

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision

Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/24/5614

Re: 16 Market Street, Forfar, Angus DD8 3EY (“the Property”)

The Parties:

Ms Rowena Frankl, 20 Morrison Street, Kirriemuir, Angus DD8 5DB (“the Applicant”)

James Gibb Property Management Ltd, Red Tree Magenta, 270 Glasgow Road, Glasgow G73 1UZ (“the Respondent”)

Tribunal Members:

**Alice Stobart, Advocate, (Legal Member)
Robert Buchan, Surveyor (Ordinary Member)
(the “tribunal”)**

Background

1. This is an application by Ms Frankl in respect of the Property in relation to the Respondent's actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”). The application was dated 5 December 2024 and was accepted by the Tribunal for determination on 9 January 2025.
2. A case management discussion (CMD) was held by teleconference on 18 June 2025. The Applicant was in attendance. Mr Gavin Baird, Senior Associate Director for the Respondent was present. At the CMD the Applicant confirmed that she was relying on the breaches of the OSP2, OSP3, OSP4, OSP6, OSP9 and OSP11. The Applicant was also relying on breaches of the following sections of the Code: section 2.1, section 2.7, section 5.6, section 6.1, section 6.3, section 6.5, section 6.6, section 6.12 and section 7.1. The Applicant withdrew the following parts of her application: OSP 8, Sections 2.9, 3.8, 6.7, 6.9, 6.10 and 7.2.

3. During the CMD the parties discussed what additional evidence may need to be lodged before a final hearing. The key documents which seemed to be missing included relevant email correspondence, telephone notes, letters or other communication between the parties especially from March 2024 to date of application relating 1) to the issue of water ingress and 2) to the complaints made by the Applicant (and any response by the Respondent) under the Respondent's complaints procedure; an offer from the Applicant to make up the shortfall of expenditure in the relevant period namely March – December 2024; insurance documentation relating to the Applicant's property; and property factoring invoices relating to 2024.
4. Following the CMD, the parties lodged further documentation with the tribunal.
5. At the beginning of the full hearing on 5 November 2025 Ms Frankl and the Respondent's Mr Baird explained that they had had discussions since the June CMD to try and resolve the issue over the insurance claim. Ms Frankl said she was still upset about the way the insurance issue had been communicated in 2024 but confirmed that the insurance claim had been resolved. As such Ms Frankl indicated that she was no longer relying on breaches of OSP3 and OSP4. Ms Frankl was however relying on a breach of the code in respect of the insurance claim in relation to section 5.6.
6. The Tribunal heard first from Ms Frankl on each part of the Code that she believed had been breached. It was accepted by Ms Frankl that her evidence overlapped and related to various different parts of the Code. The Tribunal then heard from the Respondent's Mr Baird who had taken over the conduct of the matter and had made enquiries of the Respondent in preparation for the hearing. The Tribunal noted that Mr Baird was not involved in much of the earlier matters and so could only refer the Tribunal to documents and relay what he understood to be the position.
7. The Tribunal has recorded below Ms Frankl's position in relation to each alleged breach and then the Respondent's position as related to the Tribunal by Mr Baird.
8. The Tribunal was grateful to both Ms Frankl and Mr Baird for their oral and written submissions.

Findings in Fact:

9. The Applicant acquired the property at 16 Market Street, Forfar, DD8 3EY in 2020. She received a copy of the Title Information from her solicitor on 22 October 2020. Ms Frankl was informed that she was responsible for a 10% share of the maintenance of the 'common parts' and a proportionate share (1/7) of cleaning, maintenance works etc of the 'dwellinghouse common parts'.

10. The Title Information at paragraph 3(c) says that the Factor shall have full power and authority to instruct and have executed from time to time such works as he in his judgement shall consider necessary or desirable for amongst other things the repair and maintenance of the common parts. It also states that if the cost of said repair is in excess of £500, the Factor shall, before instructing the same, report the matter to a meeting of the Proprietors.
11. On 13 March 2024 by email, Ms Frankl informed the Respondent that she had a serious issue with penetrating damp in the 2nd bedroom of the property. She provided a copy of a survey from Richardson and Starling that she had commissioned and received on 7 March 2024. She received no response.
12. Ms Frankl sent a further email to the Respondent on 26 March 2024. She received an acknowledgement of the email on the same day but received no further follow up from the Respondent.
13. On 30 April 2024, Ms Frankl wrote to the Respondent to complain about the lack of engagement with her despite having contacted the Respondent on numerous occasions. She also raised the issue of insurance and her belief that it was not for her to raise an insurance claim but for the Respondent to do that.
14. On 2 May 2024, Mr Alan Christie acknowledged her email and sent her a copy of the complaints procedure.
15. Ms Frankl lodged a formal Stage 1 complaint on 7 May 2024 as there had been no action to remedy the damp in the building.
16. On 8 May 2024 Ms Frankl received a response acknowledging the complaint and saying the Factor would investigate and respond by 8 June 2024. Ms Frankl did not receive a response by 8 June 2024 so she escalated the complaint to Stage 2.
17. On 18 June 2024, Ms Frankl received a response from the Respondent to her Stage 1 complaint. It did not acknowledge the fact that she had escalated the matter to Stage 2. In the response it said that the property manager would arrange a meeting of owners. That did not happen.
18. On 10 September 2024, a letter was sent to Ms Frankl (and other homeowners) with details of proposed works to remedy the render on the property. The letter stated there had been recent communications with owners and that the Respondent had received approval to proceed with the render repairs. There had in fact been no prior communication with owners and the letter was the first communication regarding the matter. The letter did not say who had given approval to proceed and Mr Baird was unable to answer that.
19. Ms Frankl attempted to sell her property but the sale fell through on 15 October 2024. The buyer's survey revealed dry rot in the roof due to water ingress and as such the buyer withdrew their offer for the property. Ms Frankl informed the Respondent of the dry rot found in the roof space due to water ingress at the beginning of October. It became clear that the dampness was coming from a defect in the roof rather than as a result of defective rendering. This had been suggested

as one possible cause in the original survey provided by Ms Frankl in March 2024. For some reason the contractor sent by the Respondent to provide the quote of 10 September 2024 did not inspect the roof.

20. Ms Frankl met with the Respondent's Mr Gillespie on 9 October 2024. The Respondent's Lorraine MacDonald attended part of the meeting. There was discussion about whether an insurance claim had been made and there was confusion as to the status of any insurance claim. The Respondent's position at that meeting was that there would now need to be a survey carried out but that it was unlikely to happen until after Christmas. Further that there should be an owners meeting. At that meeting the Respondent indicated that as owners did not historically pay their share of the repairs the Respondent was likely to walk away as it was a 'lame duck'.
21. Following the meeting the Respondent contacted 4 surveyors to ask for a quote. On 5 November 2024, Mr Gillespie sent an update to Ms Frankl explaining that 2 of the 4 surveyors had provided a quote to survey the property. He also informed her that the proposed work to the render would be cancelled and her share of the monies returned.
22. Ms Frankl attempted to find out from the insurers whether a claim had been made. It appeared that no claim had been made relating to the water ingress on her part of the property.
23. Ms Frankl made a complaint to the Tribunal regarding the above matter in December 2024. In January 2025 Ms Frankl took over the matter of the repair and arranged with the insurers and other homeowners for the repair to be carried out.

Alleged Breaches of the Code:

- 24. OSP 2: You must be honest, open, transparent and fair in your dealings with homeowners.**
25. Ms Frankl's position is that the Respondent had not communicated properly with homeowners (HOs) and had not been transparent. Ms Frankl explained that she raised the issue of water ingress with the Respondent on 13 March 2024. Ms Frankl tried to get answers from the Respondent and sent reminders. She had provided a copy of a reminder with a survey and photographs of the water ingress to the Respondent by email dated 25 April 2024. Ms Frankl received no reply from the Respondent until she raised a complaint. She received an email from the Respondent dated 31 May 2024 indicating that they had received a quote for the works. The Respondent then took until 10 September 2024 to raise a proposed works invoice to all the owners.
26. Mr Baird explained that the Respondent did not accept Ms Frankl's account that nothing had happened in relation to the issues she had reported. Mr Baird referred the Tribunal to his written submissions dated 14 August 2025. He accepted that he had been unable to find any further documents or communication between Ms

Frankl and the Respondent in the period March 2024-May 2024 other than what was already before the Tribunal. In terms of transparency, Mr Baird submitted that the Respondent had been transparent and that there was no ill intent or motivation to provide misleading information to the homeowners. He accepted however that there had been some delays and confusion in responding.

27. Mr Baird referred to the letter from the Respondent's Jade Cassidy on 10 September 2024 as evidence that the Respondent was acting. He accepted however that the reference in the letter to 'recent communications with homeowners' was not accurate as he had been unable to evidence any communication with homeowners about the water ingress prior to the letter of 10 September going out. Similarly, Mr Baird was unable to say who had approved the work.
28. In relation to the communication with insurers, Mr Baird was unable to find any evidence that the issues reported by Ms Frankl had been reported to the insurer. He explained that when he contacted Protector, the insurer, they said there was a date for a loss being recorded in March 2024 but it was unclear whether that referred to Ms Frankl's issue. Mr Baird contacted the insurer following the CMD in 2025 but was unable to ascertain who had made the insurance claim. He was aware however that Ms Frankl had taken the matter in hand and that an insurance claim had been successfully made.
- 29. OSP 6: You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.**
30. Ms Frankl submitted that the Respondent had not acted in a timely way. She felt it was not acceptable to take until September 2024 to send out the proposed works when she had raised the matter in March 2024. Ms Frankl was also concerned that Complete Contracts who had been sent by the Respondent had failed to identify that the water ingress causing the damp in her flat was from a leak in the roof. Ms Frankl explained that she told the Respondent in October 2024 about the dry rot in the roof. In her view the Respondent should have treated the matter with urgency and as an emergency repair. She did not think it appropriate that Mr Gillespie put the matter off until after Christmas and was planning to deal with the problem by commissioning a survey that would cost in the thousands.
31. Ms Frankl believed that Mr Gillespie should have organised a homeowner meeting as soon as she raised the issue of water ingress in March 2024 and certainly by October 2024 when she raised the issue of dry rot. She was dismayed that no action was taken despite what was said in the title deeds that required a homeowner meeting for expenditure over £500. She explained that when she finally took the matter into her own hands, she was able to organise the works and get agreement from the majority of the homeowners within weeks.
32. Ms Frankl believed that the dry rot was made worse by the delays caused by the Respondent and the lack of care and skill when the Respondent sent Complete Contractors to quote.

33. Mr Baird's view was the Respondent had used Complete Contractors before and had asked them to investigate the cause of the damp. They were a reputable all-trades firm and that he therefore would hope they would diagnose the problem properly. At first the problem appeared to be defective render that needed replacing. It was only once the Respondent was alerted to the problem of dry rot in the roof space in October 2024 that it was appreciated that the problem was more serious.

34. Mr Baird accepted that there was no homeowner meeting organised in 2024. He submitted that as the work by Complete Contractors was never carried out then there was no harm done in relation to lack of consultation. He did not accept that the lack of homeowner meeting or the delay between March and May 2024 would have meant that the work would have been completed more quickly. In his view, the problem of non-payers meant that the works were unlikely to have been agreed.

35. Once the issue of the dry rot was raised, Mr Baird explained that the Respondent provided an update to Ms Frankl in November 2024 about the request for quotes from 4 building surveyors. He felt that it was reasonable given the issues raised with the roof and on the back of the discussions regarding outstanding debt to carry out a conditions survey.

36. OSP 9: You must maintain appropriate records of your dealings with homeowners. This is particularly important if you ned to demonstrate how you have met the Code's requirements.

37. Ms Frankl explained that appropriate records had not been kept as when she asked for proof of what meetings had been arranged with homeowners it was not forthcoming. Further Ms Frankl asked to see the quotes from surveyors that the Respondent was allegedly getting but she was not provided with them.

38. Ms Frankl noted that the matter she was relying on in relation to this OSP may well fall under the general complaint about the Respondent's failure to communicate with her.

39. Mr Baird confirmed that he could not find records of communications from the Respondent to Ms Frankl prior to May 2024.

40. As stated above Mr Baird could not find any records of insurance claims having been made in respect of Ms Frankl's reported issues. He explained that the insurance claim had, as at date of hearing, been submitted and resolved.

41. OSP 11: You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

42. Ms Frankl's position is that she did not get a response to the stage 1 complaint in the timescales that the Respondent had set out. She then wrote to the Respondent by email on 9 June 2024 escalating her complaint to Stage 2. She received no

communication in response to her Stage 2 complaint. She followed up her Stage 2 complaint on 1 August 2024 explaining she had had no response. The Respondent told her that she had not sent a Stage 2 complaint or that there was no clarity from their point of view. Ms Frankl did not accept that there was any lack of clarity.

43. Mr Baird referred to his written submission. His view was that the matter was confused as Ms Frankl had written to request a stage 2 on 9 June 2024 before the stage 1 complaint response was received by Ms Frankl. The Respondent had alerted Ms Frankl to the fact that the stage 1 response would be late. The response was then sent on 18 June 2024. The Respondent believed that if Ms Frankl was still insisting on a stage 2 then she should have made that clear after she received the stage 1 response. In the Respondent's view the complaint was resolved at stage 1.
44. ***Section 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.***
45. Ms Frankl explained that the Respondent had not consulted appropriately with HOs. In her view if the Respondent had convened a meeting of homeowners in March 2024 then a lot of the damage to her property might have been avoided. She submitted that the Respondent is obliged to convene a homeowners meeting if the repair is over £500. Ms Frankl explained that if there was an issue with some homeowners not paying, in particular the restaurant, then that could have been discussed at the meeting. The problem of non-payment needed to be discussed and she should have been given an opportunity to have the repairs done with 7 out of the 10 homeowners and she could have paid the remainder. The problem of non-payment by homeowners was exacerbated in Ms Frankl's view by the conduct of the Respondent who in writing told a new homeowner that there were no outstanding issues with the building when they knew of the water ingress, the dry rot and the other issues with common repairs in the building. As a result, the new homeowner felt they should not have to pay their share. Ms Frankl felt this was another example of poor, if not misleading, communication by the Respondent.
46. Mr Baird explained that there had been some communication with the HOs and Ms Frankl. His view was that due to the non-payment by some HOs it was difficult for the Respondent to gather the monies to effect repairs.
47. ***Section 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.

48. Ms Frankl explained that this complaint mirrored the complaint at OSP11 and that she was relying on the same matters.

49. Mr Baird also relied on his previous submissions relating to the complaints procedure above.

50. ***Section 5.6: If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information must be made available if requested by a homeowner. If homeowners are responsible for submitting claims on their own behalf (for example, for work that is not on common parts), a property factor must take reasonable steps to supply to homeowners all information that they reasonably require in order homeowners to be able to do so.***

51. Ms Frankl explained that she was told that the insurance claim was left with the contractor Complete Contracts to make the claim. She was surprised as she felt it was the role of the Respondent. She was then further confused by the Respondent because they said that they had put in the claim and then she was told that they had made a mistake and that they had submitted a different claim related to a different part of the roof.

52. Mr Baird confirmed that there was a procedure for submitting insurance claims in the WSS at para 8.17 and section 13 of the Development Schedule. In essence claims can be submitted by homeowners by contacting the Respondent's office. It appears from the documentation lodged by Mr Baird at Appendix 2 that Protector, the insurer confirmed that a claim dating back to 13 March 2024 under the reference PRO-1761995 was made. The difficulty was that Mr Baird could not say who had made the claim from the Respondent's office. Matters were further confused because the wrong insurance reference number was given to Ms Frankl.

53. ***Section 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.***

54. Ms Frankl relies on what she has said before about the timely provision of repairs. Her view is that the Respondent took too long to tell her that they would not be carrying out the repairs because of group debt. Her view was that if the Respondent had had a homeowners meeting then it could have been established whether the homeowners were willing to pay for the repairs and the shortfalls that still existed. Decisions could then be made based on full information.

55. Mr Baird explained that they had instructed the repairs for the defective render but that the homeowners did not pay in advance. He went on to explain that there was a history of bad debt with the homeowners at Market Street. The historic debt from some homeowners not paying their ongoing dues had become a problem and was a reason why the Respondent did not think that consultation or homeowners' meetings would help to resolve the matter. He referred the Tribunal to a screenshot from the Respondent's portal which showed the level of ongoing debt and the number of debtors. Mr Baird accepted that the issue of bad debt may not have been fully discussed with Ms Frankl but in his view she had access to the portal and could see the level of debt. Mr Baird's view was that the debt had become so bad that the Respondent was reluctant to progress matters relating to repairs if they were not in funds.

56. *Section 6.3: A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.*

57. Ms Frankl accepted that the Respondent does have procedures in place but that they did not follow the procedures because they did not carry out an emergency repair following her notifying the Respondent of the dry rot. Ms Frankl accepted that the Respondent had procedures to allow homeowners to notify them of repairs, but her view was that they had failed to follow their procedures. She referred to the Title Deeds and anything over £500 needing a meeting. The Applicant felt there should have been a meeting with homeowners.

58. Mr Baird explained that there were procedures in place for homeowners to notify them of matters and that the Respondent's Mr Gillespie and Ms MacDonald had met with Ms Frankl and some of the homeowners in October 2024. He did not accept that the deeds required the Respondent to convene a homeowner meeting annually.

59. *Section 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.*

60. Ms Frankl stated that whilst the group repair for the render was sent there was no consultation with homeowners. Her view is that because the Respondent did not consult with homeowners prior to sending out group repair quotes then people do not understand what is needed. Ms Frankl accepted that she did get her money back on the render work that was cancelled.

61. Mr Baird submitted that the Respondent did send out Complete Contractors and that HOs were informed of the proposed schedule of works.

62. Section 6.5: If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out of hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.

63. Ms Frankl told the Respondent about the dry rot in her roof space in October 2024. She believed that the Respondent should have treated the dry rot as an emergency repair and that it was not acceptable for the Respondent to deal with the dry rot by saying they would get quotes for a survey in the New year. She also believed that the water ingress she reported in March 2024 should have been dealt with as an emergency repair.

64. Mr Baird explained that emergency repairs were temporary repairs to prevent further damage for example a tarpaulin or an attempt to patch a roof. In his view the issue of cutting out the dry rot and the affected beams was not an emergency repair but instead a major repair that would need to be agreed upon by the homeowners. Mr Baird believed that if the Respondent was to instruct major works they would need advance funding and this matter did not fall within the scope of emergency repairs.

65. Section 6.6: A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

66. Ms Frankl was relying on this section to the extent that the Respondent had sent in a contractor to remedy the render when there had been no consultation over other contractors being sent. Further there were no discussions as to who should carry out the dry rot repairs. In relation to the dry rot, the Respondent did not commission a survey and they did not consult with the homeowners.

67. Mr Baird submitted that the Respondent did or would have provided a range of options if they had commissioned the survey reports. Ms Frankl took over the repairs before that was possible.

68. Section 6.12: If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.

69. Ms Frankl believes that the section relates to the contractor Complete Contractors not having submitted an insurance claim.

70. Mr Baird submitted that this section is not applicable as this applies to contractors.

71. ***Section 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.***

72. Ms Frankl accepts that the Respondent has a written complaints handling procedure, but her position is that the complaints procedure was not applied reasonably as the Respondent did not respond to the stage 2 complaint.

73. Mr Baird's position is that there is a written complaints handling procedure and he relied on his previous submissions regarding the application of the procedure.

Decision:

74. **OSP2:** The Tribunal decided that the Respondent breached OSP2 in that the Respondent lacked transparency in the way in which they communicated with Ms Frankl. There was a lack of transparency from the date when Ms Frankl reported the water ingress in March 2024 to September 2024. There were no HO meetings which could have led to more transparency in the decision making process and the issue of bad debt. In the letter dated 10 September 2024 it appeared that there had been authority given for the works from the HOs but that was not the case. There was confusion and a lack of transparency as to the status of the insurance claim until after the CMD in June 2025.

75. **OSP6:** The Tribunal decided that the Respondent breached OSP6 in that they did not act in a timely manner once Ms Frankl alerted them to the water ingress on 13 March 2024. It was not satisfactory in the Tribunal's view that there was nothing done until Ms Frankl complained in May 2024. Further even when Complete Contractors produced a schedule of works in May 2024 there was no communication with HOs until 10 September 2024. The Tribunal also found that the Respondent lacked any urgency in dealing with the issue of dry rot once it came to their attention in early October 2024.

76. **OSP9:** The Tribunal decided that the Respondent breached OSP9. There was a distinct lack of records in terms of communication with HOs and in terms of communications with the insurer Protector. The Tribunal found that even by the time of the hearing the Respondent could not explain what had been done in 2024 relating to contacting the insurer. The matter of who had contacted the insurer and whose responsibility it was to contact the insurer was never made clear to Ms Frankl (until after the Tribunal process started) and added to the stress of the situation for Ms Frankl.

77. **OSP11:** The Tribunal decided that the Respondent breached OSP11. The Respondent missed their own Stage 1 deadline to respond to Ms Frankl's

complaint. When Ms Frankl asked for the matter to move to Stage 2 that request was ignored.

78. **Section 2.1:** The Tribunal decided that the Respondent breached Section 2.1. The Tribunal found that there was poor communication by the Respondent with Ms Frankl between March 2024 and September 2024 when the proposed schedule of works was finally sent out. This poor communication was compounded by the failure of the Respondent to convene a HOs meeting which may have addressed the problems of non-payment and gained agreement on the necessary repairs. It appears that once Ms Frankl convened a HOs meeting she was able to effect repairs to the building in a timely manner. The Tribunal found however that given that Complete Contractors did not diagnose the roof problem but instead thought it was defective render, it is unlikely that the dry rot would have been discovered before it was in early October 2024.
79. **Section 2.7:** The Tribunal decided that the Respondent breached Section 2.7. The Tribunal found that the Respondent did not comply with its own timescales for replying to the Stage 1 complaint. The policy allows for 25 days for the investigation to be completed from date of acknowledgment of complaint namely 8 May 2024. The Respondent should have responded by 12 June but instead responded by 18 June 2024. Further, the Respondent failed to acknowledge and respond to Ms Frankl's Stage 2 complaint.
80. **Section 5.7:** The Tribunal found that the Respondent breached Section 5.6. The Tribunal found that the Respondent did have a written procedure in place for insurance claim but they did not follow said procedure. There is no evidence of the Respondent making an insurance in 2024 after Ms Frankl reported the water ingress. Mr Baird had made contact with the insurer in 2025 but could find no evidence of others having contacted the insurer in 2024 to progress the claim.
81. **Section 6.1:** The Tribunal found that the Respondent breached Section 6.1. The Tribunal found that the Respondent did not seek to make prompt repairs given the findings of delay from March 2024 to September 2024.
82. **Section 6.3:** The Tribunal found that there was no breach of Section 6.3. The Respondent did have procedures in place for notification of repairs.
83. **Section 6.4:** The Tribunal found that the Respondent breached Section 6.4. The Tribunal found that there should have been a prompt inspection of the repairs needed and that by waiting till May 2024 to send Complete Contractors the Respondent did not act within an appropriate timescale. Further given the scale of the works needed both in March 2024 and October 2024, the Respondent should have had a meeting to discuss matters with HOs.
84. **Section 6.5:** The Tribunal found that the Respondent did not breach Section 6.5. The Tribunal found that the Respondent did have procedures in place and were entitled to view the repairs to the roof as major works which would need the agreement of the HOs. The Tribunal accepted that it was unlikely that emergency repairs would have been suitable to remedy the dry rot as it was likely to need substantial funds from the HOs to effect the repairs.

85. Section 6.6: The Tribunal found that the Respondent did not breach Section 6.6. The Tribunal accepted that in seeking professional advice from surveyors the Respondent was acting reasonably and could have then provided considered advice on the likely action going forward.

86. Section 6.12: The Tribunal found that Section 6.12 was not relevant as no actual work was commissioned by the Respondent so the Section did not apply.

87. Section 7.1: The Tribunal found that the Respondent did breach Section 7.1. The Tribunal found that the Respondent did have a written complaints procedure but they did not apply it reasonably by not responding in their own timescales and then in ignoring Ms Frankl's Stage 2 escalation.

Proposed Property Factor Enforcement Order:

88. The Tribunal found a number of breaches of the standards and the sections of the Code above. The Tribunal noted that many of the breaches had their roots in the same factual basis for example the failure by the Respondent to act in a timely manner when Ms Frankl reported the need for repairs, the failure to respond to Ms Frankl's Stage 1 complaint within stated timescales and the confusion about whether an insurance claim had been made. The Tribunal were concerned however by the lack of communication with Ms Frankl, the lack of timely action taken to seek to repair the defective render, the lack of urgency in looking to investigate, via a conditions survey, the dry rot once those issues became known. It appeared to the Tribunal that the Respondent had decided at some point in October 2024 that the homeowners had too much bad debt, that they were unlikely to pay for group repairs and therefore there was little point in trying to resolve matters. This was not a satisfactory approach especially given that Ms Frankl could and did eventually organise the repairs herself and could presumably have done that at a much earlier stage if the Respondent had made their concerns clear to Ms Frankl.

89. The Tribunal is satisfied that Ms Frankl has been put to considerable stress and inconvenience by the Respondent's breaches of the Code. Ms Frankl constantly had to chase the Factor for responses. The lack of action meant that she could not let out her flat and was faced with the possibility of a Council Tax surcharge for an empty flat as well as having to pay other outgoings. It cannot be known whether the dry rot could have been avoided altogether if the original dampness had been treated timeously or even if it had been existing undetected before, but dry rot starts with damp penetration and it was noted by the timber specialists who carried out a survey in March 2024. Accordingly, it is not unreasonable to think that the extent of the decay would at least have been minimised if prompt appropriate action had been undertaken. The Factor had undertaken some preliminary action in receiving quotes and instructing a tradesman but singularly failed in communication with the Applicant. They did not know if they had made an insurance claim and when they did communicate with the homeowners in September, months after being notified of the damp issue, the letter was at best misleading. Taking all these matters into account the Tribunal determined that a payment of £1,000 should be made by the Factor to the Applicant to reflect the gravity of the breaches of the Code.

The Tribunal proposes to make a property factor enforcement order ("PFEO"). 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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Alice Stobart, Legal Member
of the First-tier Tribunal for Scotland

18 November 2025