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/24/3381

Re: Property at 65 Waverley Street, Glasgow, G41 2DY ("the Property")

Parties: Mr Benjamin Semple ("the Applicant")
Macfie and Co ("the Respondent") represented by Gillespie MacAndrew LLP

Tribunal Member:

Yvonne McKenna (Legal Member) and Frances Wood (Ordinary Member)

DECISION

The Tribunal determined that the Respondent has failed to comply with section 4.4, 4.6 and Overarching Standards of Practice ('OSP') 5 of the Property Factor Code of Conduct 2021 as required by Section 14(5) of the Act. The decision of the Tribunal is unanimous.

Background

1. In this Note, the Property Factors (Scotland) Act 2011 is referred to as "**the 2011 Act**"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "**the Code**"; and the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "**the Rules**".

2. By application to the Tribunal dated 25 July 2024 the Applicant made an application under section 17 (1) of the 2011 Act.

3. In terms of the application, the Applicant complained that the Respondent had;

A; Failed to comply with the Code –

He said that in relation to the Overarching Standards of Practice that the Respondent had breached the following required standards

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

- *You must not provide information that is deliberately or negligently misleading or false.*
- *You must apply your policies consistently and reasonably.*

Furthermore, he specified that Paragraphs 4.1, 4.2 and 7.2 of the Code had been breached.

B; Failed to carry out the Property Factor's duties;
The Applicant stated that the Respondent had failed to fairly reassess the communal charges based on the change of use of the Property from commercial to residential in 2007.

4. In support of the application, the Applicant submitted the following;
- E-mails to the Respondent dated 11 August 2024, being notification under section 17 (3)(a) of the 2011 Act.
- E-mails from the Applicant to the Respondent dated 24 July 2024, 25 July 2024.
- E-mails from the Respondent to the Applicant dated 29 April 2024, 24 July 2024
- The Respondent's written statement of services

5. The Tribunal was also in receipt of the Title Sheet which confirmed the Applicant to be the registered owner of the property.

6. By Notice of Acceptance of application dated 2 September 2024, a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application.

7. The application was therefore referred to a Case Management Discussion ('**CMD**').

8. The Respondent lodged with the Tribunal on 28 February 2025, written submissions, together with an Inventory of Productions itemised as;
1) Written Statement from Macfie & Co
2) Copy of correspondence to seller's Solicitor
3) Letter of 29th April 2024 to all owners regarding a change to the allocation
4) Email from Mr Semple approving the letter
5) Email from Mr Semple rejecting our advice
6) Macfie & Co response to Mr Semple's Code of Conduct Breaches email.
7) Advice from Kevin Sturgeon, Solicitor
8) Email thread regarding 1989 figures
9) Letter to all co-owners advising on change of figures to 1989 version

9. In between the date of the application, and the date of the CMD, the Applicant made further representations to the Tribunal on a number of separate occasions. These representations set out various further complaints. He also lodged over four hundred pages of additional documents.

10. The CMD took place on 1 April 2025 by teleconference at 2pm. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the Rules.

The Case Management Discussion (1 April 2025)

11. The CMD took place by telephone conference on 1 April 2025. Both parties were present. The Applicant was supported by his partner Ms Lauren Semple. The Respondent's Mr John Walker, Director was present. Neither party was represented. Both parties were content that the CMD proceeded by teleconference.

12. The Tribunal explained to the Applicant, that what is required from him is a single document setting out each of his complaints under each specific heading, and the evidence that he relies on in relation to each alleged breach of the Code, and each alleged breach of the Property Factor's duties. Any supporting documentation will require to be paginated, and that includes any documentation already submitted. This is in terms of the President's Practice Direction of 27 May 2021.

13. The Tribunal explained that the Applicant cannot continue to add to his case with more correspondence, and more issues, as time progresses, otherwise the case will never be able to proceed to a hearing. The Applicant accepted this but said that there were ongoing matters which were arising as time progressed. He was told that he would need to keep a note of the same, if so advised, and these could be the subject of a further application at a later stage.

14. The Applicant said that he would be able to collate all of his specific complaints into one document and to specify under each heading of complaint the evidence he wished to put forward in support of the same. He said that a 28 day period would suffice to enable him to do so.

15. The Respondent confirmed that he would be able to answer this within a similar period.

16. Separate Directions were issued in relation to what each party required to do in advance of the next CMD.

The Case Management Discussion (26 August 2025)

17. The second CMD took place in person at the Glasgow Tribunals Centre ('**GTC**') on 26 August 2025. Both parties were present. The Applicant was supported by his partner Ms Lauren Mullen. The Respondent's Mr John Walker was present. He was represented by Ms Fiona Cameron, solicitor, Gillespie McAndrew LLP, and he was also accompanied by Ms Holly Edgar, trainee solicitor with that company.

18. The Tribunal confirmed that since the last CMD it had received representations from both parties in terms of the Tribunal's Directions. On 24 April 2025 the Applicant had lodged an updated complaint document together with a paginated inventory. This alleged breaches of the Code at paragraphs, 1.2, 1.5D, 1.5E,2.1,2.2, 2.4, 2.6,2.7,2.9,3.1,3.2,3.4,3.8,4.1,4.2,4.3, 4.4,4.5,4.6,4.7,4.10, 4.11, 6, 6.10, 6.11, 7, and

OSP 1,2,3,4,5,6,8,9,10, 11 and 12. The Respondent had provided their written representation in answer on 29 May 2025, together with the Respondent's Inventory of Productions.

19. The Applicant had then on 23 July 2025, added a further Inventory with productions numbered 80-82.

20. The Respondent intimated on 20 August 2025 that they wished to insist on 3 preliminary matters to be considered by the Tribunal namely; -

- (i) Dismiss that part of the Applicant's case seeking "Implementation of Assessor's Domestic Certificate" on grounds that the Tribunal does not have jurisdiction in relation to that remedy; in terms of Sch 1, Part 1, para 27(1) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017;
- (ii) Reject the balance of the Application on grounds it is frivolous and/or vexatious; in terms of Sch 1, Part 1, para 8(1) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017; and
- (iii) Grant an award of expenses in favour of the Respondent in respect of the proceedings to date; in terms of Sch 1, Part 1, para 40 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

and had referred the Tribunal to an offer which had been made to settle the case with the Applicant and which was rejected by him.

21. Before the Tribunal went on to consider these preliminary matters, time was afforded to parties to have a conversation in relation to the application, to explore whether there may be any scope for an overall resolution without the matter proceeding to a full hearing. It was explained to the Applicant by the Tribunal that all that this Tribunal can do is to consider whether there have been any breaches of the Factors Code of Conduct. What this Tribunal is unable to do is to reassess and re-allocate to the Applicant what his communal charges should be.

22. Parties returned after a short break to indicate that they had been unable to reach an overall resolution, and that the case would require to proceed.

23. The Applicant said that he accepted that this Tribunal would be unable to change the allocation of communal charges. He said that he wished to proceed with his case and maintained that the Respondent had made unfounded charges for a number of years. He said that the situation was, "an absolute mess", and that he wanted to claim back all of the money which had been inaccurately charged to him by the Factors.

24. With regard to the Respondent's first preliminary matter the Applicant withdrew his request to seek the specified remedy.

25. The Tribunal then went on to consider the second and third preliminary matters which had been raised.

26. Ms Cameron said that she had heard the Applicant accept that this Tribunal does not have jurisdiction regarding the remedy which the Applicant sought. She had a residual concern that the Applicant would continue to pursue the issue that the Factors had misrepresented the title deeds regarding the appropriate figure. She re-iterated that this forum cannot give the Applicant that declarator.

27. Her fall-back position was that the Applicant had explained that he wanted his money back. This had already been offered by the Respondent and that remedy had been rejected.

28. She drew the Tribunal's attention to the fact that this case has not been brought and pursued in an ordinary way. She said that significant paperwork had been directed to her client and the Tribunal. This disproportionately impacted on her client being in a position to defend the application. She said that the Respondent had tried hard to narrow the issues and to resolve the claim once and for all, but that the Applicant had not engaged in a meaningful way. In relation to his application as amended, certain remedies had been sought all of which had been offered, and yet there had still not been any progress made. She said that these two factors call into question the Applicant's motivation in pursuing this claim. She sought dismissal and expenses to be awarded against the Applicant.

29. The Applicant's position was that in relation to the offer to settle the case, that the Respondent had applied the wrong maths in their calculation of what was due to him. He was also unhappy with the fact that he was being asked to sign a compromise agreement in the event that he accepted the sum offered by the Respondent. He said that this meant that he would be unable to proceed with his application to the Information Commissioner and or the sheriff court regarding the manner in which his data had been handled by the Respondent. He claimed there had been data breaches and SAR requests. He understood that this Tribunal is unable to consider those aspects but wished to be able to pursue the same.

30. In relation to the copious paperwork, the Applicant said that he had been very thorough in the process of collating all of the paperwork, and that he had fully complied with the Tribunal's Direction. He said that he had never made an application before and had put a great deal of effort into all of this.

31. A further break was afforded to allow the Tribunal to deliberate on the preliminary matters.

32. On resuming the CMD, the Tribunal said that the position was that the Tribunal was not minded to dismiss the application, and to make a finding of expenses against the Applicant. The Tribunal are of the view that although there has been a great deal of paperwork lodged, that this is not unusual in cases of this nature. The Tribunal accepts that the Applicant has tried his best to comply with the Tribunal's direction and has set out his case in one comprehensive document. He has lodged the productions relied upon by him as directed. It is clear from the case lodged with the Tribunal, that a number of alleged breaches of the Factors code have been raised, not all of which are related to the mechanism for charging. For example, the Applicant is making the complaint that the Respondent did not provide a Written Statement of Services, ('**WSS**') amongst other complaints.

33. With regard to the motion for expenses, the Rules provide at Rule 10; -

'(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party or parties to unnecessary or unreasonable expense.
(2) Where expenses are awarded under paragraph (1), the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expenses incurred by the party or parties in whose favour the order for expenses is made.'

The discretion to award expenses is a wide one but is always subject to the overriding objective to deal with cases justly in terms of Rule 3. This means that the Tribunal should deal with proceedings in a manner which is proportionate to the complexity of the case. The Tribunal must also bear in mind that the Applicant is an unrepresented party, inexperienced in formal dispute resolution. Awards of expenses are exceptional. Rule 10 itself is permissive and conditional. Awards should only be made rarely and in a clear case where unreasonable behaviour has been made out to the satisfaction of the Tribunal. That is a high test to meet, and the Tribunal are not of the view that the Applicant's behaviour in the conduct of this case has been shown to be unreasonable.

34. The CMD then turned to discuss further progress of the application. The Applicant said that he had been unable to provide a definite figure in relation to what he maintains is due to him from the Respondent. He said that he had taken some legal advice from Edinburgh Law Clinic. He stated that he was of the view that there was no requirement for him to proceed with an application to the Lands Tribunal.

35. Ms Cameron said that she was opposed to the Tribunal accepting the further documentation lodged by the Applicant on 23 July 2025. The Tribunal explained to the Applicant that this documentation had not been lodged as directed and would not form part of this application. The Applicant said that he would lodge a separate application to the Tribunal in relation to any other matters arising which were not included in this application.

36. There is no scope for any agreement between parties and accordingly the case required to proceed to a Hearing.

37. The Applicant sought an in person hearing. Mr Semple said that he would be giving evidence himself. He has no other witnesses. He said that he wished to be personally present, and that he wished the Respondent to also be personally present so that he could not hide behind screens.

38. Ms Cameron explained that her client Mr John Walker the Respondent's director, lives in Hungary. He had made a special trip to Scotland for the CMD, as this had been fixed in person. She asked for consideration to be given to Mr Walker appearing remotely. There would likely be two witnesses for the Respondent Mr John Walker and Ms Joanne Walker. It was also likely that Mr Walker would be representing the company himself at the Hearing.

39. The Tribunal considered these representations and a Hearing was fixed for 9 December 2025 at 10am at GTC as a hybrid Hearing. The Applicant wished to attend personally. The Tribunal confirmed there was no requirement for Mr Walker to attend personally given that he is resident in Hungary. Over the period of the pandemic many witnesses have given evidence remotely and the practice has continued where appropriate to this date. The practice continues in the highest civil court in Scotland in the Court of Session. There was no specific reason why the Respondent's Mr Walker required to be personally present. The Tribunal rejected the Applicant's position that Mr Walker could hide behind screens. Albeit he would be giving evidence remotely, this would be by video link, and the Tribunal would be able to observe him in the same manner as they would in the event he was present personally. He would require to give evidence and to be cross examined and asked questions in the same way as he would in the event he was personally present.

40. In addition, the Applicant had found it very difficult to be in the same room as Mr Walker. He became visibly upset, and when discussions were taking place insisted that these took place only with the Applicant's representative. The Tribunal was of the view that in the circumstances it may well be easier for the Applicant in the event that Mr Walker was not physically present.

The Hearing; 5 December 2025 and 5 March 2026

41. The Hearing proceeded on 9 December 2025, and 5 March 2026.The Applicant was present supported by his partner, Ms Lauren Mullen. The Respondent was represented by Mr Miles McKay. The Tribunal heard evidence form the Applicant, Mr John Walker, a director of the Respondent, and Ms Joanne Graham, a director of the Respondent.

42. The main focus of the Applicant's case related to the communal share allocation for communal charges relating to the block 65-73 Waverley Street, Shawlands, Glasgow in which the Property is situated. This issue was raised by the Applicant in relation to many of his alleged breaches. The Applicant complained that the communal share allocations were not adjusted by the Respondent to take account of the fact the Property had previously been commercial premises and was now domestic. He complained this resulted in him paying an unfairly high percentage of communal charges compared to other properties in the block occupying the same physical footprint. Once the Respondent resigned as factors for the block on 31 August 2025, the incoming factors in 2025 quickly dealt with this by recourse to section 111 of the Local Government Finance Act 1992. The Respondent had taken legal advice which did not suggest this remedy. In fact, the advice provided to the Respondent was to the effect that section 111 could not be invoked, and that the Applicant would require to resort to The Lands Tribunal for Scotland. Whether or not the legal advice provided to the Respondent was correct or not is a separate matter, and is beyond the jurisdiction of this Tribunal. The Tribunal relied heavily on the fact that the Respondent did take legal advice and followed this advice.

43. By direction dated 5 March 2026, submissions were invited by each party addressing the evidence heard by the Tribunal.

44. Submissions on the evidence were received from the Applicant on 7 April 2026, and from the Respondent on 16 April 2026. A hearing on submissions took place on 3 June 2026. The Tribunal deliberated on the afternoon of 3 June 2026, and on 17 July 2026.

45.

The Tribunal make the following findings in fact:

1 The Applicant is the owner of the Property.

2 The Respondent performed the role of the property factor for the Property from 2017 until 31 August 2025.

3 When the Respondent took over responsibility for the block at Waverley Street they made reasonable enquiries of the outgoing factor. JB and G Forsyth.

4 The Property is now factored by Taylor and Martin. Shortly after taking on their role, they used the 1992 Local Government Finance Act S111 to vary the share allocations without owner consent given there had been a 'material change of circumstances' since 1989 valuations in that the Applicant's property had changed from commercial to residential use.

5 The Applicant moved into the Property on 31 July 2021.

6 Due to an administrative error the Respondent did not set up an account for the Applicant until 6 months after he moved in.

7 The Respondent issues quarterly invoices. The Applicant was invoiced in February 2022 for 2 quarters.

8 The Applicant received a letter from the Respondent on 5 August 2021 with a copy of the WSS.

9 The Applicant was given access to the Respondent's online portal.

10 The Applicant did not use the online portal.

11 The Applicant disputed the share allocation for the Property

12 The Respondent took legal advice. This legal advice was shared with the Applicant.

13 The legal advice provided to the Respondent was that the Respondent could not change the underlying communal share allocation without the consent of the other proprietors. The legal advice said that in 1989 the share allocations were essentially fixed and the only recourse was to The Lands Tribunal for Scotland in the absence of 100% owner consent to any changes.

14 The Respondent wrote on 3 occasions to all common owners within the block confirming the advice and requesting whether they would consent to the alteration of the title deeds. The other homeowners declined to do so.

15 The Respondent would be in breach of the Code to act contrary to legal advice.

16 The Respondent corresponded regularly and consistently with the Applicant regarding the issue of share allocation.

17 The Applicant e-mailed the Respondent at a frequency far in excess as to what is expected – in one year emailing 400 times over the course of the year. On some occasions the Applicant e-mailed 10-15 times daily.

18 The Applicant recovered internal e-mails and messages from the Respondent following subject access requests made by him. These internal communications do not fall within the scope of services provided by the Respondent to the Applicant.

19 Ms Joanne Graham is a Director of the Respondent. Her knowledge of information regarding the Property is within the bounds of the current data protection scheme for the Property.

20 Mr John Walker is a Director of the Respondent. His knowledge of information regarding the Property is within the bounds of the current data protection scheme for the Property.

21 Mr John Walker accidentally called the Applicant on 10 November 2024.

22 On 15 April 2024, the Respondent provided the Applicant with an extensive spreadsheet breakdown of entire works completed at the Property, including all works on the roof.

23 The Respondent registered a NOPL against the Property on 19 February 2025 which accrued an £80 fee. An £80 fee was mistakenly applied to the Applicant's account on 28 February 2025 and was refunded. It was never paid by the Applicant.

24 The Applicant cleared a communal cupboard himself. He was not billed for the work. The Respondent had written to the Applicant stating they intended to charge £262.80 for the cost of clearing the storage cupboard as items constituted a fire hazard.

25 The Respondent has no financial interest in EBS Construction, a company owned by Mr David Sinclair who resides in the block, namely at 3/1 Waverley Street, Glasgow.

26 There is an active court decree against the proprietor of No. 73 Waverley Street and a NOPL has been lodged with the title deeds. The Respondent has

taken steps to recover debts from the owners of 73 Waverley Street. The WSS allows maintenance shares of other proprietors to be adjusted to recover outstanding debts.

27 The Applicant was advised of a NOPL lodged against no. 73 on purchase of the Property and again by e-mail from the Respondent's Mr John Walker on 4 September 2024.

28 The WSS contains a clear written procedure for debt recovery and includes signposting to sources of advice.

29 There are no written procedures in the WSS setting out how to deal with disputed debts when financial ability to pay is not the issue.

46. The Applicant's alleged various breaches of the code

Section 1.2 of the Code

1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

- **within 4 weeks of the property factor: -**
  - **agreeing in writing to provide services to them; or**
  - **the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;**
  - **identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.**
- **at the earliest opportunity (in a period not exceeding 3 months) where:**
  - **substantial change is required to the terms of the WSS.**

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

Position of the Applicant

The Applicant referred to a letter received by him on 9 February 2022 and said this was the first of him learning of the existence of the Factor. He believed that a WSS was attached. This was 6 months after he moved into the Property. This was the very first contact he had.

Position of the Respondent

The Respondent referred to the evidence the Tribunal heard from Mr Walker that the WSS was provided to the Applicant. A copy of a letter to the Applicant dated 5 August 2021, which enclosed the WSS, was lodged in process (Respondent's production 2). A copy of the WSS was lodged in process (Respondent's production

17). The Applicant accepted in cross-examination that he had received these. The Applicant has failed to establish the Respondent is in breach of the Code.

47. Section 1.5D(13) of the Code

1.5 The WSS must make specific reference to any relevant legislation and must set out the following:….
D. Communication and Consultation
(13) how homeowners can access information, documents and policies/procedures that they may need to understand the operation of the property factor;

Position of the Applicant

The Applicant referred to this as being the "meat and potatoes" of his case. The Applicant states that the Respondent has failed to provide information as to how to access information about the shares payable by each of the respective homeowners for common property maintenance costs. The position he said has now been resolved by the new property factors who have taken over the role since the Respondent withdrew. The new factors Taylor and Martin have used the correct share allocation. He said that the Respondent had failed to produce the basis for the share calculations.

Position of the Respondent

Reference was made to the WSS (Respondent's production 17). At page 1 it states;

"*Please note that if you require a copy of the Code of Conduct for Property Factors or any of the policies/procedures or other information referred to within this document, please contact us on one of the methods detailed within this document. Alternatively, you may find what you are looking for on our online portal."*

Reference was also made to the evidence of John Walker. The parties did communicate by email regarding information relevant to the exercise of the property factor's duties. The Applicant was given access to the property factor's online portal. The Applicant neglected to use the online portal. The Applicant has failed to establish that the Respondent is in breach of the Code.

48. Section 1.5 E (17) of the Code

1.5 The WSS must make specific reference to any relevant legislation and must set out the following:….
E. Declaration of Interest
(17) 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.

Position of the Applicant

The Applicant claimed the Respondent had not declared a mutual benefit. He suggested they benefitted financially from using the contractor, 'EBS Construction', to carry out certain repair works, and vice-versa, a company owned by Mr David Sinclair who resides in 3/1 Waverley Street, Glasgow. He alleges a biased relationship.

Position of the Respondent

The purpose of the provision is that any financial interest that a property factor may have in the common scheme be disclosed to the owners. The Respondent has no ownership or other financial interest in any of the constituents of the common scheme.

Even taking the Applicant's argument at its highest, the Tribunal heard from Mr Walker that the Respondent has no financial interest in EBS Construction. There is no provision of the Code that prohibits a factor from contracting with a constituent homeowner for the execution of common repairs. The Applicant has failed to establish the Respondent is in breach of the Code.

49. Section 2.1

2.1 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.

Position of the Applicant
The Applicant referred to a number of productions and his "entire case". He claimed there was "deliberate internal plotting" by the Respondent to use the 1989 rateable values system to calculate his share allocation and to terminate management of the Applicant's block as a response to his emails regarding share allocations. He also said he was told that his only remedy would be to approach the Lands Tribunal, which was incorrect as his new factors have used the correct figures without this procedure.

Position of the Respondent
The Respondent relied on the evidence of both John Walker and Joanne Garaham and to the Respondent's productions referred to in the course of their evidence. The Respondent said communication between the Applicant and the Respondent on this matter was regular and consistent. The Respondent considered the Applicant's communications carefully and in detail. The Respondent took legal advice on the matter. The outcome of that legal advice was that the Respondent could not change the underlying title position without consent of the other proprietors. This

consideration of the approach to the shares was transparent, with the advice itself exhibited directly to the applicant. The Respondent wrote to all of the common owners within the block confirming the advice. The Respondent asked the other homeowners if they would consent to alteration of the title deeds on three occasions. The other homeowners declined to alter the title deeds. The Applicant was referred to the arbitration clause in the title deeds should the interpretation of the title deeds be disputed. In cross-examination, the Applicant accepted that the Respondent would have been in breach of the Code to act contrary to their legal advice. In addition, Mr John Walker gave evidence that the Applicant would email him about this matter at a frequency far beyond what is expected in the normal provision of his company's services. He estimated over 400 emails in the period of a year. On some days the Applicant would email him 10 to 15 times per day. The Respondent was taking legal advice on the matter and in any case did not have sufficient capacity to respond to every email at this frequency.

50. Section 2.2

2.2 Factors are required to comply with current data protection legislation when handling their client's personal data, and to ensure that this information is held and used safely and appropriately.

Position of the Applicant

The Applicant had recovered internal e-mails following Subject Access Requests to the Respondent. He claims his roof complaint was shared with, and commented on by a non-employee, namely, Ms Charlotte Fern's mother. He also states he was called on a Sunday morning by the Respondent's Director Mr John Walker at 6.27am. on 10 November 2024. The Applicant felt this was done deliberately and was tactical to unsettle him in some way. He queried why Mr Walker would have his number on his personal phone. He also refers to various internal e-mails where he is mocked.

Position of the Respondent

The Respondent referred to the evidence of Joanne Graham. She gave evidence that she is Charlotte Fern's mother and that she is a Director of the Respondent. Her knowledge of any information regarding the Property is within the bounds of the current data protection regime. Reference was also made to the evidence of John Walker. He gave evidence that the phone call which he made to the Applicant on 10 November 2024 was accidental. In any case, the Applicant has failed to explain why that fact amounts to a breach of the current data protection legislation.

51. Section 2.4

2.4 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.

Position of the Applicant

The Applicant's position is that he alleges that he was not provided with a "breakdown of the roof issues". He also alleges that he was not provided the "share calculation formula".

Position of the Respondent

The Respondent relied on the evidence of Mr John Walker and Ms Joanne Graham. Reference was made to the Respondent's productions 8 and 16. The Respondent provided to the Applicant an extensive spreadsheet breakdown of the entire works done at the Property, including all works on the roof (Production 8). The Applicant requested this information on 19 March 2024, and it was provided on 15 April 2024. The Respondent provided the Applicant with a detailed note and tables showing the maintenance cost shares applicable to the homeowners (Production 16). The Applicant has not established any failure to provide requested information that they must make available under the Code.

52. Section 2.6

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there 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.

Position of the Applicant

The Applicant referred to the fact a Notice of Potential Liability ('**NOPL**') was registered against the Property during Tribunal proceedings which incurred an £80 charge. He states he was not consulted.

Position of the Respondent

The Applicant misinterprets the Code. Section 2.6 of the Code does not preclude an NOPL being registered against the Property.

53. Section 2.7

2.7 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.

Position of the Applicant

The Applicant stated that his original roof complaint has been left unanswered since 13 April 2023.

Position of the Respondent

The Applicant gave no evidence at the hearing of a specific instance on which the timescales for responding to a complaint confirmed in the WSS was not adhered to. Reference was made to the Respondent's production 10 and to the evidence of Ms Joanne Graham.

54. Section 2.9

2.9 Where another property factor is due to take over the management of property and land owned by homeowners; the outgoing property factor must co-operate (within the limits of their authority to act and data protection legislation) with the new, formally appointed, property factor (and vice versa), to supply each other with information about the land and properties to be factored and contact details for homeowners. This could be achieved via a letter of authority from the majority of homeowners to confirm their instructions to the outgoing property factor and list the information they wish to be shared.

Position of the Applicant

The Applicant claims the Respondent has failed to request and receive mandates from the previous factors and to request and receive compliant rateable values,

Position of the Respondent

The Respondent referred to the evidence of Mr John Walker and the Respondent's Production 16, which was an e-mail sent to the Applicant from Mr John Walker dated 2 September 2024.This e-mail explained that the share allocation figures were provided to the Respondent from the previous factors, who they understood had been using the figures for decades. The e-mail also detailed,

'*We have not retained the appointment mandates, but the basis of our appointment is detailed within the attached written statement of services. In the vast majority of properties we manage, we do not retain mandates from years ago, as there is no requirement to do in terms of the legislation. It is generally accepted that the vast majority of factorial appointments in Scotland were made many years ago and the legislation was adapted to suit.'*

The Respondent made reasonable enquiries of the outgoing factor. The Respondent obtained the relevant documents and information that a reasonable property factor would require to perform their duties in terms of the Code.

55. Section 3.1

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

Position of the Applicant

The Applicant suggests his entire case shows this section has been breached. He said that this included the rateable values used by the Respondent, the systems used by the Respondent and the nexus of change from the 1950s system to the 1989 system was not transparent. In his evidence the Applicant referred to his productions 57 and 58. Production 57 is an e-mail sent to the Applicant by the Respondent dated 20 September 2024 which accompanied an invoice (production 58) for the period 1 June 2024 to 31 August 2024. The Applicant takes issue with the way this invoice has been calculated. He then referred to what he specified as 'retroactive invoicing outside of the billing period which clashes with the WSS'. He said his Productions 53-59 evidenced a breach of this section of the Code. He said this could not be put down to a clerical error but was a purposeful decision by the Respondent to use the 1989 system. He states that his view is that by not applying the law, this is not a clerical error. He complained that all of the invoices he was issued should reflect the pre-switch and post-switch systems.

Position of the Respondent

The Respondent had written to the Applicant on 19 September 2024 referring to the ongoing discussion regarding the communal share allocation for the Property.
They explained in this communication that the share allocation figures in use were passed by the previous factors, JB &G Forsyth in 2017, when they took over the management of the tenement. They explained that they were advised the figures were based on historic assessed rental figures, per the Title Deeds for decades.
These figures were adopted by the Respondent. Following the Applicant's challenge the Respondent took legal advice which stated;

'The *Deed of Conditions dating from 1950 provides that the split of maintenance costs for the common parts shall be determined by reference to the proportion of the assessed rental of the tenement. Section 111 of the Local Government Finance Act 1992 has fixed the date of reference for assessed rental so that any reference to assessed rental (or as the case may be the gross annual, net annual or rateable value) in a Title Deed before 1 April 1989 is to be construed as a reference to the net annual value which appears in the Valuation Roll in force on 31 March 1989. Essentially, the 1992 Act fixes the set of valuations which are used for the calculation of the maintenance split to those in force as at 31 March, 1989.All references to "Assessed Rental" within the Deeds should therefore be interpreted accordingly...'*

The Respondent explained they had obtained the 1989 values from the Loacl Authority and stated they would be recalling their recent communal charge invoice and re-issuing it reflecting the revised allocation.

The Respondent referred to their Productions 11 and 18 (both invoices) and to the evidence of Joanne Graham. The Respondent provided clear invoices to the Applicant for all payments sought. Those invoices stated the share of the total cost payable by the Applicant. Those invoices contained narratives that explained what the payment was for. Invoicing errors on occasion do not amount to a breach of the Code. In so far as there may have been invoicing errors from time to time, the Tribunal heard that the Applicant was refunded. The Applicant has failed to establish a relevant breach of the Code.

56. Section3.2

3.2 The overriding objectives of this section are to ensure property factors:

- **protect homeowners' funds;**
- **provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;**
- **make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.**

Position of the Applicant

The Applicant said that there had been a failure to protect homeowners funds. He referred to being forced to opt-out instead of opting-in for the cost of clearing a storage cupboard and being charged £262.80. He said the Respondent had billed the homeowners but the job had been cancelled as the Applicant had carried the work out himself. He complained that the Respondent said the work was necessary as the items in the cupboard constituted a fire hazard. However, there were no combustibles stored there, and no fire risk assessment was provided.
He again claimed his entire case proved this breach as there was a failure by the Respondent to provide clarity and transparency in all accounting procedures.

Position of the Respondent

The Respondent states the Applicant does not plead any relevant failure to protect homeowners funds. The Applicant does not evidence any failure by the Respondent to protect homeowners funds.

57. Section 3.4
3.4 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.

Position of the Applicant

The Applicant claims he was never sent an annual statement.

Position of the Respondent

The Respondent refers to the Code which specifically states that a billing arrangement will fulfil the duty. There is no duty to provide an annual financial statement, only that there be a financial statement at least once a year. Billing was quarterly.

58. Section 3.8
3.8 A property factor must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on the sale of the property).

Position of the Applicant

The Applicant states there is clear evidence of overpayments. He referred to his production 21 which was a series of e-mails between the Applicant and Mr John Walker in which the Applicant requests to be paid back in full regarding the communal share allocation system used by the Respondent.

Position of the Respondent

The Respondent states that the Applicant has misinterpreted the Code and has failed to specify a relevant breach of the Respondent's duty.

59. Section 4.1
4.1 Non-payment by some homeowners may affect provision of services to others,
or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating.

Position of the Applicant

The Applicant refers to the fact that the proprietor of no. 73 in the communal block has absconded. No. 73 was abandoned before the Applicant moved in. The Applicant said in his evidence that no. 73 was boarded up he thought for 5 years. The Respondent sought to recoup costs of no. 73 not paying, by increasing the average communal share allocation percentages. The Respondent states they will

do what they can to recoup the money paid by the other homeowners. The Applicant complains he has received no updates in that regard.

Position of the Respondent

The Respondent relied on the evidence of John Walker and also referred to their productions 12 and the WSS. Production 12 is an e-mail from Mr John Walker to the Applicant dated 4 September 2024 advising the Applicant there is an active court decree lodged against the proprietor of No. 73 and that a Notice of Potential Liability has been lodged with the title deeds. Accordingly, the Respondent has taken steps to recover the debts from the owners of 73 Waverley Street. The WSS allows maintenance shares of other proprietors to be adjusted to recover outstanding debts.

60. Section 4.2
4.2 It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners.

Position of the Applicant

The Applicant states a late payment charge was applied to the roof payment despite clear evidence of complaint abandonment and internal mishandling.

Position of the Respondent

The Respondent referred to the evidence of Joanne Graham that an £80 fee was mistakenly applied to the Applicant's account on 28 February 2025. She gave evidence this charge was an error and was removed from the Applicant's account. It was never paid by the Applicant. No debt recovery measures were taken by the Respondent. The Respondent acted reasonably.

61. Section4.3
4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.

Position of the Applicant

The Applicant stated the late payment charge was completely unreasonable when the Respondent knew it was their own fault internally yet tried to apply it anyway.

Position of the Respondent

The Respondent referred to the evidence of Joanne Graham that an £80 fee was mistakenly applied to the Applicant's account on 28 February 2025. She gave

evidence this charge was an error and was removed from the Applicant's account. It was never paid by the Applicant. No debt recovery measures were taken by the Respondent. The Respondent acted reasonably.

62. Section 4.4

4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.

Position of the Applicant

The Applicant states the Respondent ignored his requests and those of his MP, to stop all procedures until tribunal proceedings were concluded. Furthermore, he referred to the various internal e-mails exchanged between the Respondent's employees suggesting they were intentionally harming both his physical and mental well-being in their dealings with him.

Position of the Respondent

The Respondent referred to the WSS lodged Respondent's production 17. The WSS contains a clear written procedure for debt recovery. The internal WhatsApp messages produced by the Applicant are irrelevant to this application. They were obtained by a Subject Access Request. He was not a recipient of the messages. The messages did not fall within the scope of the service being provided by the Respondent to him.

63. Section 4.5

4.5 When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies.

Position of the Applicant

The Respondent did not provide any third-party debt advice support information. The Respondent applied a NOPL to the Applicant's property, yet it is unclear whether they registered one against 73 Waverley Street.

Position of the Respondent

The Respondent referred to the WSS specifically page 8, under the heading, 'Debt Recovery Procedure', which specifically provides not-for-profit debt advice bodies

that homeowners may consult. This section of the Code imposes no duty on the Respondent to disclose debt recovery steps against other proprietors within the common scheme. An NOPL was registered against 73 Waverley Street. The Applicant was informed of that upon purchase of the Property. The Applicant was told that again by e-mail from Mr John Walker on 4 September 2024.

64. Section4.6
4.6 A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe.

Position of the Applicant

The Applicant states there was a system failure to register his account until around 6 months after he took ownership pf the Property. He also queries the content of his invoices.

Position of the Respondent

The Respondent states the Applicant has misinterpreted the Code. This section of the Code does not impose a timescale by which a homeowner must be given access to an online portal. The Applicant in any case was given access to the online portal although he did not use it.

65. Section4.7
4.7 If an application against a property factor relating to a disputed debt is accepted by the First-tier Tribunal for consideration, a property factor must not continue to apply any interest, late payment charges or pursue any separate legal action in respect of the disputed part of the debt during the period from when the property factor is notified in writing by the First-tier Tribunal that the application is being considered and until such time as they are notified in writing of the final decision by the First-tier Tribunal or the Upper Tribunal for Scotland (if appeal proceedings are raised).

Position of the Applicant

The Applicant states the Respondent continued to invoice him despite ongoing tribunal proceedings. They applied a NOPL against the Property.

Position of the Respondent

There is no duty imposed on the Respondent not to invoice for common repairs. Disputed debts were not pursued in separate legal action while the present proceedings were ongoing.

66. Section 4.10

4.10 A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).

Position of the Applicant

The Applicant claims the Respondent has failed to provide evidence of steps taken to prevent 73 Waverley Street non-payments from escalating.

Position of the Respondent

The Respondent states the duty imposed by this section of the Code is that it must be able to demonstrate it has taken reasonable steps to recover unpaid charges. There is no duty to prevent non-payment by a homeowner. A NOPL was registered against 73 Waverley Street and a court action raised to recover debts. The Applicant was informed of that upon purchase and again by e-mail from Mr John Walker on 4 September 2024.

67. Section4.11

4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).

Position of the Applicant

The Applicant relies on the fact a NOPL was registered against the Property during Tribunal proceedings (on 19 February 2025).

Position of the Respondent

The Respondent states a NOPL is not legal action. No separate legal proceedings have been raised against the Applicant.

68. Section 6; Carrying out Maintenance and Repair

Position of the Applicant

The Applicant under this general heading states the Respondent has completely mismanaged securing him keys for the garden and the close area. In addition, the Respondent has failed to fix the roof due to constant recurring problems and repeat fixes. He states there does not appear to be any guarantees on repairs.

Position of the Respondent

The Respondent states they took all steps reasonably expected of them to provide keys to the Applicant. There are no outstanding repairs.

69. Section 6.10
6.10 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the contract.

Position of the Applicant

The Applicant relies on what he refers as an undisclosed relationship between the Respondent and Mr David Sinclair in Flat 3/1.

Position of the Respondent

The Code does not prohibit the Respondent contracting with a homeowner within the common scheme for repairs.

70. Section 6.11
6.11 A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.

Position of the Applicant

The Applicant relies on what he refers as an undisclosed relationship between the Respondent and Mr David Sinclair in Flat 3/1.

Position of the Respondent

The Code does not prohibit the Respondent contracting with a homeowner within the common scheme for repairs.

71. Section 7
Section 7: Complaints Resolution
Property Factor Complaints Handling Procedure
7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.
The procedure must include:

- **The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.**
- **The complaints process must, at some point, require the homeowner to make their complaint in writing.**

- **Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.**
- **How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.**
- **Where the property factor provides access to alternative dispute resolution services, information on this.**

Position of the Applicant

The Applicant states the subject of the complaint Mr Callum Bruce, handled his own complaint. He maintains the complaints procedures were done opaquely, selectively as a formality with no reasonable outcome being possible. He complains that there was a purposeful scheduling of e-mails to him to be sent at 5pm. It was his perception the complaints procedure was 'weaponised'. It was never made clear to him what steps were taken during a complaints procedure at any point, only that one was underway.

Position of the Respondent

The Respondent states the Applicant has failed to specify any duty contained within section 7 that the Respondent has reasonably failed to comply with.

72. Property Factors Duties
Section 17(5) Property Factors (Scotland0 Act 2011

In this Act, "property factor's duties" means, in relation to a homeowner—
(a)duties in relation to the management of the common parts of land owned by the homeowner, or
(b)duties in relation to the management or maintenance of land—
(i)adjoining or neighbouring residential property owned by the homeowner, and
(ii)available for use by the homeowner.

Position of the Applicant

The Applicant stated he narrowed his points under this heading to two matters;
Firstly, not receiving keys to the communal close/garden of the Property for a period of 2 months. He said he first requested the keys on 28 June 2024 and did not receive them until 28 August 2024. He was unable to access parts of the building he paid for namely the bin shelter and the garden.
Secondly, the failure to adequately resolve the roof problem. He asked for detailed breakdowns of all the roof issues and work that had ever been carried out. He felt that there were constant charges for dealing with water ingress.

Position of the Respondent

There were no specific submissions regarding these duties.

73. The Overarching Standards of Practice ('OSP')
OSP1
OSP1. You must conduct your business in a way that complies with all relevant legislation.

Position of the Applicant

The Applicant relies on the fact the Respondent insisted on assigning a complaint to the person who was the subject of the complaint suggesting "possible non-compliance with impartiality complaints requirements set out in legislation".

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

Position of the Applicant

The Applicant complains he was not made aware of longstanding roof problems and had to chase for full details indicating a lack of transparency;
He suggests not being provided with a key to the communal close/garden was unfair;
The Applicant had to find out about the 'free' First-tier tribunal process route himself, whereas the Respondent emphasised that his only solution was to proceed to the Lands Tribunal, an 'expensive' process. This felt misleading to the Applicant and not wholly transparent or fair;
The Applicant refers to internal correspondence implying a refusal to address his concerns or provide clarity to him;
He states the Respondent did not provide requested details regarding the precise formula for communal share allocations, which raises concerns over transparency;
The Respondent asserted items in a cupboard were a fire hazard and initially planned to charge the block for removal without providing a formal risk assessment.

75. OSP3
OSP3. You must provide information in a clear and easily accessible way.

Position of the Applicant

The Applicant relies on his request for a meeting, citing unclear updates on the close keys and garden use, as evidence the Respondent has not provided straightforward information;
He states he repeatedly asked for clarity regarding the complaints process and how it worked and that the Respondent's replies do not clearly set out the complaints procedure or address conflict of interest concerns, suggesting a lack of clear accessible guidance;
The Applicant requests specific points be emphasised in a draft letter to co-owners regarding share allocation and voting rights. He complains the revised letter from the Respondent did not incorporate these requests;
The Applicant asks what is required for his share allocation to be lowered, and receives no response;

The Applicant states the Respondent's responses regarding share allocation does not provide the breakdown of the original dates applied, nor a step by step formula, indicating a lack of clear, easily accessible explanation;
The Applicant is not provided with what specific 'combustibles' are in the cupboard which he views as insufficient clarity or evidence of a real fire risk.

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

Position of the Applicant

The Applicant disputes the basis for common charges. He complains that he forwarded the Respondent official Council evidence that the Property had been classed as a dwelling house since 2007, yet the Respondent continued to treat it under an old commercial-based share, potentially misleading the Applicant about the basis for charges;
The Applicant argues that the Respondent gave a "rather misleading" impression that the Lands Tribunal (with high costs) was the only route he could take, omitting the Housing and Property Chamber or arbitration which raises a concern about misleading information about the Applicant's legal options;
The Applicant complains the Respondent's communications on voting rights appear inconsistent creating potential for misleading information;
The Applicant states the fact that there has been confusion regarding the use of 1989 or 1950 rates being applied to the Property caused significant misunderstanding;
The Applicant complains about the cupboard items being loosely referred to as a "fire hazard".

77. **OSP5**
OSP5. You must apply your policies consistently and reasonably.

Position of the Applicant

The Applicant complains the Respondent raised the percentage share for common parts in the past, but yet refused to lower it without a costly legal route, suggesting inconsistent application of rules on re-allocation;
Invoices are issued with multiple share percentages detailed;
The Applicant refers to the Respondent's written complaints terms stating that if dissatisfied, the complaint would escalate to a different senior person. However, in this case the Respondent insisted that Mr Calum Bruce – who is the subject of the complaint- dealt with it.

78. OSP6
OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

Position of the Applicant

The Applicant refers to reporting the gardener repeatedly fails to clear weeds at the front of the block and requests a schedule, suggesting the Respondent has not consistently ensured maintenance is done properly;
The Applicant refers to not being supplied with a working key for the communal close/green as evidence implying slow or incomplete follow-through;
The Applicant cites an 11 plus month gap in relation to responses about a roof repair, calling this a breach of timely service provision.

79. OSP8
OSP8. You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property.

Position of the Applicant

The Applicant complains the Respondent assigns a complaint to "Whomever it chooses" despite impartiality requirements being drawn to their attention by him suggesting staff may not be applying or recognising Code obligations;

80. **OSP9**

OSP9. You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

Position of the Applicant

The Applicant states that internal emails from the Respondent mentioning difficulty locating original share-allocation documents or letters from the previous factor may suggest incomplete record keeping.

81. OSP10
OSP10. You must ensure you handle all personal information sensitively and in line with legal requirements on data protection.

Position of the Applicant

The Applicant complains his personal information is being transmitted to third parties by internal staff. He complains of multiple failures of what he referred to as, "censoring other individuals data".

82. OSP11

OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

Position of the Applicant

The Applicant refers to an email sent to the Respondent on 21 March 2024 where he expresses frustration that they took 11 months to progress a roof dispute issue.; (not provided);
He relies on his production 49 where the Respondent's Charlotte Fern accepts she "dropped the ball".

83. OSP12

OSP12. You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

Position of the Applicant

The Applicant complains that he was forced to pay under threat of council enforcement and suggests that involving the local authority without resolving the dispute came across as intimidation. He describes the internal messages having ended up in his possession following a subject access request to have had an overall intent on driving him insane.

84. Position of the Respondent regarding all OSPs

The Respondent maintains there is a lack of specification in the Applicant's pleadings regarding the OSPs. He has provided a timeline and certain acts but this falls far short of the standard required to prove a case. In any event none of the OSPs were breached.

85. Reasons for Decision

The Tribunal considered all of the documentary evidence submitted by the parties and the written and oral submissions in reaching a decision on the application

Section 17(3) of the 2011 Act states that a homeowner cannot apply to the Tribunal for a determination that a property factor has failed to carry out the property factor's duties or comply with the Code unless they have notified the property factor in writing of their complaint and the property factor has refused to resolve or has unreasonably delayed in attempting to resolve the complaint. The Tribunal had before it the notification letter sent by the Applicant to the Respondent and was satisfied that proper notification had been given in accordance with the requirements of section 17(3).

86. Section 1.2

The Applicant accepted in cross-examination that he had received the WSS. The Applicant has failed to establish the Respondent is in breach of the Code.

87. Section 1.5D(13) of the Code

This section of the Code relates to access to information not the content of information. The Applicant very much focussed in his evidence on his position that the Respondent was using the wrong formula to calculate his share allocation (and the fact that the figure used by the Respondent did not match what the Glasgow Life Archives detailed), and not on access to information, which is what this particular section of the Code is for. There was clear evidence from both parties in their voluminous productions that they had extensive communication on the share allocation and the reasons each side had come to a separate conclusion on how the share allocation should be determined. The Applicant has failed to establish the Respondent is in breach of the Code.

88. **Section 1.5 E (17) of the Code**

There is no evidence to support the contention of mutual benefit. The Tribunal accepted the evidence from Mr Walker that the Respondent has no financial interest in EBS Construction. There is no provision of the Code that prohibits a factor from contracting with a constituent homeowner for the execution of common repairs. The Applicant has failed to establish the Respondent is in breach of the Code.

89. Section 2.1 of the Code

The Tribunal accepts the Respondent's position. They regularly communicated with the Applicant, but the volume of e-mails coming from him was stretching their resources. Notwithstanding this, their communication with him was regular and consistent. They approached the other homeowners regarding changing the share allocation. They sought legal advice which they followed. The Tribunal does not accept the Applicant's position that the Respondent was "playing internal games and using the law to suit internal needs" as suggested by him. The Respondent provided information required to enable an understanding of their operation as property factors. The Applicant has failed to establish the Respondent is in breach of the Code.

90. Section 2.2 of the Code

With regard to the various internal messages the Applicant has recovered by Subject Access Requests, these are certainly unprofessional in their content and display black humour exchanges between common employees of the Respondent. This is all internal. Nothing has gone external. The Applicant has only become aware of the content of these messages following his requests for information. He has not explained why specifically that data protection legislation has been breached. The Tribunal accepts Ms Joanne Graham is a director of the company and is entitled to have information about the Applicant. The Tribunal accepts that the phone call made on the early Sunday morning in November 2024 was made accidentally by Mr Walker. No evidence was presented regarding a failure to anonymise individuals, what this related to, and why this constituted a breach of the Code. The Applicant has failed to establish the Respondent is in breach of the Code.

91. Section 2.4 of the Code

The Respondent provided to the Applicant an extensive spreadsheet breakdown of the entire works done at the property, including all works on the roof (Production 8). The Applicant requested this information on 19 March 2024 and was provided it on 15 April 2024. The Respondent provided the Applicant with a detailed note and tables showing the maintenance cost shares applicable to the homeowners (Production 16). The Applicant has not established any failure to provide requested information that they must make available under the Code. The Applicant has failed to establish the Respondent is in breach of the Code.

92. Section 2.6* of the *Code

The Tribunal does not accept the Applicant's position. The Tribunal does not interpret a NOPL as work or services. The Applicant has failed to establish the Respondent is in breach of the Code.

93. Section 2.7 of the Code

The Applicant accepted in his own evidence that he had not provided the Tribunal with his e-mail setting out his roof complaint. He referred to an e-mail dated 13 April 2023 he had received (Applicant's production 48). The Tribunal is of the view that no evidence has been led to support this alleged breach of the Code. The e-mail referred to lacks any specification. The Applicant did not provide the Tribunal with a specific instance in respect of which the timescales for responding to a complaint in the WSS was not adhered to. The Tribunal accepts the evidence of Joanne Graham regarding a detailed e-mail sent by her dated 20 August 20124 which responds to a formal complaint from the Applicant dated 25 July 2024.

The Applicant's production 49 is an e-mail dated 2 August 2024 which is an internal e-mail. There is a recognition within that e-mail that between March 2023 and March 2024 the Respondent has not chased up the owners regarding action on the roof. However, this is not a failure by the Respondent to respond to the Applicant. The Respondent is not ignoring the Applicant's queries. It appears to the Tribunal the Applicant has not evidenced using the formal complaints procedure other than on 25 July 2024. Therefore, it is difficult to fathom how he can complain about manipulation of the complaints procedure. The Applicant has failed to establish the Respondent is in breach of the Code.

94. Section 2.9 of the Code

The Respondent made reasonable enquiries of the outgoing factor. The Respondent obtained the relevant documents and information that a reasonable property factor would require to perform their duties in terms of the Code. It appears the Applicant is unhappy with the content of what has been provided, but the Respondent has complied with this aspect of the Code. This part of the Code does not provide that the Respondent requires to investigate historical rateable values. The Applicant has failed to establish the Respondent is in breach of the Code.

95. Section 3.1 of the Code

The Tribunal does not accept that the Applicant can simply state that he relies on his whole case, as he suggests. The Respondent has conceded that there have been invoicing errors from time to time. Where these errors have occurred, the Tribunal accepts that this has been down to a clerical error, and the Applicant has been re-imbursed accordingly. The Applicant's position is that he does not agree with the way his share allocation has been calculated. The Respondent has explained to the Applicant how it has been arrived at and has shared the legal advice proffered to them. The Respondent has been entirely transparent in setting out invoices to the Applicant. The Respondent's production 18/1 shows the allocation using the 1950 rateable value and the Applicant's communal share at 17.12%. Their production 18/2 shows the 1989 values and the Applicant's communal share allocation at 24.36%. The Respondent has provided clear invoices to the Applicant for all payments sought. Those invoices contain narratives explaining what the payment is for. The Respondent has acted appropriately. The Applicant has failed to establish a relevant breach of the Code.

96. Section 3.2 of the Code

The point about the clearing out of a communal cupboard is not related to the protection of homeowners funds. This relates to a job which was quoted for by the Respondent at the request of other homeowners and the Applicant determining to carry the work out himself. The work was not carried out by the Respondent or their agents, and the Applicant was not billed ultimately for this work.
The complaint regarding the Respondent using an incorrect apportionment of the communal share allocation is not to do with protection of funds. The Respondent has taken legal advice and acted accordingly. They have been clear and transparent in their accounting procedure. There is a recognition by the Respondent that the system is unfair but that they cannot do anything about that. The Applicant has failed to establish a breach of the Code.

97. Section 3.4 of the Code

The Tribunal is of the view that the Applicant has misinterpreted this aspect of the Code. There is clear evidence the Respondent billed quarterly. This part of the Code can be discharged via normal invoices issued quarterly. The Applicant has failed to establish the Respondent is in breach of the Code.

98. Section 3.8 of the Code

The Applicant has misinterpreted this section of the Code. He is relying on the fact he claims the Respondent used the wrong share allocation, resulting in an overpayment. He has demanded his overpayment be refunded. The Respondent has applied a method used by the previous factors and a method which they have sought legal advice on to use. They accordingly have denied any overpayment is due. The Applicant refuses to recognise the apportionment method adopted by the Respondent. This does not establish an overpayment. The Applicant has failed to establish the Respondent is in breach of the Code.

99. Section 4.1 of the Code

The Applicant was advised on 4 September 2024 that there was a decree and a Notice of Potential Liability and a payment plan in place, which was being adhered to by the proprietor of No. 73. In evidence Mr Walker said there was only £2,000 still outstanding. The Applicant has failed to establish the Respondent is in breach of the Code.

100. Section 4.2 of the Code

The Tribunal accept that a late fee of £80 was added and was removed from the Applicant's account. The Tribunal accepted the evidence of Ms Joanne Graham this was a clerical error. There was no loss to the Applicant. He did not pay this charge. It was a mistake and the £80 charge was re-credited to his account. The Applicant has failed to establish the Respondent is in breach of the Code.

101. Section 4.3 of the Code

The Tribunal does not accept there was any credible or reliable evidence presented suggesting that the Respondent knowingly incorrectly applied the £80 charge. The Tribunal accepts the evidence of Ms Joanne Graham this was a mistake. The Applicant has failed to establish the Respondent is in breach of the Code.

102. Section 4.4 of the Code

There are no written procedures in the WSS clearly setting out how the Respondent as property factor will deal with disputed debts. The Applicant has established a breach of the Code.

103. Section 4.5 of the Code

The WSS provides clear information regarding organisations providing free impartial advice and which specialise in financial guidance on managing debt.
The Respondent provided at production 1 a letter dated 29 July 2021 to the solicitors acting for the Applicant in the purchase of the Property. This letter clearly sets out that a NOPL has been registered against 73 Waverley Street. This section of the Code covers situations where homeowners are in default or arrears difficulties. It is in relation to managing the debt. It is not applicable to the Applicant's position where he disputes the share allocation methods. The Applicant has failed to establish a breach of the Code.

104. Section 4.6 of the Code

For the large part, the Applicant is querying the content of the invoices, not the systems in place. The Tribunal accepts the Respondent has systems in place to ensure the monitoring of payments due from homeowners and accepted the evidence of Joanne Graham in that respect. However, the Tribunal also accepts that due to an administrative error, the Applicant did not have an account set up for him when he moved into the Property and in February 2022 received a bill covering two quarters. This is unreasonable to wait 6 months after the Applicant has moved in and

then issue him with an invoice covering two quarters. The Applicant has established a breach of the Code.

105. Section 4.7 of the Code
The Tribunal does not accept that registering a NOPL against the Property is pursuing a legal action. The Respondent has not continued to apply any interest, late payment charges or pursued separate legal action since being notified in writing that this application is being considered. The Applicant has failed to establish a breach of the Code.

106. Section 4.10 of the Code
The Tribunal accepts the Applicant's solicitors were advised of steps taken to recover unpaid charges form 73 Waverley Street and was told specifically about this by Mr John Walker on 4 September 2024. The Applicant has failed to establish the Respondent is in breach of the Code.

107. Section 4.11 of the Code

The Tribunal is of the view that simply registering a NOPL against the Property is not in and of itself legal action. The term, 'legal action' is not defined in the Code. The Code refers to a property factor not taking legal action without giving notice of intention to raise legal action. The Tribunal interprets raising an action to clearly refer to proceedings in court or before a tribunal. A NOPL would not be raised. A NOPL would be registered. The Applicant has failed to establish the Respondent is in breach of the Code.

108. Section 6 of the Code – general heading

The Tribunal is of the view that if a person takes entry to a property, they will generally ask their solicitor, the previous owner of the Property or adjoining neighbours regarding keys for common areas such as close or garden areas. There is no specific provision in the Code which states this is the responsibility of the property factor. In his evidence the Applicant said that he did not take this up with his solicitors at the time of purchase. The Applicant has failed to specify a specific part of the Code he states has been breached. The Applicant has failed to establish the Respondent is in breach of the Code.

109. Section 6.10 of the Code

There is no prohibition on the Respondent contracting with a homeowner within the common scheme for repairs. There is no evidence of any 'backhander' or incentive commission for this being received by the Respondent. The Applicant has failed to establish the Respondent is in breach of the Code.

110. Section 6.11 of the Code

There is no prohibition on the Respondent contracting with a homeowner within the common scheme for repairs. There is no evidence of any 'backhander' or incentive

for this being received by the Respondent. The Applicant has failed to establish the Respondent is in breach of the Code.

111. Section 7.1 of the Code

The Applicant was unable to provide the Tribunal with any specific formal complaint he had made against the Respondent. He acknowledged in his evidence that he had not said this specifically in his communications with the Respondent. He argued that his email of 28 August 2024 (his production 26) was a formal complaint even though he had not stated this in the e-mail. He said this was evident. The Tribunal accept this e-mail sets out his grievances. It does not however make it clear this is to be regarded as a formal complaint. No specific breach has been identified by the Applicant. The Respondent has a written procedure in place for dealing with complaints. Whilst the Respondent's internal e-mails are clearly unprofessional in their terms, they do not constitute a breach of this section of the Code. The Applicant has failed to establish the Respondent is in breach of the Code.

112. Property Factor Duties

The Tribunal does not consider the Applicant has established any particular breach of property factor duties in respect of both the matters complained of. There is no specific obligation on the property factor to provide keys to common areas, and in any event, these were supplied within a 2 month period which is not an unreasonable period of time. It is unclear why the Applicant did not speak to neighbours, previous owners, or his solicitors to help resolve this problem. As previously commented on in this decision, the Applicant has failed to evidence invoking the formal complaints procedure regarding the roof repairs. The Applicant has failed to establish the Respondent has failed to carry out Property Factor Duties.

113. OSP1

The Applicant has failed to specify what legislation he is complaining has not been complied with. The Applicant has failed to establish a breach of the overarching standards of practice.

114. OSP2

The Applicant has not provided the Tribunal with full information. The Applicant has not provided the Tribunal with his e-mail requesting full information regarding the roof problems. It is our view on the evidence presented that when the Applicant has requested information, this has been supplied by the Respondent. Whilst there is an obligation on the Respondent to bring to homeowners attention details of any outstanding roof issues, there is no obligation to provide historical information.
The Tribunal's position regarding the key to the communal close has already been dealt with in the body of this decision. The Tribunal consider the Respondent has been honest, open, transparent, and fair in their dealings with the Applicant. Whilst the Respondent's internal communications used wording which was wholly inappropriate and unprofessional, there is nothing to suggest that this translated into actions by the Respondent.

The Respondent provided the Applicant with their position on the share allocation and the legal advice given to them.
The Respondent did not carry out a fire risk assessment. They obtained a quote to clear a cupboard. There is nothing in the Code to state a formal fire assessment is required. The Applicant chose to clear the cupboard himself. He could have formally complained if he was dissatisfied. No evidence was presented to the Tribunal regarding the contents of the cupboard, nor expert evidence regarding the advisability of clearing it. The Applicant has failed to establish a breach of the overarching standards of practice.

115. OSP3

The Applicant cannot suggest the fact that he called for a meeting is evidence of straightforward information not being supplied. He then goes on to repeat the same points regarding the complaints process. There is a clear accessible complaints process detailed in the WSS. The Tribunal considers that the information provided by the Respondent has been clear and accessible. The Applicant is unable to dictate to the Respondent what they include in communication with other homeowners. The Applicant has failed to establish a breach of the overarching standards of practice.

116. OSP4

The Tribunal has been provided with an e-mail sent to the Applicant on 24 July 2024 by the Respondent (Respondent production 5). This e-mail clearly states the Respondent took legal advice in relation to the share allocation. The information provided by the Respondent is not deliberately or negligently misleading. The fact the Applicant does not accept the share allocation method used is a separate matter. It is not within this Tribunal's jurisdiction to change the share allocations.
The Applicant has provided insufficient specific evidence regarding inconsistent voting rights. The Tribunal does not accept that the Respondent has been negligent or misleading regarding the cupboard contents. No evidence has been presented regarding the actual contents. We have only been provided with a photograph of an empty cupboard after cleaning. The Applicant has failed to establish a breach of the overarching standards of practice

117. OSP5

The Tribunal accepts the Respondent took legal advice as previously detailed in this decision. The Tribunal has a copy of the WSS. This provides for a two stage complaint process.
The Tribunal considers that the invoice sent to the Applicant are potentially misleading as they are inconsistent with the share allocation being used. For example, the invoices Respondent's productions 18/1 (invoice from 01/12/2023-28/02/2024) and 18/2 (invoice from 01/12/2024 to 28/02/2025) contain both the 1950 and 1989 allocations at 17.12% and 24.36% respectively. The Applicant's production 72 (invoice 01/09/2024 to 30/11/2024) has a mixture of percentages. This is misleading as the apportionments change throughout with no explanation provided. The Tribunal accepts that in this respect policies have not been applied consistently and reasonably. The Applicant has established a breach of the overarching standards of practice.

118. OSP6

There was no evidence presented regarding weeding and gardeners. The Tribunal does not consider the other matters raised as breaching this section of the Code and the Applicant has failed to establish a breach of the overarching standards of practice.

119. OSP8

There was no evidence presented to the Tribunal of the specifics of legislation he contended was breached. The WSS allows for a two stage complaints process. The Applicant has failed to establish a breach of the overarching standards of practice

120. OSP9

The evidence presented is not sufficiently specific and seems to relate to records from the previous factor and not the Respondent. The Applicant has failed to establish a breach of the overarching standards of practice.

121. OSP10

There has been insufficient evidence provided to the Tribunal that personal information of the Applicant has been supplied to third parties. There is no basis for this. The Applicant has failed to establish a breach of the overarching standards of practice

122. OSP11

For the reasons detailed at paragraph 93 of this decision the Tribunal does not consider that the Applicant has established a breach of the overarching standards of practice. There is not sufficient evidence of the 11 month time period complained of to progress his roof complaint**.**

123. Expenses

Position of the Applicant

The Applicant invites the Tribunal to make an award of expenses against the Respondent in terms of Rule 40. He says that the Respondent has acted unreasonably in a manner which materially increased the work, complexity and expense to which he was put in order to present his case properly.

Position of the Respondent

The Respondent opposes the motion for expenses and points out the Respondent has not acted unreasonably in the conduct of the case. The Applicant's written submissions do not state any relevant and unreasonable conduct by the Respondent in the proceedings. The Respondent has complied with all Orders of the Tribunal in a

clear and timely manner. The Applicant has not instructed a solicitor in these proceedings. The Tribunal has no authority to make an Order that would combine a PFEO and an award of expenses.

124. **Decision on Expenses**

The Tribunal has already detailed in paragraph 33 of this decision the position regarding a claim for expenses. The Tribunal does not consider the Respondent has acted in the conduct of the case unreasonably. As previously explained, this is a high test to meet.

125. Proposed Property Factor Enforcement Order

Having made a decision in terms of Section 19(1)(a) of the Act that the Respondent 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."

The Tribunal has identified that there is no procedure for disputed debts in the WSS. However, the Respondent is no longer the property factor for the Property and new factors are in place. There is therefore no point in the Tribunal ordering any action is taken in that respect.

It is not part of this Tribunal's jurisdiction to determine which share allocation should and should not be applied to the Property over the period of time he has been resident there. The fact of the matter is that the Respondent took appropriate legal advice and acted accordingly. The large part of this case has revolved around share allocations. The Tribunal does not make any award relating to the calculation of percentages of communal shares applied to the Property.

The Tribunal has recognised that the Respondent has applied on occasion haphazard percentages regarding the communal share allocation for the Property. They have given some quite tardy information.

The Tribunal's view is that the Respondent's breaches of the Code have caused the Applicant frustration and distress, and that a PFEO should made to compensate him for his distress and inconvenience. The Tribunal considers that £500 is a reasonable sum.

The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Appeals

A homeowner or property factor 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.

Yvonne McKenna	Legal Member and Chair
5 September 2026	Date