

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/24/1023

Re: 21, Flat 8, Muirhouse Parkway, Edinburgh EH4 5JG

Parties:

**Mr Stewart Elliot, 34/3 Cammo Tower View, Edinburgh EH4 8GL (the
Applicant")**

Ross & Liddell, 60 St Enoch Square, Glasgow G1 4AW ("the Respondents")

Tribunal Member:

**Graham Harding (Legal Member)
Angus Anderson (Ordinary Member)**

DECISION

The Respondent has failed to carry out its property factor's duties.

The Respondent has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with Sections 2.7 and 6.4 of the 2021 Code.

The decision is unanimous.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the 2011 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors July 2021 as "the 2021 Code"; and the

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as “the Rules”

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By email dated 3 March 2024 the Applicant submitted an application complaining that the Factor had failed to carry out its property factors duties and was in breach of Sections 2.5, 6.1 and 6.9 of the 2021 Code. The Applicant submitted a written statement outlining his complaint together with copies of correspondence between the Applicant and the Respondents in support of the complaint. He submitted that these failures demonstrated a failure on the part of the Factor to carry out its property factors duties to a reasonable standard and were also breaches of the 2021 Code.
2. By Notice of Acceptance dated 18 April 2024 a legal member of the Tribunal with delegated powers accepted the Applicant's application and a Case Management Discussion (“CMD”) was assigned.
3. By email dated 7 August 2024 the Respondents' representatives Raeside Chisholm Solicitors Limited, Glasgow, submitted written representations to the Tribunal.
4. By email dated 12 August 2024 the Applicant submitted further written representations to the Tribunal.
5. A CMD was held by teleconference on 20 August 2024. The Applicant attended in person. Ms Jennifer Johnston attended from the Respondents who were represented by Mr David Doig of Raeside Chisholm Solicitors Limited, Glasgow.
6. The Tribunal noted by way of preliminary matters that firstly there appeared to be some confusion as to which sections of the 2021 Code the Applicant was claiming the Respondents had broken. The Applicant explained he had used the Sections of the 2012 Code and after some discussion it was apparent that the actual sections that were the subject of the Applicant's complaint were Sections 2.7, 6.4 and 6.12 of the 2021 Code. The Tribunal ascertained from Mr Doig if the Respondents had any objection to the application being amended to reflect the correct sections and Mr Doig confirmed that they did not and the Tribunal allowed the application to be so amended. The Tribunal confirmed that alleged breaches of the Code occurring before 16th August, 2021 could not be dealt with under this application but alleged breaches of property factor's duties occurring before that date could be considered, as the duties were the same under both versions of the Code. The Tribunal also noted that the Respondents' written

submissions had not addressed the Applicant's claim that the Respondents had failed to carry out their property factor's duties. Mr Doig accepted that this had been an oversight and undertook to submit further written representations on the basis that it was unlikely that matters would be resolved at the CMD but that it was not accepted that the Respondents were in breach of their duties. With regards to Section 2.7 of the Code the Tribunal noted that the Respondents had accepted there had been failures in communication with the Applicant and that as part of the complaints process offers of compensation had been made. The Applicant explained that he had been unwilling to accept compensation until all the water ingress issues had been resolved. The Tribunal noted there had been water ingress reported in 2021 but also earlier quotes obtained in 2019. There was some discussion as to what would constitute an emergency when it came to water ingress at a property with the parties unable to reach consensus. The Tribunal noted that surveyors had prepared a report on the issues affecting the property and tender documents had been prepared with the expected cost of repairs being around £40000.00 to be divided between 36 owners. There being disputed facts at issue the Tribunal adjourned the CMD to a hearing and issued Directions to the parties.

7. By email dated 25 October 2024 the Respondents' representatives submitted written representations and productions in response to the Tribunal's directions.
8. By email dated 25 November 2024 the Applicant submitted written representations and productions to the Tribunal.
9. By email dated 3 February 2025 the Respondents' representatives submitted further written representations and a Second Inventory of Productions to the Tribunal.

The Hearing

10. A hearing was held at George House, Edinburgh on 6 February 2025. The Applicant attended in person. Ms Jennifer Johnston attended from the Respondents who were represented by Mr David Doig of Raeside Chisholm Solicitors Limited, Glasgow.
11. By way of a preliminary matter the Tribunal ascertained from the Applicant that he had no objection to the Respondents' Second Inventory of Productions being received although late.
12. The Tribunal heard from Mr Doig who advised the Tribunal that the breaches of Sections 2.7, 6.4 and 6.12 of the Code were not accepted by the Respondents. Mr Doig went on to say that it was the Respondents' position that they had responded to the Applicant's enquiries and complaints within the timescales contained in their Written Statement of Services ("WSS"). Mr Doig said that the water ingress at the development had posed challenges for the Respondents in arranging repairs but that they had continued to try to work with owners to achieve this. He said that when it

had not been possible to arrange repairs the Respondents had either unilaterally partially funded a survey or underwritten tender stage costs. Mr Doig also said that the Respondents totally denied any breach of Section 6.12 of the Code. With regards to failing to carry out its property factor's duties, Mr Doig said that there had been no failure on the part of the Respondents but that they had to work with the owners and they had not been able to carry out repairs until a majority of owners sanctioned and paid for the repairs.

13. Mr Elliott said that he had only received costs for the repairs the previous week as initially only two of the three blocks at the development had been surveyed when the survey was carried out in November but the owners of all the properties in the development were being asked to pay for the cost of the repairs and so the owners in the third block also wanted their roof surveyed.
14. Mr Elliott explained that he first became aware of water ingress at his property in the en-suite in 2020 and that in 2021 there was further water ingress in the hallway of the property. He said that the water ingress was only evident after a heavy downpour of rain. He said that following the water ingress he began chasing the Respondents for progress to be made. Mr Elliott spoke of an email from the Respondent where he was told there was a guarantee for defective construction but if it was storm damage a backdated insurance claim could be submitted (Applicant's Productions page 7).
15. Mr Elliott said that in June and July 2021 water was coming into the hall cupboard and he made repeated phone call to the Respondents to find out what was being done. He said that a contractor accessed the attic and had thought that the space around the vent was the problem but subsequently it all went quiet. Mr Elliott said he continued to live in the property until May 2023 when he moved to live with his partner. He advised the Tribunal that no temporary repair was carried out. Mr Elliott disputed that access to the roof could not have been obtained with a ladder. He referred the Tribunal to an excerpt from the Health and Safety Executive website that said that at heights over 9 metres landing areas or rest platforms were required. Mr Elliott said his roof was at a height of 8 metres.
16. Mr Elliott also queried what constituted an emergency as the Respondents had instructed the removal of a tree at a cost of £2000.00 without prior consultation of owners on health and safety grounds and submitted that water ingress to his property causing damp and mould also constituted an emergency. (Applicant's Productions page 8).
17. Mr Elliott referred the Tribunal to the Respondents' offer of compensation following his complaint of 4 May 2023 in their response dated 2 June 2023 (Applicant's Productions pages 12-14). The Applicant explained he refused to accept the compensation offered.

18. Mr Elliott spoke of a vote being taken on proposed repairs on the Respondents' portal but that he never received any letter advising him of the proposal. He said it was only by chance that he saw it on the portal and only three votes had been received. Mr Elliott said that he thought the Respondents had not been proactive in progressing the roof repairs and everything had ground to a halt. Mr Elliott said that following his complaint progressing to a stage 2 complaint the Respondents' Ms Harkins had upheld the complaint and again offered £500.00 compensation and a surveyor was instructed to prepare a report which was carried out on 14 November 2023.
19. Mr Elliott spoke of being told by the Respondents that owners had to make their own applications under the Premier Guarantee scheme and that the Respondents could not do this on owners' behalf. He went on to say that he had spoken to Ms Harkins and that he had been told that the tender documents would be sent out in January 2024. He queried why the survey and tender documents could not have been done at the same time. Mr Elliott also spoke of receiving an email on 16 May 2024 from the Respondents telling him he had not voted on the proposed repairs when in fact he had.
20. Mr Elliott spoke of his emails to the Respondents dated 29 January 2024, 22 February 2024 and 16 May 2024 and said he felt nothing was being done and that he then received an email on 28 May 2024 saying the file was being closed but that this was followed by a further email on 29 May 2024 saying the letter of 28 May had been sent in error and there was a further 2 days left to vote. Mr Elliott went on to say that on 5 June 2024 the surveyor had been asked to attend and survey a second block at the development and this survey was carried out on 11 June 2024. And subsequent to that the third block was surveyed. Mr Elliott said that there had not yet been a request for payment but the cost per owner was about £1800.00.
21. With regards to the alleged breach of Section 2.7 of the Code, Mr Elliott said that there had been times that he had sent emails to the Respondents but had not had a response or had not heard anything further. He said that on a lot of times he had to chase the Respondents for an update and referred the Tribunal to his email of 7 December 2023 (Applicant's Inventory page 27) to which he said he had not received a reply. Mr Elliott said that the 21 December was the last time he had spoken to the Respondents on the phone regarding this.
22. In response Mr Doig referred the Tribunal to the Respondents' letter of 21 December 2023 (Applicant's Inventory page 29) and disputed that the Respondents had not replied to the Applicant's email of 7 December 2023. Mr Elliott submitted that this letter was not a direct reply to his email.
23. With regards to Section 6.4 of the Code, Mr Doig explained that the Respondents had offered £500.00 as compensation as matters had not progressed as the Respondents would have wished and they had also met 50% of the survey costs and had gone further by underwriting the tender

costs so concessions had been made as their performance had not been as effective as it could have been. Mr Doig went on to say that it was evident from the large number of documents lodged that there had been a high level of reporting by the Respondents to owners but that owners did not approve the repairs (Respondents' Productions page 83). Mr Doig said that correspondence was sent to the owners but that owners were not embracing the job and that whilst Mr Elliott had his own view as to how the Respondents could cajole owners to carry out the repairs the Respondents could only act when a majority of owners were in agreement. The Respondents could not fund the repairs themselves. Mr Doig also said that the Respondents had pointed the owners in the direction of Premier Guarantee and one owner had agreed to spearhead an approach to both the original contractor and Premier Guarantee. Mr Doig understood that if a claim was submitted to Premier Guarantee the £10000.00 excess would be split between all the owners.

24. In response Mr Elliott said that he thought the Respondents had not been robust enough and that there was a legal obligation to have the work done. He was of the view that the Respondents would have been able to act as the owners' representatives in applications to Premier Guarantee and he did not think there had been an adequate explanation given as to why this was not possible. Mr Elliott also said that it could take a number of years to pursue the original contractor.
25. With regards to Section 6.12 of the Code, Mr Elliott submitted that the Respondents had failed to follow up on the quotes provided in 2021 or make a claim under the builder's warranty.
26. For the Respondents, Mr Doig submitted that section 6.12 of the Code came into effect when work had been instructed and done and there were defects and this was not the case here and there was no breach of this section of the Code.
27. In response to a query from the Tribunal, Mr Elliott advised the Tribunal that he moved into the property in 2018 and the builder's warranty on his property would have ended in March 2020. He said that the other two buildings were completed slightly later. He confirmed the Premier Guarantee cover lasted for a further eight years and was still in place.
28. In response to further queries from the Tribunal, Mr Elliott said that there had been occasional water ingress in 2020 that had become slightly worse over time and that there were now water marks over the entire length of the property. He said that the frequency of the water ingress had not changed but that it now affected more of the property. He said that there could be ingress four or five times in a fortnight and then nothing for some months it all depended on the severity of the wind and rain. He said that the ceiling in the hall cupboard had dropped and he had a bucket in place to catch the water which entered through an electric fan. Mr Elliott said that the water ingress caused the lights to trip and also his fridge to cut out.

29. Mr Elliott thought that some form of temporary repair could have been done perhaps by using roofers' tape or a flashband to prevent further water ingress. He explained that the design of the valley was too shallow and that in heavy rain there was too much water for the depth of the valley allowing water to penetrate underneath the flashing.
30. For the Respondents Ms Johnston confirmed that the Respondents did obtain estimates following the Applicant's original complaint but that matters were then not fully investigated until November 2022. Ms Johnston did not think a temporary repair was possible and explained that the Respondents had to work under the guidance of the contractors they instructed. In response to a query from the Tribunal as to whether the surveyor was instructed to comment on any temporary repairs, Ms Johnston said that she could not say if they had been specifically instructed on this but would have expected them to comment if temporary repairs were possible. Ms Johnston disputed that it would be normal practice to instruct a report and the preparation of tenders at the same time as the report would usually provide indicative costs and these would in the first instance be sent to owners. Ms Johnston explained that initially the surveyor had only been instructed to survey Mr Elliott's block but that the instruction had then been extended to a second block when another owner complained of water ingress and then the third block was surveyed when all 36 owners were asked to contribute to the cost. Ms Johnston said that prior to that no owners from the third block had contacted the Respondents to advise of water ingress so there was no evidence of any defect.
31. With regards to any Premier Guarantee claim, Mr Doig said that either one of the owners, Mr Firth, or the Respondents would circulate and collate the claim forms for submission to the insurance brokers.
32. With regards to carrying out the repairs, Mr Doig said that owners would need to make payment of their share of the cost in advance of the work being instructed.
33. In response to a further query from the Tribunal as to when the Respondents were told that temporary repairs were not possible, Ms Johnston referred the Tribunal to the quote from North Facades dated 3 March 2021 (Respondents' Inventory page 6). Ms Johnston confirmed there was no record of the quote being sent to owners.
34. The Tribunal noted that Mr Elliott had submitted a note of the financial implications of the property sitting empty and the ongoing costs associated with the repairs (Applicant's Inventory page 43). Mr Elliott advised the Tribunal that the property did not meet the repairing standard and could not be rented out and would be difficult to sell as it would be difficult for a purchaser to obtain a mortgage on the property. He submitted the monthly cost of £612.00 was a reasonable estimate of his outgoings on the property. He also explained that he was paying £1000.00 per year for factoring charges. With regards to the washing machine, he said it was still working but he did not think it would be serviceable for much longer due to the water

damage. Mr Elliott confirmed that he had insurance cover to meet the cost of reinstatement of the property once the roof repairs had been completed.

35. For the Respondents, Mr Doig disputed that there was a causal connection between the Applicant's alleged losses and any fault on the part of the Respondents. He also explained that it was likely that part of the applicant's mortgage payments would be repaying both capital and interest and that this would require to be taken into account. Mr Doig also said that the Respondents were still maintaining the development and were therefore entitled to charge their factoring fees which would include outgoings incurred. Mr Doig said he was unable to comment on the condition of the washing machine but the Applicant had not produced evidence to prove it was not working. Mr Doig also said that the Applicant had thought to move in someone into the property and therefore it was not uninhabitable. In this regard Mr Elliott explained that his girlfriend's aunt had been the victim of domestic abuse and he had proposed she live in the property in order to escape an abusive partner on a short-term basis.

Findings in Fact

36. The Applicant is the owner of the property.
37. The property is a flat located in a development of three blocks consisting of 36 flats in total.
38. The Respondents are the property factors for the development.
39. The Applicant experienced water ingress to the property following heavy rain on 11 August 2020.
40. The Applicant reported the water ingress to the Respondents and on 13 August 2020 the Respondents issued an estimate request to North Facades Limited and Burns and Watson asking them to contact the Applicant and investigate the source of the water ingress.
41. The Respondents have no record of these contractors responding to the estimate requests in 2020 and no record of the requests being followed up with the request being closed on 14 October 2020.
42. The Applicant continued to contact the Respondents regarding the water ingress and the Respondents received a quote from North Facades dated 3 March 2021 at a cost of £880.00 plus VAT for repairs to the valley gutter above the property.
43. The Respondents also received a quote from Burns and Watson and by order dated 19 April 2021 the Respondents instructed Burns and Watson to undertake inspection and remedial works at the property at a cost of £280.00 plus VAT.

44. Burns and Watson reported to the Respondents that there was a tile within the valley gutter and various tiles with chipped or broken edges and that about 100 tiles would need replaced in the near future.
45. No action was taken by the Respondents following receipt of the report from Burns and Watson.
46. The Applicant reported further water ingress to the Respondents in July 2021.
47. On 8 July 2021 the Respondents asked North Facades Ltd to quote for assessing the water damage and carry out temporary repairs.
48. The respondents have no record of North Facades responding to this request or of the request being followed up and the request was closed in the absence of information.
49. Following a further report of water ingress to the Applicant's property in October 2021 the Respondents instructed Burns and Watson to attend at the property and make it watertight but the order was cancelled with no reason being recorded.
50. On 13 October 2021 the Respondents contacted the Applicant by email asking for information about the water ingress in order to progress an insurance claim.
51. The Applicant reported further water ingress to the Respondents in February 2022 and on 24 February 2022 the Respondents instructed North Facades Ltd to attend and complete repairs.
52. On 24 February 2022 North Facades provided a quote for accessing, investigating and completing minor repairs. This was not acted upon by the Respondents.
53. On 22 November 2022 the Applicant again reported further water ingress to the property.
54. By email dated 28 November 2022 the Respondents advised the Applicant that the water ingress would be investigated when annual gutter cleaning was carried out which would be within two weeks of 2 December 2022.
55. On 31 January 2023 the Applicant requested an update from the Respondents as he was still experiencing water ingress at the property.
56. On 6 February 2023 the Applicant received an email from the Respondents to advise that temporary repairs were to be carried out but no temporary repairs were undertaken.
57. The Applicant made a formal complaint to the Respondents by email dated 4 May 2023.

58. The Applicant's complaints were upheld by the Respondents at both Stage 1 and Stage 2 and the Applicant was offered compensation of £500.00 and following the Stage 2 complaint the Respondents agreed to meet 50% of the cost of instructing CSQ Consult Ltd, Building Surveyors to prepare a report on the issues affecting the property.
59. The Applicant moved out of the property in May 2023 to live with his partner.
60. By letter dated 10 November 2023 the Applicant was advised that CSQ Consult Ltd would be attending the property on 14 November 2023.
61. CSQ Consult Ltd submitted their report to the Respondents on 21 November 2023.
62. By email dated 7 December 2023 the Applicant requested an update.
63. The Applicant attempted to speak to the Respondents Mrs Harkin by telephone on 19 and 20 December 2023.
64. On 21 December 2023 the Respondents wrote to the Applicant providing an update and advising of further steps to be taken.
65. On 11 January 2024 the Applicant was advised that a tender was required and owners would require to vote on the tender on the Respondents' portal.
66. On 19 January 2024 the Applicant received letter advising his vote was required.
67. On 22 January 2024 the Applicant voted on the Respondents' portal.
68. On 16 May 2024 the Applicant received a final reminder from the Respondents asking him to vote on the portal and he contacted the Respondents who agreed the email had been wrongly sent and that he had voted.
69. On 28 May 2024 the Respondents advised the Applicant that insufficient votes in favour of the repairs had been cast and the case would be closed.
70. On 29 May 2024 the Applicant was advised the previous day's letter had been sent in error and to resubmit his vote.
71. CSQ Consult Ltd reattended at the development on 11 June 2024 to survey a second block.
72. The tender for the works was completed by 20 August 2024 but at a further meeting of owners on 21 October 2024 it was decided that the third block also needed to be surveyed.

73. The final survey was completed in November 2024 and tender documents prepared.

Reasons for Decision

74. Although the parties provided the Tribunal with information regarding the progress of the repairs throughout 2024 the Tribunal's jurisdiction is largely restricted to consideration of the Applicant's complaint up to the date of the application in March 2024. There is no dispute that the Applicant suffered from water ingress to his property starting in August 2020 and recurring on a number of occasions thereafter in 2020 and 2021 and subsequent years. There is also no dispute that the Applicant reported the water ingress to the Respondents. For reasons that the Respondents are unable to explain, although contractors were asked to quote for investigating and carrying out repairs to the property in August 2020, apparently no quotes were obtained and no follow up was undertaken and the case was closed. That was not satisfactory and the Respondents acknowledged this when dealing with the Applicant's stage 1 complaint.

75. The Respondents' failings were compounded when after finally instructing some work to be done by Burns and Watson in March 2021, no further action was taken by the Respondents to act upon the contractor's recommendations nor to advise the Applicant of the outcome. The Respondents did however again acknowledge their failings in their response to the Applicant's stage 1 complaint.

76. After the Applicant reporting further water ingress in July 2021 the Respondents instructed North Facades Ltd to assess the damage and carry out temporary repairs but although it was subsequently suggested by North Facades Ltd in February 2022 that they had submitted a quote the Respondents had no record of this and once again the case was closed. The Respondents again acknowledged this in their response to the Applicant's stage 1 complaint.

77. Following further water ingress in October 2021 Burns and Watson were initially instructed to attend by the Respondents but then for reasons unknown the order was cancelled. Yet again this is acknowledged in the Respondents' response to the Applicant's stage 1 complaint.

78. The Applicant reported further water ingress in February 2022 and once again the Respondents instructed and obtained a quote from North Facades Ltd and once again no further action was taken. Once again this was acknowledged in the Respondents' response to the Applicant's stage 1 complaint.

79. Further water ingress was reported to the Respondents by the Applicant in November 2022 and January 2023 and although the Applicant was told the roof would be investigated during annual gutter cleaning in December 2022 the Respondents failed to advise the Applicant of any report provided but he was advised in February 2023 that temporary repairs would be carried out but subsequently no such repairs materialised.

80. To be fair to the Respondents they did accept that there had been failings on their part in their responses to the Applicant's stage 1 and stage 2 complaints and in addition to offering some compensation also offered to meet 50% of the cost of instructing a report by CSQ Consult Ltd and their report was made available in December 2023. However, from information subsequently attained further reports were necessary to extend the survey to include all three blocks at the development. The Tribunal also noted that in their report CSQ Consult Ltd concluded that it was possible the water ingress in the hall cupboard emanated from a defective vent tile and not the valley gutter (paragraph 4.4). The Tribunal considers this could have been repaired separately and this was an issue raised by the Applicant when the property was inspected by North Facades.
81. The Respondents submitted that they had responded to the Applicant's enquiries and complaints within the timescales contained in their Written Statement of Services. The Tribunal does not find this to be the case in that although the Respondents may have acknowledged receipt of the Applicant's complaint of water ingress their subsequent communication with the Applicant and with contractors was entirely inadequate. The property was being badly affected by water ingress on a regular basis. It was causing electrical circuits to trip and in addition to a ceiling sagging through water penetration, over time the property has been affected by damp and mould leaving it if not uninhabitable certainly difficult to rent or sell. The Respondents indicated that they would arrange for temporary repairs to be carried out at the property but then never explained to the Applicant why this was not done or explicitly why this was not possible. The Applicant was left with water ingress issues at the property from July 2020 until December 2023 before any substantive progress was made. During that time none of the delay was due to the need to persuade other owners to cooperate or provide funds. The delay was entirely due to inertia on the part of the Respondents. For these reasons the Tribunal is satisfied that the Respondents are in breach of Section 2.7 of the Code and also failed to comply with the terms of the WSS and so failed to carry out its property factor's duties.
82. As indicated above the Respondents were poor at keeping in communication with the contractors they had instructed and totally failed to keep the Applicant informed of progress or rather the lack of progress being made. The Tribunal is therefore satisfied that the Respondents are in breach of Section 6.4 of the Code.
83. Given that no significant repairs have been instructed the Tribunal accepts the Respondents' submissions that there has been no breach of Section 6.12 of the Code.
84. With regards to a further failure of the Respondents to carry out their property factor's duties the Tribunal was advised that all 36 owners were liable to share in the cost of any roof repairs affecting any of the blocks and that this was stipulated in the Deed of Conditions affecting the development.

The Respondents ought to have been aware of this when they instructed CSQ Consult Ltd to carry out their report and ought to have anticipated that the owners in all three blocks if paying for repairs would wish their block to be included. The Tribunal is therefore satisfied that to this extent the Respondents failed to carry out their property factor's duties although of course the Respondents have now remedied any such failure.

85. The Applicant sought to persuade the Tribunal that he should be compensated for his mortgage costs and Council Tax and utility standing charges from May 2023 together with the cost of reinstating the property internally, his factoring fees and the cost of replacing his washing machine that had been affected by water ingress. The Respondents submitted that their offer of compensation of £500.00 together with meeting 50% of the cost of the CSQ Consult report and initially underwriting the tender costs was adequate recompense for any failings. The Tribunal does not consider that the Applicant's claim is justified. The Tribunal agrees that there is no causal link between the Applicant's claim and the Respondents' failings. The Tribunal accepts Mr Doig's argument that some of the Applicant's mortgage payments will be reducing capital and the Applicant has insurance cover to meet internal repairs. The Tribunal cannot say that the property is completely uninhabitable or that it could not be sold although it may well be the case that its price may be affected. The principal failing on the part of the Respondents is the delay in progressing matters between July 2020 and November 2023. Thereafter although there may be some further issues with regards to the extent of the initial report and the need to include all three blocks, the Tribunal considers the Respondents are progressing matters and as indicated above the Tribunal's jurisdiction is restricted to considering the Applicant's complaints up to the date of the application. There is no doubt that the Applicant has been put to considerable inconvenience and distress. His comfortable enjoyment of his home from July 2020 has been affected through the inadequate dealings of the Respondents over a period of some three and a half years until December 2023 and beyond. No adequate explanation was ever given for the inability or inappropriateness of carrying out temporary repairs. The Respondents communication with the Applicant was poor. The Tribunal also considers that the Respondents offer of compensation is inadequate. The Respondents' failings over a very lengthy period must be considered to be very serious breaches of the Code and has severely impacted on the Applicant's life. The Tribunal therefore considers that a substantial level of compensation to reflect this should be imposed on the Respondents and that the sum of £3000.00 is an appropriate amount to award the Applicant.

Proposed Property Factor Enforcement Order

86. 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.

Appeals

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.

Graham Harding Legal Member and Chair

25 February 2025 Date