homeowners had been consulted but only two had paid for these repairs including Mr Glancy. Mr Glancy confirmed that where in the videos he had lodged of the roof space where wood had been coming away when touched, the affected timbers had now been replaced with new timbers.

30. The Tribunal was advised that quotes had been obtained for further works and two quotes had been obtained for the work which was going to require scaffolding and removal of slates. The work done had already cost around £5120 plus VAT and it was considered by Mr Hunter that further work would cost something around that figure. The hearing was adjourned to allow settlement discussions to take place between the parties.

31. The Tribunal was advised after the hearing on 1st March 2024 in response to a Direction that no new reports of water ingress had been reported since works were completed on 6th and 26th March 2024 and there was no evidence of continued water ingress. The Respondent was said to be satisfied that the water ingress was not continuing and intended to remove the tarpaulin around the end of April 2024.

32. A further hearing was fixed for July 2024, but this was postponed at the request of both parties to allow further discussions and to allow further work to take place as there had been further water ingress at Mr Glancy's property and work had been done to rectify this and he wanted to monitor the situation. The Tribunal was advised that a settlement in principle had been reached between the parties. A postponement of the hearing was granted.

33. A hearing was fixed for 25th October 2024. The Applicant requested a further postponement as he said the issue was ongoing and further work had been carried

out but this would require to be tested to see if it had fixed the issue. The Respondent objected to a further postponement as they took the view that all required works were complete and that recall works had been inspected by an independent contractor and the tarpaulin was found to be dry. Fortnightly inspections had been arranged to take place. It was further indicated that additional reports had been obtained and that these had been paid for by the Property Factor. These reports were an internal loft condition survey, an External drone survey and a thermal image survey. Settlement had not been achieved between the parties.

Hearing 25th October 2024

34. Before the hearing the Applicant lodged a timeline of events and leaks which contained the emails regarding the water ingress position since June 2024. By email of 24th June 2024 it was indicated on behalf of the Respondent that issues of water ingress were resolved and fortnightly inspections of the tarpaulin would continue for 3 months. A further email dated 23rd July 2024 suggested that at an inspection on 22nd July 2024 the tarpaulin was wet and after further inspection it was discovered that the water ingress was due to a missing seal between a hip tile and slate and was on the opposite side of the roof from where previous repairs had been carried out.

34. The Hearing was attended by the Applicant, Ms Donnelly for the Respondent, Mr Hunter and Mrs Barrow, Services Director also from the Property Factor.

35. At the hearing the Applicant Mr Glancy indicated that the problem of water ingress persisted and the settlement offer had been withdrawn.

36. In relation to paragraph 6.4 of the Code Mr Glancy said that when he first advised the Property Factor of the leak in June 2022 it had not been addressed in a proper or timely fashion. He said there was still water ingress in the same area despite inspections and works carried out and this was some 2.5 years after the leak was first reported. He said that had the issue been identified at the start he would not have had to come to the Tribunal. He said that surveys had been carried out and questioned why a survey of the whole loft area had not been carried out rather than the area above the tarpaulin as there had been leaks at other parts of the building. He said that inspections of the tarpaulin had assisted to an extent in that when water had gathered it had been emptied. Mr Glancy raised concerns about the heat survey and said that none of it had homed in on the area where the water had been coming in. He said that various works had been carried out which had simply wasted money.

37. Mr Glancy said that he had countless conversations by email about the leaks. He had raised issues about where the water was coming from and the amount of ingress. He said that since May 2024 there had been three instances of water ingress into his bedroom, one had actually entered the room and 2 were on the tarpaulin. He said that every time work was done, he wanted to give the work a grace period to check if the ingress had stopped.

38. The Respondent's position was that inspections continued and since May 2024

there had only been one water ingress to the Applicant's property.

39.Mr Hunter explained that all roofing work was now managed internally, and they worked with two companies. He said that some of the information provided to them regarding Mr Glancy's complaints had been wrong and the level of service provided had been far below what was expected.

40.Ms Donnelly indicated that Factors instruct professional contractors who explain the steps required to be taken and reliance is placed on them. The Factors themselves have a level of expertise in that they have some ex trades working for them e.g. a roofer, but they had taken the decision to escalate matters with Eagle and another firm of Roofing Contractors.

41.Mrs Barrow and Mr Hunter explained that she had taken leadership on the issues and improved communication and arranged the additional reports to be carried out. She said that the most recent work had been done below the level of satisfaction and the contractor had accepted that point. She said that the tarpaulin would continue to be monitored. She described that there had been no signs of ingress for 3 months and in May 2024 the work had reported to her as being successful. She said that some earlier work had not been done properly and had to be done again. They advised the Tribunal that they had relied on specialists as to the course of action to be taken.

42.As far as Paragraph .6.5 of the code was concerned Mr Glancy confirmed that there had been problems with different contractors on a few occasions and he had been told they could not get access to the building or the loft space if he was not at home. He said that the loft space now has a padlock, and the Property Factor has a key, and he was never aware of the hatch being locked in the last 2 years. A padlock had been put in place during the Tribunal proceedings as he requested it.

43.As far as emergency procedures are concerned Mrs Barrow advised that the Property Factor has 24 hour call handling and trades are in place 24/7.She accepted that in the early days Mr Glancy had a poor experience. She said that there were occasions after 5pm where they would go straight to a property.

44.Mr Glancy indicated that he had been concerned as it appeared to be inferred that he had denied access which was untrue, and a homeowner should not require to be at home for matters to be resolved. He said that he had had countless tradesmen looking at the hole in the ceiling and had two tradesmen at one time on one occasion, one in the roof space and the other in the room shouting to each other.

45.Mr Glancy's position was that a range of options were considered but they did not seem to cover the matter at hand. He felt that the water ingress into his home was a pretty simple matter. He said that he thought the matter should be fixed and his home should be watertight.

46.On behalf of the Property Factor it was said that they did look at a range of options and they had considered the internal loft condition , an external drone survey and other advisory checks. It was said that suggested that enhancements were considered as they would be of benefit to the roof such as roof vents. It was suggested that these had been considered at a homeowners' meeting, but Mr Glancy said he had not been invited to that meeting.

47. In terms of OSP 6 Mr Glancy said that the repairs carried out and the time taken was shocking. He said the fact that the hole in the ceiling had been there for 2.5 years and suggested that the factor could not address issues raised in a proper or timely manner.

48. For the Respondent it was said that steps had been taken to monitor and address issue with regular checks to identify issues and instruct. It was accepted that early management had not reached the standards to which they aspired, but it was suggested that since May 2024 the water ingress had been pinpointed and resolved to completion and an action plan had been put in place to deal with the tarpaulin. It was said that checks on this would continue for another 3 months.

49. Mr Glancy said that the last work carried out after a leak in early September 2024 he had wanted a grace period to give the work time to prove itself.

50. For the Respondent Mr Hunter advised that the three surveys they had instructed had cost £450 plus VAT, the Drone survey £450 plus VAT and the thermal imaging survey was £522.60 plus VAT.

51. Mr Glancy said that he made his application due to feeling that he was at the end of his tether and that the ingress was never going to stop. He had been in fear of the ceiling collapsing. He said the stress was still not alleviated and there had not been a period of more than 2.5 – 3 months where ingress was not happening. Mr Glancy wanted time for the recent work done in September 2024 to prove itself and he wanted a damp survey carried out.

52. Mr Glancy referred to time off work, the ceiling needing re plastering which could not be done until the water issue was resolved. He said that financially he had expected some help. He referred to the factoring fees, bedding he had required to throw out, and the cleaning of dirty water, a chest of drawers having to be discarded and laminate being warped.

53. For the Property Factor Ms Donnelly said that a Factor's role was not to guarantee that a roof was watertight, and this could never be guaranteed. She adopted all her written representations and pointed out how the matters had been pro-actively managed and how the factor had relied on specialist contractors. She submitted that the factor had considered a range of options and engaged specialists.

54. Ms Donnelly referred to the specialist surveys and tarpaulin inspections and said that as issues arose the Property Factor had handled these with reasonable care and skill and there had been delays outwith their control. She submitted that as far as Overarching standard of practice 6 was concerned the Tribunal would need to have been able to consider what another Property Factor would do and referred to the case of *Countrywide v Cowan* [2022] UT 23 and the test adopted which was in three parts:- what was the normal practice, how was this not followed and how the course of action was one which no other Property Factor would take.

55. Mr Glancy was asked if he wished time to consider his position on overarching standards of practice 6 and the legal test outlined by Ms Donnelly, but he said he would have to research if it was something he was to put into evidence and when asked if he wished time to consider this he did not and wanted to continue.

56. Ms Donnelly suggested she had summarised issues with a previous contractor and works had been revisited and remedied and she submitted that practices had improved and if the Tribunal considered there were breaches there was no requirement for a Property Factor Enforcement Order. She submitted that as far as the duties were concerned the Tribunal had to have regard to what was in the title deeds and referred to paragraphs 11 and 13 of the deeds and the requirement for a Property factor who was to be responsible for instructing and supervising the common repairs in the tenement and apportioning the cost of these and in terms of paragraph 13 for arranging insurance for the property.

57. Mr Glancy indicated that if the Tribunal found there had been breaches, he had highlighted in his application what would help to solve the problem. Ms Donnelly indicated that Mr Glancy had not vouched for any costs incurred and he indicated that he could do that. Mr Glancy said that any money taken by the Factor had been misspent and they had done surveys but would have been better off doing a damp survey. He said that what he had paid over the 2.5 years since he raised the issue was substantial and what he had received was nothing short of a horrendous experience for his first property ownership. The experience had massively impacted his first job which he had moved from and his mental health and enjoyment of his property in the knowledge that this was a safe place to live. He had spent time going into the attic spaces and he said the list was endless as to how this had affected the life of him and his wife.

58. After the hearing the Tribunal noted that the Applicant may not have had a clear opportunity during the hearing or the case management discussion to put forward his position on the Property Factor duties and a Direction was issued to allow him to do that and for the Property Factor to respond if appropriate. The Applicant Mr Glancy submitted a summary of his position overall, some photographs and an update on maintenance and costs he had incurred without any vouching. The Respondent responded to the Direction indicating that new evidence had been introduced and requesting that the Tribunal disregard any new evidence lodged. The Applicant responded by indicating that what he had lodged gave the tribunal the whole picture and should be considered. Having regard to the overriding objective and noting that the Direction sought any written representations on the Property Factor's duties only the Tribunal decided as a matter of fairness that it could not consider new evidence lodged after the hearing although it was prepared to consider the outline of costs and estimated costs given by Mr Glancy although noted that these were unvouched.

Findings In Fact

59. The applicant is the homeowner at the property.

60. The Respondent is the property factor for the properties at 8 Claremont Street Glasgow

61. In June 2022 the applicant contacted the Respondent in regards to water ingress at his property.

62. The water ingress was coming from the roof space area which is a common part of the building managed by the Respondent in terms of their written statement of

services and the deed of conditions for the property which requires the appointment of a Factor who amongst other matters is responsible for instructing and supervising common repairs.

63. When the Applicant's complaint of water ingress was made the request for action was passed from one team to another within the Factor's business, but the Applicant was not kept updated as to what was happening with the concerns he had raised.

64. The Applicant contacted the Factors on 14 occasions and made phone calls to find out what was happening.

65. In response to a stage 2 complaint made to the property factor by e-mail 13th January 2023 Mr. Hunter, the Repairs and Factoring Manager at the property factors accepted that the property factor should have been more proactive in their updates to him.

66. The property factor instructed a contractor to attend to the issue raised by the applicant and this contractor reported back that no leak had been found.

67. A plumber was requested to attend the property but encountered access issues.

68. Further work was instructed to be carried out and this was done in January 2023, and the Respondent were advised that this work was completed early in February 2023

69. The Applicant advised that further water ingress had occurred and the Respondents contacted their contractor who advised that further work was required which was completed by April 2023.

70. The Applicant reported further water ingress in September 2023.

71. Further work was carried out between December 2023 and March 2024 on roofing and timber struts and further work was required on the sarking boards at that time.

72. No new water ingress was reported in March 2024 after further work was carried out and it was proposed at that time to remove the remaining tarpaulin which had been put in the roof space in June 2022 to "catch" any water coming into the roof/loft space.

73. Between May 2024 and the tribunal hearing in October 2024 there were three instances of water ingress at the property one of which involved water entering the Applicants' bedroom.

74. The Respondents obtained a loft report dated 28th February 2024 from specialist Roofing Contractors, and this found evidence of historical water ingress which was to be treated, and repairs required at the hip end due to active water ingress, along with roof tiles and gutters to be cleaned.

75. A drone report was prepared in June 2024 to give an overview of the roof which recommended cleaning of the roof slope, unblocking of a gutter and renewal of a cracked section in the cement ridge.

76. The tarpaulin in place in the loft space was inspected in June, July, August, September and October 2024 and water was noted in the inspections in July and September 2024 and contractors were requested to deal with the issue.

77. Further work was carried out in September 2024 to address the water ingress.

78. A homeowners meeting took place in September 2024 and recommendations of a further Roof Report carried out in September 2024 were put to homeowners to install roof tile vents and a vent to the roof slope.

79. The Applicant is of the view that little has been done to address the leak properly over time by the Factor and that the water ingress has completely affected the ability of him and his wife to enjoy their property as they remain concerned that water will enter their bedroom.

80. The delegated spend for required repairs reported to the Factor for which homeowner authority is not required is £ 200 per unit and job specific progress reports are not required for repairs below the delegated authority limit as set out in the Respondent's Written Statement of Services and Annual Information Statement.

Reasons for Decision

Code of Conduct 2021

81. 6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

Whilst the initial repair carried out was within the delegated spend and did not require a job specific progress report the Respondent has accepted that when Mr Glancy asked for updates on the water ingress, he did not always receive them, and he complained that he had sent 14 emails and made many phonecalls to the Factor between reporting the water issue and the complaint he made. Whilst a progress report was not always mandated by the code, further repairs were required during this period and we consider that where updates are requested by a Homeowner they should be given and to this extent we find that this paragraph of the code has been breached. The Property Factor has apologised for the service and indicated that this was due to staff turnover strain on resources at the time.

82.6.5 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible

The Tribunal did not consider that it had sufficient evidence to find that this paragraph of the code was breached as the Applicant has simply indicated that he had difficulty with previous out of hours contractors being difficult to reach and to have them attend.

We accept that the Respondent had procedures in place for this type of contact. The Applicant himself stated that arrangements had improved when a new contractor was put in place.

83.6.6 *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.*

We found no evidence to support a breach of the Code in terms of this section. There was evidence that a range of options was considered to deal with the water ingress and recommendations regarding roofing enhancements were brought to homeowners as the water ingress continued. It was clear from the evidence that the Factors obtained reports from specialists which informed further work in the loft space.

84.Overarching Standard of Practice 6

Whilst the Respondent accepted that their service was not always delivered as the Applicant might have expected 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. We therefore do not find any breach of OSP 6 in this application.

Property Factor Duties

85.The Applicant's assertion that the Property Factors failed to identify and repair a leak in the roof space at the property. Whilst it is accepted that the Property Factor's initial response appears to have been slow, they were initially advised that no leak could be found and required to instruct further work and repairs. They were assured that all required work had been carried out by February 2023.The Applicant is of the view that the same leak recurred time and again, but we are unable to make that finding as it is not clear from the evidence if these were new leaks caused by differing issues over time. The Respondents were proactive in obtaining surveys and reports and instructing work as time moved on in order to eradicate the water ingress. They took steps as informed by specialists. The Applicant believes damp surveys and a full loft survey should have been carried out but there is no evidence as to why this should have been done or whether it would have made a difference to the circumstances. Based on the evidence we have considered we do not find that the Property Factor duties were breached in this application.

Property Factor Enforcement Order

86.The Tribunal accepts that the Applicant has been affected by the ongoing leak at

his property and his enjoyment of the property has been badly affected. However we have made a limited finding on a breach of section 6.4 of the code and in these circumstances, we consider that it is appropriate to require the Respondent to refund any management charges paid between June 2022 and January 2023 to the Applicant.

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.

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.

Valerie Bremner

Chairperson of the tribunal

Decision date 7th July 2025