



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 17 of the Property Factors
(Scotland) Act 2011 ("the 2011 Act")**

Chamber Ref: FTS/HPC/PF/24/1791

6/1, 339 Glasgow Harbour Terraces, Glasgow, G11 6BH ("the Property")

Parties:

Mr John Carruthers, 6/1, 339 Glasgow Harbour Terraces, Glasgow, G11 6BH ("the Applicant") - Homeowner

Hacking & Paterson Management Services, 1 Newton Terrace, Glasgow, G3 7PL ("the Respondent") - Property Factor

Tribunal Members:

Nicola Weir (Legal Member) and Nick Allan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Overarching Standards of Practice 1, 2 and 6 and Sections 2.4, 2.7, 6.1 and 6.4 of the Property Factor Code of Conduct 2021 ("the 2021 Code"). The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.

Background

1. By application dated 23 April 2024, the Applicant (the Homeowner) applied to the Tribunal for a determination on whether the Respondent (the Property Factor) had failed to comply with Paragraphs 1, 2, 6 and 10 of the Overarching Standards of Practice and Sections 2.2, 2.4, 2.7, 6.1 and 6.4 of the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the 2011 Act. Supporting documentation was submitted by the Applicant including detailed written representations, timeline spreadsheets/communication logs and photographs in respect of leaks

affecting the Applicant's property, copy correspondence between the parties and a copy of the Respondent's 'Terms of Service and Delivery Standards' dated 11 February 2019. The Applicant subsequently lodged updated representations and an updated attachment list, together with further supporting documentation on 19 August 2024.

2. On 8 May 2024, a Legal Member on behalf of the Chamber President accepted the application and referred it to a Tribunal for a Case Management Discussion ("CMD"). Both parties were notified of the details of same.
3. The Respondent lodged written representations in response to the application on 23 August 2024, together with supporting documentation which included correspondence between the parties from dates between January and May 2024 in connection with the Applicant's formal complaint against the Respondent, dealt with under the Respondent's internal complaints procedures. The Respondent indicated that they were unable to attend the CMD, as they had already had another CMD on the same day but asked for their written representations to be taken into account at the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 23 September 2024 at 10am. The Applicant, Mr John Carruthers and Mr Martin Henderson, Associate Factoring Director of the Respondent were in attendance. Mr Carruthers indicated that he was dialling in from Cyprus where he was currently on holiday. Mr Henderson explained that he had been able to make the CMD after all.
5. Following introductions and introductory remarks by the Legal Member, reference was made to the written representations lodged by the Respondent. Mr Carruthers commented on the written representations but confirmed that his position remained the same. There are three areas of his property affected by water ingress and damage. The Respondent have now instructed Allied Surveyors but there have been many delays and failures in communication by the Respondent and the repair issues remain unresolved.
6. Mr Henderson was unable to confirm exactly when further repairs would be undertaken or the situation resolved. He accepted that things have taken longer than they should have. Several repairs had been undertaken by different contractors in relation to the spare bedroom leak over the years but, unfortunately, these have failed to resolve the issue. The Respondent had instructed Allied Surveyors to undertake a full survey and thereafter, works will be instructed and carried out to resolve the leaks. Mr Henderson has discussed matters with the Respondent's management team who deal with Allied Surveyors and Mr Carruthers. Estimates have been received for the spare bedroom and works now instructed. Allied Surveyors are including the kitchen leak as part of their general investigation. Mr Henderson's understanding was that contact with Mr Carruthers was being made.

7. In response, Mr Carruthers accepted that previous repairs have been instructed and carried out to the spare bedroom leak by different contractors prior to Allied Surveyors being instructing in October 2023. However, the different contractors had mostly carried out exactly the same repair and had not resolved the issue. He made reference to the supporting documentation he has already produced. No-one has yet contacted him regarding the kitchen and, similarly, he was not aware that works had been instructed in relation to the spare bedroom until 20 September 2024. This has always been the problem. Mr Carruthers does not get properly informed by the Respondent and is given no context as to what is happening. At no point, had he been told that the Respondent was having any problems liaising with Allied Surveyors. Nor had Mr Carruthers been informed when specifically Allied Surveyors were instructed by the Respondent to carry out the repairs. Mr Henderson stated that he would speak to the management team again and ensure that Mr Carruthers is provided with an update. He is aware that there have sometimes been delays in the management team's communications with Mr Carruthers. Mr Carruthers made reference to the Respondent's written representations regarding the communication issues. The current timescale for the Respondent replying to his email communications is three to four weeks which exceeds the timescales stated in the Respondent's Terms of Service. Mr Carruthers does not consider his own level of communication to have been unreasonable but, in response to the Respondent's written representations, he has sought to reduce his email communications chasing up responses to previous emails which have not been answered within the specified timescales.
8. At the conclusion of the CMD, the Tribunal decided to adjourn the application to an Evidential Hearing, given that there were disputed issues. There was brief discussion regarding the procedures which would follow. Parties were requested to advise the Tribunal meantime of any significant developments or if there is any change to their respective positions in respect of the application. The Ordinary (Surveyor) Member intimated that Mr Hamilton of Allied Surveyors is known to him and it was noted that neither Mr Carruthers nor Mr Henderson had any issue with Mr Allan sitting as the Ordinary Member at the Evidential Hearing.
9. Following the CMD, the Tribunal issued a CMD Note detailing the discussions which had taken place, together with a Direction to parties. Mr Carruthers subsequently requested some changes to the wording of the CMD Note, to which no comments or objections were received from Mr Henderson on behalf of the Respondent. Accordingly, the Tribunal considered the request and amended the CMD Note in terms of Rule 36 of the Procedure Rules. An amended CMD Note was issued to parties dated 3 December 2024.

Direction

10. The Direction issued following the CMD, dated 23 September 2024, directed the parties as follows:-

“1. The Applicant is required to submit to the Tribunal:-

- (a) Updated communication logs/timeline spreadsheets in respect of the three separate leaks (originally submitted as Attachment # 2 to his application); and*
- (b) Any further photographs, reports, correspondence or other documentation on which he seeks to rely in support of his application.*

2. The Respondent is required to submit to the Tribunal:-

- (a) Timelines in respect of investigations, reports and repairs carried out to date in respect of each of the three separate leaks; their communications with Allied Surveyors since they were appointed; and their communications with the Applicant in the event that they dispute the information provided by the Applicant in this regard; and*
- (b) Any photographs, reports, invoices, estimates, correspondence or other documentation on which they seek to rely in support of their position in this application.*

In respect of the documentation specified above, both parties should provide a numbered list or index page of said documentation, together with numbered copies of any such documents, the pages of which should also be numbered (if possible) if the document consists of multiple pages.

3. The Applicant and Respondent are required to submit to the Tribunal a list of any witnesses that the parties wish to call to give evidence on their behalf at the Evidential Hearing to be fixed in respect of this application, and to make arrangements for the attendance at the Hearing of any such witnesses;

The documentation referred to in paragraphs 1, 2 and 3 above should be lodged with the Tribunal Administration no later than 14 days prior to the Evidential Hearing to be fixed.”

Further Procedure

11. The parties were notified of the date, time and arrangements for the Evidential Hearing, scheduled to take place on 11 February 2025, on 22 November 2024.
12. On 26 November 2024, a postponement request was received from the Respondent, stating that he would not be in the office that day. The Applicant objected to this request on the same date and gave reasons for this. The Tribunal considered the request and comments from the Applicant and refused the request in terms of Rule 28 of the Procedure Rules, providing their reasons for this.
13. On 27 January 2025, the Applicant responded to the Direction by email and lodged an updated list of documents lodged, updated communication logs, updated written representations and a document from the ICO regarding breach

of GDPR. The Applicant's updated "Attachment List" contained 27 numbered items. The Applicant also provided a brief update regarding the three leaks at his property, confirmed he would be in attendance at the Evidential Hearing and that he had no witnesses to intimate at the present time.

14. On 28 January 2025, the Respondent responded to the Direction by delivering updated written representations dated 27 January 2025, timelines in respect of the three leaks and a large bundle of supporting documentation, with an Index page/list of documents attached which contained 39 numbered items. The documentation included copy work orders, invoices and numerous emails between the parties. The Respondent advised that they would not be in attendance at the Evidential Hearing and explained their reason for this. They requested that their lodged documentation be taken into account by the Tribunal.

Evidential Hearing

1. The Evidential Hearing took place by telephone conference call on 11 February 2025, commencing at 10am. Only the Applicant, Mr John Carruthers was in attendance.
2. Following introductions and introductory remarks, it was ascertained from Mr Carruthers that he had received a copy of the Respondent's written representations and documentation which had been lodged with the Tribunal on 28 January 2025. The Tribunal proceeded to hear evidence from Mr Carruthers. Reference was made throughout to the documentation he had lodged in support of his application and the documentation lodged by the Respondent. The Tribunal asked Mr Carruthers questions throughout. He summed up briefly at the end and the Evidential Hearing was concluded. The Legal Member confirmed that the Tribunal would deliberate and issue its written decision in due course.

Evidence of Mr John Carruthers – Applicant/Homeowner

3. Mr Carruthers confirmed that his complaint to the Tribunal was still in effect. He understands that some progress has been made but his issues are the length of time it has taken and the failings of the Respondent throughout. In his view, the Respondent had not fully complied with the Tribunal's Direction, in that the timelines produced in respect of the three leaks were incomplete and not up to date. The Respondent has been aware of the spare bedroom leak since 2017 and their timeline should have reflected this, rather than starting at June 2023. The kitchen leak timeline is incomplete and not up to date, as it stops at March 2024 and nor is the main bedroom one as it stops at June 2024 or the spare bedroom one which stops at April 2024. None of the email correspondence referred to with Eagle and I&D Cant has been produced. Contracts would have been prepared in respect of each of the repairs carried out and should have been produced. Mr Carruthers referred, in comparison, to his own timelines produced (reference made to attachment #25) which are up to date in

compliance with the Direction. Mr Carruthers stated that in his view, the representations and documentation lodged by the Respondent are incomplete, untidy and misleading. Not all of the information requested has been produced. Reports have been produced in amongst all the emails and have not been separately listed. The Respondent was only directed to produce communications with him if they disputed the information he had provided in this regard. However, they have instead produced around 350 emails, many of which are contained in email chains. They have not been transparent in their communications and in his view, are overburdening the Tribunal and the whole process. Their documentation has not been provided in a clear way. Mr Carruthers also referred to the Subject Access Request (SAR) he had previously required to make to the Respondent to try and recover documentation regarding the history of repairs to the balcony at his property and his subsequent GDPR complaint which was upheld by the Information Commissioner's Office (ICO) (reference made to attachment #27). The Respondent has now produced some documentation which they previously said they did not hold, so Mr Carruthers is bringing this to the attention of the Tribunal and will also be reporting this to the ICO.

4. Mr Carruthers noted the statement in the Respondent's recent representations that progress is being made. He accepts that some progress has been made to date, but not enough. He referred to his updated written representations in this regard. Even after Allied Surveyors were instructed by the Respondent and carried out a site visit in October 2023, very little has been achieved. In respect of the spare bedroom leak/balcony, they produced a report in November 2023 then attended again in May 2024 to carry out some water testing, again producing a report after that. There was then another delay until November 2024 when Allied attended again and carried out some works. The water ingress is ongoing. In relation to the kitchen leak, Allied have still not done anything. In relation to the main bedroom leak, Allied attended in July 2024 and again in November 2024. A contractor attended in January 2025 to clear weeds from a terrace above but, other than that, nothing has been resolved. In the 16 months since the Respondent instructed Allied Surveyors, Mr Carruthers considers very little to have been achieved. If anything, things have worsened since he submitted this Tribunal application. Even since the CMD took place in September 2024, despite what Mr Henderson had said at the CMD, there has really been no improvement, either in terms of the property repairs or in the Respondent's communications with him.
5. Mr Carruthers explained the background to his dealings with the Respondent in connection with these matters and the problems he has experienced. He made reference to supporting documentation throughout. Mr Carruthers confirmed that the building opened in 2012 and the Respondent has been the Property Factor throughout. Water ingress has historically been a problem, even before Mr Carruthers moved in. He has produced a statement from his neighbour above confirming this (reference made to attachment #23). He was originally the chairman of the Homeowners Association. However, he became increasingly frustrated and eventually stepped away from the Committee. Mr Carruthers has had the support of the Homeowners Association throughout

(reference made to attachment #24). He has always tried to be very direct with what he is asking of the Respondent but feels that his complaints have just gone round in circles. Mr Carruthers explained that the Respondent's team dealing with the matter changed during 2024. His previous contact, Mr Fraser Hamilton, resigned and Ms Alexandra Friel was put in his place. Although Mr Carruthers had been told, and hoped, that this would improve things, it did not. Ms Friel did not know the full background of the leaks affecting his property and seemed to have a lot of catching up to do. She did not seem to know what to do with the situation and there was a lot of confusion apparent in her communications with him (reference made to attachment #22). She would repeatedly say that she would get back to him by a particular time, but would not then do so, nor provide him with any explanation for her failure to do so. She does not seem to take the issue seriously and even used the term "LOL" in one of her emails to him. The Respondent now insists in communicating only by e-mail with Mr Carruthers as it seems Ms Friel found him difficult to deal with on the telephone. Ms Friel does not appear to think it is the Respondent's job to manage the repairs or the contractors instructed by them on behalf of the homeowners, or even to query the contractors. The Respondent always appears to be reactive rather than proactive and only seems to do anything when he chases them up. They do not appear to have any control over matters.

6. Mr Carruthers does not think that the Respondent takes any accountability for these matters or understands the impacts on him and his partner of the ongoing situation. Their living conditions are affected. The property damage is unsightly. They still have a tarpaulin and hose diverting water which is coming in to their property. They want to move home in order to move on with their life plans but feel they are stuck with the property due to the unresolved situation with the leaks. This has been ongoing for over 8 years and causes Mr Carruthers in particular a lot of stress, in addition to all the time he has spent trying to get things resolved. When Mr Henderson became involved in dealing with Mr Carruthers' complaints in January 2024, he had initially offered to meet Mr Carruthers but this was then cancelled with less than 24 hours' notice and was never rearranged. The Respondent's Team Leader, Ms Short, admitted that she did not have knowledge of his case. The Respondent's solution was to switch their teams around and offer Mr Carruthers a £55 refund on his management fee. Mr Carruthers is aware that there have been instances of staff of the Respondent being absent due to sickness or bereavement but, in his view, this does not excuse the delays and lack of progress with the repairs. Mr Henderson has acknowledged both at the CMD and in his written representations that there have been failings on the part of the Respondent but yet, no corrective action has been taken. Mr Carruthers still has to repeatedly contact the Respondent to try and get updates and to move matters along. He is then criticised for doing so. Mr Carruthers has often felt that he is expected to be managing the situation, the contractors and other homeowners involved, rather than the Respondent. Mr Carruthers stated that he had put forward a proposed resolution previously that he should get a weekly phonecall update from the Respondent. Their response was that they would arrange contact between Mr Carruthers and Allied Surveyors but his contract is not with Allied. It is with the Respondent and they should therefore be involved too. He cannot

instruct Allied or the contractors. He has to rely on the Respondent to do that and also to chase up and question the contractors about things. The Respondent has refused to say how often they have chased Allied. In Mr Carruthers' view, the Respondent has had sufficient time to resolve all these things. They have breached the Property Factor Code in all these respects. He has lodged 27 attachments in support of his application. Despite this, Mr Henderson has still said in his representations that there is not enough detail to respond. Mr Carruthers referred to Mr Henderson seeking to change the date of the Evidential Hearing which he thinks was just another attempt to delay the process.

7. Mr Carruthers was asked to comment on the most recent report from Allied Surveyors dated 6 January 2025, produced by the Respondent with their recent representations. Mr Carruthers confirmed that he was issued with a copy of this report by the Respondent on 27 January 2025. As to the recommendations in the report relating to the three leaks, he has no issues with the further works Allied are proposing but, given the longstanding nature of the leaks and the fact that, historically, works have been carried out in relation to his neighbour's terrace above and not resolved matters, he is concerned that this may happen again. He notes that Allied have mentioned that access around the terrace above will be problematic and said that Mr Hamilton had previously mentioned scaffolding and that this is expensive. Mr Carruthers is pleased that the kitchen ceiling is no longer wet but, again, is concerned that there may be a repeat of this leak if there is a bad storm as a high volume of water came in there.
8. Mr Carruthers was then asked to make comments on the particular sections of the Code that he alleges the Respondent has breached in relation to the matters referred to above. It was noted by the Tribunal that, in Mr Carruthers' updated written representations he had introduced other sections of the Code that had not formed part of his original application to the Tribunal, nor his prior notification to the Respondent. These were paragraphs 5, 6, 9 and 11 of the Overarching Standards of Practice (OSP), and Section 2.1 of the Code. It was noted that the Respondent had only specifically responded in their written representations lodged prior to the CMD to the parts of the Code contained in the original application, namely OSP 1,2,6 and 10 and Sections 2.2, 2.4, 2.7,6.1 and 6.4. Nor had they lodged any further representations relating to particular sections of the Code in their more recent representations lodged in advance of the Evidential Hearing. Mr Carruthers explained that his complaint has evolved during the Tribunal process, for example, in respect of his SAR/GDPR complaint. Mr Carruthers also stated that he has lodged supporting documentation in respect of the additional breaches of the Code he alleges with his further representations, both before the CMD and in advance of the Evidential Hearing. He made brief comments in relation to OSP 5,6,9 and 11, and Section 2.1 of the Code and why he considers the Respondent to have breached these. He also addressed the following parts of the Code, with reference to the evidence he had already provided as detailed above:-

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

The Applicant considered that the Respondent had not complied with the 2011 Act and GDPR.

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

Mr Carruthers does not consider the Respondent to have treated him fairly. In terms of honesty, transparency and openness, he considers that they omit things and say one thing and then do another. He referred to the timelines the Respondent has produced which omit the up-to-date information requested by the Tribunal. He estimates that the Respondent only responded to around 20% of the content of his communications.

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.

Mr Carruthers stated that property factors do not need to be surveyors but considers that they must at least be able to support communication with and the engagement of the appropriate contractors and with homeowners when it comes to repairing and maintenance of the properties they factor. The Respondent should have processes and timescales that they follow in these matters to be effective in the services they are supposed to be providing to him as a homeowner. He does not think that Ms Friel had the necessary understanding of his repair issues and the background and does not think the Respondent has demonstrated reasonable care and skill. He does not know whether this is due to lack of staff training or not. Mr Henderson has conceded that the Respondent had not always complied with their own timescales.

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

Mr Carruthers explained that this was the basis of his complaints to the ICO. He was provided with unredacted personal data relating to other homeowners and their properties and wondered whether his personal data had also been shared with others in the same way, although he does not have specific evidence of that.

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.

Mr Carruthers stated that he had asked the Respondent questions about their use of his personal data such as how it is retained but this has not been answered. The Respondent's position is that they are not obligated to tell him this. He has concerns as there was a big gap apparent in the papers that were produced relating to 2018, with a lot of emails missing from Sophie's papers, whereas paperwork of Angela's from before then was there.

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.

Mr Carruthers confirmed he considers this paragraph to be the crux of his complaint in that he has repeatedly sought information and documents from the Respondent which has not been provided to him. He considered this to have been already covered in his evidence detailed above.

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.

Mr Carruthers stated that the Respondent does not comply with their own stated complaints process. They failed to properly log complaints and to deal with them properly. They mostly do respond within 7 working days to him, although often this is nothing more than a holding email which confirms that the Respondent will respond further within a set time limit. Reference was made to the communications logs lodged by Mr Carruthers in which he has marked in red the various instances of the Respondent failing to respond to him within their own time limits. Mr Carruthers referred again to Mr Henderson's admission regarding this, although he had noted that the tone had changed. In Mr Henderson's initial written representations to the Tribunal, he had appeared to blame Mr Carruthers for the volume of communications he sent to the Respondent. Mr Carruthers had taken this on board and reduced his email communications by not sending follow-up emails where the Respondent had failed to respond to his previous emails within the required time limit. However, Mr Carruthers had noted from Mr Henderson's more recent representations that he is now saying that their failings are due to the complexity of the repairs issues. Mr Carruthers considers the main issue to be that, despite these admissions of failings, no corrective action has been taken by the Respondent who continue to deal with the matter in the same way as always. It is a vicious circle. Mr Carruthers said that, when Mr Henderson became involved, he had initially had hope that matters would be resolved by the changes to the management team dealing with him. However, he was disappointed to learn that the team leader, Ms Short, was not even aware of the background to his complaints. Ms Friel has not been able to provide him with any more information than he would get previously. She would not respond on time, she does not appear to chase the contractors if they have not responded to her when they should and basically, gives his issues no prioritisation.

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

Mr Carruthers stated as an example of this that the contractors had cut away a square metre of the render in November 2024, which left the interior of the building exposed right through the winter. He has had to have his heating on a lot more as a consequence. He also referred to still having a tarpaulin and hose, diverting water into a bucket inside his property.

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

Mr Carruthers stated that the Respondent has always had complete authority from the Homeowners' Association to go ahead with the repairs to his property as they are regarded as emergency repairs, due to the water ingress, which should be done promptly. There is therefore no financial threshold applying. He has been copying in the Homeowners' Association to his communications with the Respondent for more than a year and the other residents are well-versed on the situation, given that his problems have been ongoing for eight years. They wrote him a supporting statement for the Tribunal (reference made to attachment #24). Despite this, Ms Friel did say at one point that they would have to get input from the Homeowners' Association. Mr Carruthers considered that this was just the Respondent seeking to unnecessarily delay the process as the Homeowner's Association had never queried anything and there was no need for the Respondent to engage with them. Mr Carruthers estimated that between £20,000 and £30,000 had been spent so far in connection with his required property repairs. He thinks that there is the option of a claim on the buildings insurance but his questions regarding this have not been answered.

9. Mr Carruthers was asked about the remedy he was seeking in respect of this application, should the Tribunal decide to grant a PFEO against the Respondent. He stated that, if he could get a weekly update from the Respondent, he would stop chasing them. The Respondent, having instructed Allied Surveyors, have already had a reasonable period of time to resolve matters. He now just wants things to keep moving forward. He wants them to have a faster turnaround and for contractors to be instructed quickly, and for the Respondent to keep engaging regularly with Allied and with him. He would like to see more openness and transparency on a routine basis. He does not disagree with what is being proposed by Allied but wants effective repairs to his property implemented as soon as possible. As far as compensation, Mr Carruthers would like the Tribunal to take into account the impact on him of what has happened. He referred to the comments he made in this regard in his application and his evidence detailed above. He mentioned the length of time this has been ongoing, all the disruption, not being able to sell his flat and the personal impact on him and his partner of the stress. Mr Carruthers stated that

the situation has also impacted his own work, given the amount of time he has had to spend dealing with the Respondent and in preparing for the Tribunal. He would like the Respondent to be held accountable for this.

10. In summing-up, Mr Carruthers said that he aware that the Tribunal has been provided with a lot of information and hoped that he had been able to highlight the important parts of his case. He appreciates that this system exists to deal with such complaints.

The Respondent's position (written representations)

11. The Respondent's position was outlined in their written representations dated 20 August 2024 lodged before the CMD and their further written representations dated 27 January 2025 lodged in response to the Tribunal's Direction and prior to the Evidential Hearing, both lodged with supporting documentation.
12. The Respondent's position in relation to the breaches of the Code included in the Applicant's application to the Tribunal were outlined in their written representations of 20 August 2024. They made the point that the Applicant's application to the Tribunal included some parts of the Code which had not formed part of his original complaint to them, which they had produced as an attachment to their representations. They did not refer specifically to their alleged breaches of the Overarching Standards of Practice (1,2,6 and 10) but did respond in general terms to the application and also to the specific sections under Section 2 (Communication and Consultation) and Section 6 (Carrying out Repairs and Maintenance) that were included in the Applicant's original application to the Tribunal, as follows:-

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.

"We certainly do our utmost to ensure that all our customers' personal data handled correctly and used safely and appropriately. Our understanding is that this section is being highlighted within this complaint but actually forms the basis of the homeowner's second formal complaint with ourselves, and which we understand will be the subject of a further escalation to the First-tier Tribunal."

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.

"We have done our utmost to provide Mr Carruthers with and all the documentation and information that we hold relating to the water ingress issue and have provided this. There are some items where there is documentation and this must have been the subject of conversations, in

person of over the telephone, with contractors/third parties. Please be assured, we would not withhold any information or documentation from the homeowner (unless we had explained the rationale for not doing so)."

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.

"As we have outlined in our responses to the homeowner, as part of our complaints handling process, we always do our utmost to ensure that we respond in line with our Terms of Service and Delivery Standards, however, there have been some occasions where this has not been adhered to and our unreserved apologies have been offered to the homeowner, along with an gesture of goodwill payment made to his common charges account.

We do believe, however, that this has been somewhat challenging with this customer, as since the turn of the year, we have received in excess of 80 e-mails from Mr Carruthers as well as substantive levels of telephone calls.

We never wish to be at odds with our customers, however, we do believe (as stated above) it has been challenging given the volume of correspondence and calls generated by Mr Carruthers and whether or not this would be deemed reasonable."

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

Throughout this process, which we do understand must have been very frustrating for our customer. We have always tried to act promptly in assisting him in obtaining third party contractors to attend, investigate and undertake repair works; which we were led to believe would resolve the matter. Subsequently, these remedial works have proven to have failed resolving the water ingress matter.

To resolve the original leak, and also the two more recently highlighted water leaks, Allied Surveyors have been instructed to undertake a full survey, and provide scopes of works, which will rectify each leak, which will lead to them undertaking a tender exercise and eventually recommending, then instructing, the contractor offering the most competitively priced tender."

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

"As outlined within our letter of 29th February 2024 (part of Attachment 1), there have been numerous occasions of us procuring the services of contractors, on your behalf, in attempts to repair and resolve the instances/sources of water ingress. Whilst it is clear that during these visits, repairs were undertaken to areas which were defective and relating to the ingresses of water, as has been mentioned previously, it is now clear that a larger scope of works will be required, based upon more disruptive surveys, and led/overseen by an independent building surveyor.

As has been previously outlined, Allied Surveyors were placed with an instruction, given it has been agreed that the optimum route of ensuring all sources of water ingress can be identified and repaired permanently, was employing the services of a building surveyor, and it was our recommendation that you/owners proceed with Allied Surveyors suggested next steps as opposed to instructing any further jobbing repairs/works."

13. The Respondent's updated representations dated 27th January 2025, together with further supporting documentation was lodged in response to the Tribunal's Direction and in advance of the Evidential Hearing. The supporting documentation included timelines in respect of the three leaks, stated to be as requested in the Direction, together with a substantial volume of copy emails and other documents, namely work orders and invoices. The Respondent's further representations were as follows:-

"Whilst we accept there have been instances where our communication SLA has not been met, this has proven to be a complex experience of water ingress and we recognise distress, inconvenience and upset that must have caused our customer, which will have been the cause of the substantial volume of e-mails and telephone calls.

Throughout seeking to assist with this our team have sought to support in delivering repairs, relying upon third party contractors and the co-operation of homeowners. We recognise that despite the large volume of communication which occurred, this effort could, at times, have been better focused.

We are sorry that our handling of Mr Carruthers formal complaint did not resolve these concerns and that Mr Carruthers felt escalation to the Tribunal was required.

As progress continues to be made by Allied Surveyors, this does post-date the Application, and whilst recognizing Mr Carruthers' concerns, the Application does not appear to explain in detail how our actions have breached the sections of the Code set out in Form C2 and as such we are not able to fully respond on this basis, however, the resolution clearly sought is for effective building repairs to be carried out and our efforts continue to be focused on delivering this.”

Findings-in-fact

1. The Applicant (Homeowner) is the proprietor of 6/1 339 Glasgow Harbour Terraces, Glasgow, G11 6BH.
2. The Respondent (Property Factor) is the properly appointed Factor in respect of the Property.
3. The Respondent's written statement of services is contained in a document entitled "Terms of Service and Delivery Standards" dated 11 February 2019.
4. The Applicant has three separate areas in his property which are affected by water ingress.
5. The first leak to occur was in the spare bedroom where there has been water ingress since 2017, reported to the Respondent at that time.
6. The second leak was in the kitchen and occurred in June/July 2023, reported to the Respondent at that time.
7. The third leak was in the main bedroom and occurred January 2024, reported to the Respondent at that time.
8. None of the three leaks have been resolved.
9. There has been a substantial volume of email and other communication between the parties in relation to the three leaks and related issues over a lengthy period.
10. The Applicant made a formal complaint to the Respondent in January 2024 which was dealt with through the Respondent's internal complaints processes.
11. The Applicant was dissatisfied with the Respondent's responses to his formal complaint.
12. The Applicant notified the Respondent on 9 April 2024 that, unless there was agreement on his proposed resolution of matters, he intended to make application to the Tribunal in respect of alleged breaches of the Code.

13. The Applicant lodged his application with the Tribunal on 23 April 2024 and advised the Respondent that he had done so on 29 April 2024.
14. The Respondent acknowledged that the Applicant had applied to the Tribunal on 13 May 2024.
15. The Respondent had previously instructed repairs through several different contractors in respect of the oldest leak but these repairs were unsuccessful.
16. The Respondent instructed Allied Surveyors in October 2023 to undertake wider investigations and repairs in an attempt to resolve the water ingress issues.
17. A Report dated 6 January 2025 containing recommendations for resolving the three leaks was produced by Allied Surveyors and issued to the Applicant shortly before the Evidential Hearing.
18. The Respondent was found by the ICO to have committed a technical breach of Data Protection legislation in that they had not responded to a SAR by the Applicant within the permitted statutory timescale.
19. The Respondent was not open, transparent and fair in their dealings with the Applicant.
20. The Respondent did not carry out their services to the Applicant in a timely way and did not ensure that their staff had all the information they needed to be effective.
21. The Respondent did not provide the Applicant with all the information or documents he had requested.
22. The Respondent did not respond to enquiries/complaints from the Applicant within the timescales stated in their written statement of services and did not aim to deal with these enquiries/complaints as quickly or as fully as possible and to keep the Applicant informed when they were not able to respond within the agreed timescale.
23. The Respondent did not help to prevent further damage or deterioration to the Applicant's property by seeking to make prompt repairs to a good standard.
24. The Respondent did not arrange inspections and repairs within an appropriate timescale or keep the Applicant informed of the progress of this work, including estimated timescales for completion.
25. The Respondent admitted not always responding to the Applicant's enquiries/complaints within their own set timescales and to delays with effective

repairs being carried out to resolve the three water leaks into the Applicant's property.

26. The Respondent previously made an ex gratia payment of £55 to the Applicant in recognition of their failings.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and initial supporting documentation, the further written representations and supporting documentation from the Applicant, the initial written representations, together with supporting documentation from the Respondent, their further written representations, together with supporting documentation and the oral evidence given at the Evidential Hearing by the Applicant.
2. In terms of the presentation of their documentation by the parties, the Tribunal considered that the Applicant had presented his documentation in a clear way and had fully complied with the Tribunal's Direction issued following the CMD in that regard. However, the Tribunal tended to agree with the comments made by the Applicant at the Evidential Hearing regarding the Respondent's presentation of their paperwork which extended to almost 400 pages. Although the Respondent had numbered the pages and provided an index page, the documentation did not appear to have been presented chronologically or in a manner which was particularly easy to follow. As the Applicant had pointed out, there were some reports contained within the documentation which were not separately listed in the index page. This was compounded by the fact that the Respondent was not in attendance at the Evidential Hearing to answer questions from the Tribunal or make reference to particular documents at relevant points during the proceedings. In addition, the Tribunal agreed with the Applicant that the timelines in respect of the three leaks produced by the Respondent were incomplete in that the entries relating to the spare bedroom leak only started at June 2023 and none of the timelines had been brought up 'to date', in terms of the Direction, but rather appeared to stop around the time the Applicant had made his application to the Tribunal in April 2024. It was noted that there were three further entries at the end for April, May and June 2024, but nothing following that. It may be that the Respondent had mis-interpreted the wording of the Direction but what the Tribunal had wanted was timelines up to as close as possible to the date of the Evidential Hearing. That said, the Respondent had submitted written representations, which albeit in fairly brief and general terms, stated their position in relation to the application. In addition, their supporting documentation assisted the Tribunal in showing the efforts they had made to deal with the repairing issues and the Applicant's concerns and complaints.

3. Preliminary Issue

The Tribunal considered the issues of prior notification and fair notice of the Applicant's complaints being brought to the Tribunal in terms of the breaches of the Code alleged by the Applicant, taking into account the Respondent's written representations and the explanation of the Applicant at the Evidential Hearing that his complaints have "evolved" during the process. The Tribunal reviewed the formal complaint correspondence between the parties between January and May 2024 and considered that the Applicant had included sufficient detail, repeatedly mentioned Code breaches and informed the Respondent that he intended to proceed to the Tribunal if his complaint was not resolved, albeit that only sections 2.7 and 6.4 were mentioned in the initial complaint form which had been produced by the Respondent. In the Tribunal's view, this was sufficient to satisfy the requirement of Section 17(3) of the 2011 Act which states that:- *"No such application may be made [to the Tribunal] unless – (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to.....comply with the section 14 duty [the Code]"* and the application had been accepted on that basis.

The application to the Tribunal included alleged breaches of the OSP 1,2,6 and 10 and Sections 2.2, 2.4, 2.7, 6.1 and 6.4 of the Code and the Respondent's original representations mentioned and responded to those sections. However, the Applicant had updated his representations twice during the Tribunal process and had subsequently referred to OSP 5,6,9 and 11 and Section 2.1 in addition to the original Code breaches alleged. The Applicant provided his explanation for this, which was essentially that his complaint had evolved during the process. The Tribunal did not consider that the Respondent had been given prior notice by the Applicant in respect of these specific alleged breaches in terms of Section 17(3) of the 2011 Act referred to above. Although the Respondent appears from their initial representations to have been aware of other complaints by the Applicant, the Tribunal is not satisfied that the Respondent had been given fair notice in respect of these further alleged breaches of the Code in the context of this particular application, nor that they required to answer in respect of those alleged breaches of the Code. The Respondent appeared to be anticipating in their representations that a further application to the Tribunal may follow and, in the Tribunal's view, that would have been the more appropriate course for the Applicant to follow, in which case the two applications could perhaps have been conjoined and heard together. There is, in any event, a fair degree of overlap regarding the factual background and subject matter forming the basis of the Applicant's complaints relating to specific sections of the Code. Accordingly, the Tribunal does not consider that their decision to exclude the 'added' sections of the Code from their consideration of the application prejudiced the Applicant's case.

4. Breaches of the Code

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

The Applicant considers that the Respondent has not complied with the Property Factors (Scotland) Act 2011 and GDPR. The Respondent did not specifically respond in terms of OSP1. The Tribunal considers that as this type of application is made in terms of the 2011 Act, that “relevant legislation” in this context means any other legislation. As to GDPR, the Tribunal noted that the Applicant had produced a letter from the ICO dated 5 September 2024 stating that the ICO was of the view that the Respondent had infringed the data protection legislation as they had failed to comply to the Applicant’s SAR within the statutory timeframe of a calendar month. The Tribunal viewed this as a technical breach of the data protection legislation and therefore evidence of a technical breach of OSP1 only. Although the Applicant gave evidence of his concerns that the Respondent may be in further breach of GDPR regarding their failure to produce documentation in response to his SAR that they, in fact, held and regarding their handling of his personal data, the Tribunal did not consider that it had sufficient material before it to establish these matters. It was noted that the Applicant now intends to further pursue his complaint against the Respondent with the ICO, given that he considers that some of the documentation which the Respondent has recently produced to the Tribunal should previously have been released to him in terms of his SAR. The Tribunal considers that the ICO is the correct forum to investigate and determine these further matters.

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

The Respondent did not specifically respond in terms of OSP2. The Tribunal was satisfied that the Respondent had breached OSP2 in that the Tribunal did not consider that they had been open, transparent and fair in their dealings with the Applicant. Having considered the evidence before them, the Tribunal did not consider that it had been established by the Applicant that there had been dishonesty on the part of the Respondent. However, the Respondent had clearly not adequately responded to the Applicant’s enquiries regarding the outstanding repairs situation over a lengthy period of time. They omitted to answer many of his queries at all, provide him with documentation he had specifically requested or to provide him with adequate responses or explanations, particularly regarding the repeated delays in effective repairs being carried out. Given the significant delays in the repair issues being resolved, the Tribunal agreed with the Applicant that he was entitled to a full explanation and regular ongoing updates in order that he could understand the reason for the delays and to be reassured that the Respondent was properly managing the contractors they had instructed to resolve the issues. Instead, the Applicant was left not knowing if his issues were being prioritised in any way by the Respondent and/or the contractors or whether the Respondent or contractors were responsible for the repeated delays, or both. It did not appear to the Tribunal that the matter had been given sufficient priority by the Respondent, although they were well aware of the background and the length of time the Applicant had been awaiting a resolution. In these ways, the Tribunal did not consider that the Respondent had been open, transparent or fair to the Applicant.

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.

The Respondent did not specifically respond in terms of OSP6. For the reasons stated above in relation to OSP2, the Tribunal also considered that the Respondent was in breach of OSP6. The Tribunal was satisfied that the Respondent had not provided their services to the Applicant in a timely way and the Respondent appears to have admitted this, both by previously offering the Applicant an ex-gratia payment of £55 and in terms of their written representations to the Tribunal. The Applicant had provided detailed evidence about the chronology of matters and his frustration when the Respondent's staff members dealing with him had changed and the new staff members clearly were not fully aware of the background nor appeared to approach the situation any differently or more effectively than their predecessors. The Tribunal did not consider it had enough information before it to establish that the Respondent's staff had not exercised reasonable care and skill or had not been properly trained but were satisfied that they had not been in possession of all the information they needed in order to be effective.

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

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.

The Respondent did not specifically respond in terms of OSP10 but did respond regarding Section 2.2 of the Code and denied any such data breach. The Tribunal did not consider that it had sufficient information before it to make findings in this regard and did not therefore consider that the Respondent had breached OSP10 or Section 2.2. The Tribunal accepts that the Applicant had reason to believe that his personal data may not have been handled properly, given that he considered that the personal data of other homeowners had been inappropriately provided to him. However, the Tribunal considered that this aspect of the Applicant's claim would be more appropriately dealt with through the ICO should he wish to pursue this matter further, as the Respondent had, in effect, stated in their written representations. The Applicant himself conceded in his own evidence that he did not have evidence that his own personal data had been the subject of a data breach by the Respondent.

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.

The Respondent had responded in relation to this alleged breach, stating that they had provided all documentation requested by the Applicant which they had in their possession and had not deliberately withheld anything or if they had

been unable to provide requested documentation, they would have offered an explanation for same. The Applicant had described this matter as being the crux of his complaint. He had provided detailed evidence to the Tribunal on this point and had referred the Tribunal to specific documents he had requested previously, in terms of a SAR. His position was that the Respondent had not provided these to him, stating that they did not hold them, but had subsequently produced some of these documents to the Tribunal. Having considered the evidence produced, the Tribunal was satisfied, on the balance of probabilities, that the Respondent was in breach of Section 2.4, although not necessarily that the documentation had previously been deliberately withheld.

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.

The Respondent had responded in relation to this alleged breach and, as referred to above, had admitted that there were instances of their failing to comply with their own stated timescales for responding to enquiries/complaints by the Applicant, albeit they had provided some explanation for this. It was noted that in terms of their Terms of Service and Delivery Standards, the Respondent stated that they would respond to written enquiries within 7 days and telephone enquiries by the end of the next working day. The Tribunal had requested in their Direction that the Respondent specifically respond where they disagreed with any of the Applicant's three timelines produced, in respect of which he had coloured red the numerous times he considered they were in breach of their response timescales. It was noted by the Tribunal that there were many instances where responses far exceeded the timescales set by the Respondent. The Respondent had not challenged any of these and, accordingly, the Tribunal considered all these specific breaches to be admitted by the Respondent and thus a breach of Section 2.7 established.

6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

The Respondent had responded in respect of this alleged breach of the Code and had explained the steps they have taken in the past in respect of the oldest leak and the more recent two leaks reported. Their position was essentially that they had instructed repairs several times, using different contractors, in respect of the oldest leak and that they required to rely on these various contractors who, unfortunately, had not managed to resolve the leak. They had explained that more recently, Allied Surveyors had been instructed to undertake a full survey and wider scope of works to try and resolve the older leak and the two more recent leaks that had since arisen. It appeared to the Tribunal, however, that the facts in this regard really spoke for themselves. The original leak had

been reported by the Applicant in 2017, the second one in June/July 2023 and the third in January 2024. In respect of the oldest leak, it was not explained why it had taken until October 2023 for the Respondent to instruct Allied Surveyors. In the Tribunal's view, it ought to have been apparent to the Respondent that a different approach was required at an earlier stage and that wider investigation and a scope of works was required, rather than repeat attempts by different contractors doing the same type of repairs. Nor was it satisfactorily explained why, since the instruction of Allied Surveyors in October 2023, progress with resolving the leaks had been so slow, involving lengthy delays at each stage of the process. Reference is made to the Applicant's detailed evidence produced in this regard. It was not known to the Tribunal if the delays were due to Allied having insufficient capacity or too heavy a workload as the Respondent has not explained this satisfactorily to either the Applicant or the Tribunal. It is the view of the Tribunal that the Respondent has not demonstrated that they have been, or are, effectively managing the contractors. Certainly, sufficient priority does not appear to have been given to these particular repair issues. The Tribunal understands both the Applicant's frustration regarding the delays but also his concern that his property has already been damaged by water ingress and may be being further damaged by part of the interior of the building being left exposed to the elements since exterior render was removed last winter. In these circumstances, the Tribunal was not satisfied that the Respondent had helped 'to prevent further damage or deterioration by seeking to make prompt repairs to a good standard'. Accordingly, the Tribunal determined that the Respondent was in breach of Section 6.1 of the Code.

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

With reference to the matters already referred to above in respect of OSP6 and Sections 2.7 and 6.1, the Tribunal considered that the Respondent was also in breach of Section 6.4 in that it was satisfied that inspections and repairs had not been done within an appropriate timescale, and nor had their communications with the Applicant been sufficient to keep him informed and updated as to the progress of the repair works or reasons for the delays.

In summary, the Tribunal accordingly determined that the Respondent is in breach of OSP 1, 2 and 6 and Sections 2.4, 2.7, 6.1 and 6.4 of the Code.

5. As to the remedy that the Applicant was seeking, it was clear to the Tribunal that his aim and priority is for effective progress to be made to bring these outstanding repair issues to a conclusion within a reasonable period of time. He would also wish to have improved communications with the Respondent and to be provided with regular updates, without having to constantly chase for this. The Tribunal also took account of the representations of the Applicant regarding

his claim for financial compensation as outlined in paragraph 9 of the narration of his evidence above. The Tribunal noted that the Respondent accepted in their more recent representations that, although they had previously criticised the Respondent in respect of the volume of his communications to them, that they stated “....we recognise distress, inconvenience and upset that must have caused our customer, which will have been the cause of the substantial volume of e-mails and telephone calls”. The Tribunal also noted that, at an earlier stage that the Respondent had offered the Applicant an ex gratia payment of £55 as a partial refund of their most recent management fee. The Tribunal was in agreement with the Applicant that this was in no way adequate, given the background circumstances, such that the Applicant had informed the Respondent that he intended to donate this money to charity. The Tribunal considered that a financial award of £750 was appropriate here, to compensate the Applicant for the amount of time and effort he had spent trying to resolve these issues; the length of time these issues have been ongoing and are, as yet, unresolved; and the inconvenience, stress, anxiety and upset he has experienced as a direct consequence of the respondent's breaches of the Code.

6. The Tribunal proposes to make a property factor enforcement order ("PFEO") dealing with the above compensation award and other matters. The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

Right of Appeal

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

Legal Member/Chair

11 February 2025
Date