

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 Refs: FTS/HPC/PF/23/0253 and 2605

15/13 Allanfield Place, Edinburgh, EH7 5AL ("the Property")

Parties:

Walter Zayachkivsky, 36 – 3 Restalrig Road, Edinburgh ("the Applicant")

James Gibb, 4 Atholl Place, Edinburgh ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

DECISION

The Tribunal determined that the Respondent has failed to comply with OSP 6, 7, 9 and 10 and Sections 2.2, 6.1 and 6.4 of the Property Factor Code of Conduct as required by Section 14(5) of the Act. The Respondent has also failed to carry out their property factor duties by failing to arrange for the repair to the roof within a reasonable timescale between November 2022 and March 2023, refusing to communicate with the Applicant by telephone and incorrect apportionment of insurance charges.

The decision of the Tribunal is unanimous.

Background

1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application (PF/23/0253) comprises documents received by the Tribunal between 26 January 2023 and 4 April 2023. The application stated that the Respondent has failed to comply with the Code of Conduct for Property Factors and failed to carry out its property factor duties. Documents were lodged in support of the applications including a series of emails, photographs and an email dated 2

March 2023 addressed to the Respondent which outlines the Applicant's property factor duties complaints. The application did not appear to be accompanied by a letter or email to the Respondent regarding breaches of the Code of Conduct.

2. On 12 April 2023, a Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 29 June 2023 at 2pm by telephone conference call. Prior to the CMD the Applicant lodged further emails with the Respondent and an email report from Roof and Façade Systems Ltd dated 22 May 2023. The Respondent lodged a brief response to the application.
3. The CMD took place by telephone conference call on 29 June 2023. The Applicant participated. The Respondent was represented by Mr Bodden.
4. The Tribunal advised the parties that there did not appear to be prior notification of the Code complaints and no specification of these. Following discussion, the Applicant stated that he would proceed with the application in relation to property factor duties only and that he would arrange to submit a second application in relation to the Code of Conduct, once he had taken advice and followed the correct procedure. The Tribunal noted that for the purposes of application 0253, the Code complaints were withdrawn.
5. The Tribunal noted that the Respondent had only lodged a very brief response to the application which did not appear to address the substance of the complaints. Mr Bodden told the Tribunal that it was not disputed that roof repair work was required. However, there had been difficulties with the Applicant which started prior to his purchase of the property. He insisted on assistance regarding the parts of his property which are exclusive to him and therefore outwith the Respondent's remit. He seemed confused as to the scope of their role. He became frustrated, which led to him being abusive to staff. He was also verbally abusive to Mr Bodden when they met at one of his other properties and Mr Bodden took the opportunity to speak to him about his unacceptable behaviour. As a result, they decided to stop all verbal contact. Mr Bodden confirmed that he needed to investigate the position regarding the roof repair before he could respond regarding this complaint.
6. Mr Zayachkivsky told the Tribunal that the Respondent was not using the correct contractors for the work, they were not using specialist contractors. The roof was not repaired properly and not maintained correctly. The NHBC (National Housing Building Council) guarantee had expired. In relation to the statement that he had verbally abused Mr Bodden, Mr Zayachkivsky said that when they met, Mr Bodden told him that he was not prepared to listen to a word that he had to say. He has been treated unfairly.
7. Mr Zayachkivsky confirmed to the Tribunal that the property factor duties' complaints were that the Respondent had failed to arrange for the hole in the roof to be repaired and the leak resolved, since it was reported in November 2022. They had also failed to respond to his reports and enquiries regarding

this issue. He added that those repairs which had been carried out were not successful because the wrong contractors had been used and the wrong type of materials employed. He referred to a report submitted by him from a roofing contractor.

8. Mr Zayachkivsky advised the Tribunal that he wanted a response to the contractor's report which he sent to the Respondent and submitted to the Tribunal before the CMD. The Tribunal noted that this report is an email from Roof and Façade Systems Ltd dated 22 May 2023. It was therefore received by the Applicant 5 weeks after his application was accepted. The application concerned an alleged failure by the Respondent to carry out its duties prior to 4 April 2023, the date of acceptance of the application. In the circumstances, their failure to act upon this report might not be relevant to the application. However, the Tribunal was of the view that the Respondent should provide information regarding their knowledge of the maintenance requirements of the building and what information or documentation was provided to them at the time of their appointment. Their comments on the terms of Roof and Façade Systems report might also be useful.
9. The Tribunal determined that the application should proceed to a hearing and that a direction should be issued for further information and documents. The parties were notified that a teleconference hearing would take place on 2 October 2023. This was postponed at the request of the Applicant. On 20 September 2023, the parties were notified that the hearing would take place on 14 December 2023.
10. On 2 August 2023, the Applicant submitted a second application (PF/24/2605). The application comprises documents received on that date. A Legal Member of the Tribunal accepted the application and referred it to the Tribunal. The parties were notified that this application would be heard alongside application 0253. The application was accompanied by notification letters in relation to both the Code of Conduct and property factor duties. These are dated 5 April 2023 and date stamped as received on the same date.
11. The Applicant submitted documents and submissions in response to the Tribunal's direction. The Respondent did not respond to the direction or contact the Tribunal prior to the hearing.
12. A Hearing took place on 14 December 2023 by telephone conference call. The Applicant participated. The Respondent did not participate. A call was made to the Respondent by the tribunal clerk. The clerk was advised that Mr Bodden had left the company at the beginning of November and that the Respondent had not been aware of the date of the hearing. The Tribunal noted that all correspondence issued since the CMD had been sent to Mr Bodden by email and that the Tribunal had not been notified that he was no longer working there or provided with a new point of contact. Mr Zayachkivsky told the Tribunal that the last time he was in touch with the Property Factor he had spoken to Mr Mayall who had told him that he was now dealing with the development and

that he would not discuss matters with him prior to the hearing. This clearly showed that he was aware of the hearing, although not necessarily the date.

13. Following discussion, the Tribunal determined that the hearing should be adjourned. The Tribunal also noted that the Applicant would require to provide better specification of the complaints in application reference 2605 before this could be considered. The Tribunal issued a further direction to the parties.
14. Hearings scheduled for 9 April, 28 July and 22 August 2024 were postponed, twice at the request of the Applicant and once at the Respondent's request.
15. On 23 November 2023, the Applicant lodged a submission which provided fuller details of his complaints. On 29 January 2024, he lodged a copy of the Code with comments/details of his complaints handwritten on it. On 23 July 2024, the Respondent lodged a response to the Applicants submission.
16. The parties were notified that a Hearing would take place by telephone conference call on 18 December 2024. Prior to the hearing the Applicant lodged a large number of emails between himself and the Respondent. He also requested a postponement of the hearing, stating that a residents meeting was scheduled for January 2025. The Tribunal noted that the hearing originally took place in December 2023 and had to be adjourned. Since then, three hearings had been fixed and postponed. The Tribunal indicated that the hearing could be replaced with a CMD so that some progress could be made. The Applicant withdrew his request for a postponement, and parties were notified that the hearing would proceed as scheduled. The Respondent notified the Tribunal that they would not attend and would rely on their written submissions.

The Hearing on 18 December 2024

17. The Legal Member advised the Applicant that the Respondent had confirmed that they did not intend to participate and wished to rely on their written representations.
18. Mr Zayachkivsky said that he had prepared a statement. He stated that he purchased the property in February 2022. It was to help fund his retirement. He assumed that, as the NHBC period had expired, all defects would have been addressed before he purchased the property. However, this was not the case. There was a leak from the roof leading to a hole in his ceiling and the balcony window was not wind and watertight. An expansion vessel also fell off the wall. There have also been other issues within the block and the development as a whole. The property factor was Life Property Management, who were taken over by James Gibb, although he is not quite sure of the relationship between the two companies. He was recently given access to documents which show that the factors have swept major construction defects under the carpet. These were identified by engineers in 2018. His complaints about the Respondent were as follows: -
 - (a) Alleged abuse by him toward the Respondent's staff. This was fabricated to keep him at arm's length. It is not documented or recorded on their computer

system.

- (b) Snagging was not completed during the defect liability period. The NHBC cover expired in 2019.
- (c) Failure to carry out required repairs. The Respondent has admitted that they do not have the required technical knowledge. There is no compliance with health and safety, no responsibility, no specialist contractors employed and no proper logs of, or reports on, completed repairs. His suggestion that a handyman be employed was refused and instead the homeowners have been charged thousands of pounds for rogue repairs.
- (d) The loss of the maintenance manual and the failure to properly understand and apply the title burdens, ignoring the correspondence from BTO. For example, the underground car park is supposed to be for the whole development to use and the title deeds state that the maintenance costs are to be shared by all proprietors. However, the Respondent does not charge the houses because they have their own parking. But his block doesn't use it either. The Applicant feels uncomfortable and vulnerable and worried about the future of the development.
- (e) Escalating insurances – The insurance costs are wrongly apportioned as the size of the properties is not taken into account.

Case reference PF/23/0253 – property factor duties

19. Mr Zayachkivsky told the Tribunal that a leak was reported in November 2022, and a contractor (Pinnacle) attended. He discussed the leak with the contractors and they told him what they planned to do. He didn't know that they were not approved to work on aluminium roofs. However, they didn't turn up and were sacked by the factor and Clelland were appointed. Between November 2022 and the Spring of 2023, no repairs were carried out. He was upset and agitated. as were his tenants. The leak was in the corner of the kitchen. His flat is on the top floor and there is condensation in the roof space. Clelland attended and put mastic on the roof. This was not what Pinnacle had suggested. The mastic was not placed at the location of the leak. Their repair was to address the leak into the stairwell although they should not have used a mastic patch on this type of roof. The leak into his property continued. It's not a problem during the summer. It only happens now and again, when the wind and rain are in a particular direction. Between the repair in April 2023 and November 2023, there were no issues, but it then recurred. He has requested records of all previous repairs, but they don't have these or have not provided them. There is nothing in the records except the 2018 correspondence. Nic Mayell (who has also left the company) suggested that North Facades be instructed. They said that they needed an inspection hatch and cut a hole in his ceiling. They could see water on the down pipe. They suggested putting mastic round each pipe and this was agreed. However, there has been a further episode, and he put a camera up to investigate. His theory is that there should be insulation round all the pipes. Heat from the flats goes into the roof space and causes condensation. When the water hits the metal deck there is water

ingress. He has been talking to Kalzip but they will only speak to the Property Factor. He also doesn't understand why a roof hatch in the communal hall has never been installed to allow access for repairs and save the cost of a cherry picker. The Factor should also have logs and worksheets for the repairs which have been carried out.

Application reference 2605 – Code complaints

20. The Tribunal noted that additional information about the Code complaints had been handwritten on a copy of the Code and submitted by the Applicant in January 2024. The Respondent provided a response in July 2024. Having considered both submissions the Tribunal was of the view that only some of the specified complaints could be considered.

(a) The Applicant has put a question mark next to some of the sections referred to in the application. It appears that the Respondent assumed that these complaints have been withdrawn as they are not addressed in their response. The sections in question are – OSP 1,2, and 8, and sections 5.9, 6.3, 6.8, 6.9, 6.10 and 6.11. Mr Zayachivsky said that he had been unable to provide any additional details about these sections of the Code because of the failure by the Respondent to provide him with information. The Legal Member explained that the Tribunal can only consider actual complaints, not those which the Applicant speculates that he might have in the future.

(b) There are a number of complaints which do not appear to be relevant to the identified section of the Code and some which do not appear to have been notified before the application was made. The Respondent has objected to some of these complaints being considered. For example, OSP 4 states that a property factor must not provide information which is misleading or false. The comment next to this section is "Roof was not fixed". It does not appear that a failure to repair the roof is relevant to this section. In relation to OSP 5, the Applicant has stated "No telephone contact allowed on pretext that I am abusive". Again, this does not appear to be relevant to this section of the Code which requires a property factor to apply its policies reasonably and consistently.

21. Mr Zayachivsky told the Tribunal that his complaint under OSP 4 is that Respondent told him that the roof had been fixed, when this was not the case. In relation to OSP 5, he said that he was referring to the Respondent's failure to apply their complaints procedure. The Tribunal noted that the application form, notification letters and the comments on the copy of the Code do not make this clear. Mr Zayachivsky said that he did not accept that this is the case and was not willing to withdraw any of his complaints. He said that all his complaints should be considered. He indicated that he would like the opportunity to take advice and possibly obtain representation before continuing with the hearing. The Tribunal confirmed that the hearing could be adjourned to allow him to do this. The Tribunal also indicated that an in-person hearing would be preferable if the Applicant was able to attend a venue in Edinburgh. He confirmed that he should be able to do so.

Further procedure

22. The Tribunal scheduled an in-person hearing at George House in Edinburgh for the 2 April 2025. This was converted to a teleconference hearing at the request of the Applicant. Further documents were lodged prior to the Hearing.
23. The Hearing took place by telephone conference call on 2 April 2025. The Applicant participated. The Respondent did not participate. The hearing was adjourned to a further hearing by telephone conference call. This took place on 6 January 2026.

The Hearing on 2 April 2025

24. The Applicant stated that he had not instructed a representative and was content to proceed with the hearing, representing himself. He said that although he had been ill since January 2025, he was well enough to proceed and was keen to bring matters to a conclusion. He also stated that he wanted all his complaints to be considered and was not prepared to withdraw any of these, including those marked with a question mark on his submission in January 2024. The following is a summary of the Applicant's evidence: -

- (a) **OSP1 and 2. (Marked with question mark).** The Factor should have a standard service. Their actions are not logical and there is no effort by them. The legislation he is referring to is the whole document – Code and Duties. It is everything because they have not told him. The Respondent should be open with him and deal with the issues. From the start they have not been open, there has been no communication or support. He sent email after email with no response. They have refused to meet with him and to advise him and assist. There has been a poor service since the start. They have not addressed the issue with the balcony.
- (b) **OSP 3 – “No concise reports on repairs”.** The Factor does not take photographs before and after repairs. They don't give full details of the work in the invoices. Page 376 of File 1 is an invoice which refers to remedial work but does not say when it was carried out or where. He asked for details, but they could not provide them. The invoices should have specific details. Page 373 is an invoice which includes work carried out by Clelland but there are no details.
- (c) **OSP 4 – “Roof was not fixed”.** When they stated that the roof had been fixed, this was not the case. He received an email from Lisa which said that the roof had been fixed. The email was dated 17 May 2023 – he lodged it on 1 April 2025.
- (d) **OSP 5 – “No telephone contact allowed on pretext that I am abusive”.** They should have a procedure. If they are accusing him of being abusive, they should be able to tell him why. They sent a letter to the flat (not his home address) stating that they were not prepared to speak to him on the phone. He didn't receive it. It was just a pretext. They did not comply with the WSS. (Page 716

of bundle 2). This deals with their communication arrangements. They do not comply with this. They don't respond to emails. Page 377 file 1, is an email from him with their responses in red. It was deliberate, to prevent him raising issues with them. In response to a question from the Tribunal about the unreasonable behaviour guide referred to in the WSS, the letter issued to him alleging abuse did not refer to this and they did not warn him about his behaviour before this letter.

- (e) **OSP 6 – “No specialist roofer that is required by manufacturer”**. The Respondent's staff should have known that a specialist roofer was required. In 2011 the Factor was told by a roofer that they were not specialists. Page 20 of File 1 is a letter from Leith Roofings to Life Property Management Ltd dated 3 November 2011. This recommends a course of action but states that Leith Roofing do not specialise in the required work and recommends two other contractors. This letter should have alerted the Respondent to what was required. This letter was in the Respondent's files. Nic Mayell agreed to allow his access to their files in July. The maintenance manual was not there. Properly trained staff would know which contractor they should appoint.
- (f) **OSP 7 – “Disability discrimination – no telephone contact.”** The Applicant's eye specialist has told him to stay away from electronic screens because of his cataracts. Paper is OK. The Respondent was told but still banned telephone contact. He has had the eye condition for several years. He has had surgery on one eye, but the other has been delayed for various reasons. He told the Respondent of his requirements although he is not sure whether he put it in writing. He can send emails but needs to take regular breaks or he gets migraines. He has to avoid electronic communications. When asked whether he asked for hard copy communications, he said that they ignored his emails and letters and he needed to use the telephone.
- (g) **OSP 8 (question mark)**. The letter on page 20 is also relevant to this. There is also the issue of the balcony window and whether it is common or private. They did not deal with it because they said it was not common property.

25. In response to questions about the two incidents referred to in the application:

- The first incident involved a visit from Mr Bodden. He received a telephone call from the Respondent's office to say that Mr Bodden wanted to meet him. They agreed to meet at the flat, but Mr Bodden only came to lay down the law. He said to the Applicant -“I am not going to listen to you, I am not here to listen”. When the Applicant said that he had things to say and wanted to speak, Mr Bodden looked away. He wasn't listening. So, the Applicant didn't listen to him either and showed him the door. The purpose of the visit was to intimidate him. Then, on 5 April 2023, the Applicant went to the Respondent's office to hand in the notification letters. He was speaking to another employee when the employee who was dealing with him slammed down his pen and said that he was not prepared to serve the Applicant because he was being ignored. The Applicant made a complaint about this on the 6 April 2023, but it was never investigated.

26. The Tribunal heard the following further evidence: -

- (a) **OSP 9 – “No evidence of me being abusive and I am told what is written about me I cannot see”**. Nic Mayell told him that there had been something on the screen which stated that he was aggressive and that is why the receptionist reacted in that way. However, it had been removed. Page 666 is a letter from the Respondent to the Applicant dated 8 June 2022 which states that all communication is to be carried out by written letter following the meeting with Mr Bodden. It was sent to the property. The Respondent should have a proper record of the grounds for this.
- (b) **OSP 10 – “4 months to get SAR (by ICO)”**. The ICO got involved and said that they had failed in their duty and told them to send it. Page 43 is the first page of their response. Page 35 is an email from the Applicant in relation to the behaviour of the receptionist and his request for an explanation.
- (c) **OSP 11 – “No response to any emails since roof found to be still leaking”**. The Applicant made a telephone call at the end of November 2022 about the leak. When there was no response, he complained on 6 December. On that date he was told it was not an emergency. Pages 23 and 32 – their response was contrary to policy and not compliant with the emergency repairs arrangements. When he first reported the leak, the concierge took photographs. She was dealing with it but by 6 December 2022 nothing had been done. He first reported it by telephone on 26 November. The leak was bad, and the roof could have collapsed. The leak continued after the Clelland repair. He had met with Pinnacle on site. They agreed a roof hatch was needed. But they got the sack when they failed to turn up. The Respondent would not agree to the hatch. They said it needed unanimous consent. Instead, they used cherry pickers.
- (d) **OSP 12 – “Intimidating behaviour in my home on false pretext of having a discussion – showed Mr Bodden the door. Again, abused at their offices without any explanation or accountability”**. The Respondent and the other residents committee members were all against him and he decided to step down.
- (e) **Section 1 – “Written statement of services – Can’t obtain a copy at this stage to enable me to review from their website, provided a copy in December 2023.”** He wasn’t able to download the WSS from the website. He did not hear from the Respondent with the WSS when he purchased the property. The first contact was when he contacted them about the balcony. He doesn’t remember how he got the WSS.
- (f) **Section 2.1 – “No effective communication, transparency, accountability as no owner rep representation promotes negative relationship not consulting repairs or providing proper repairs as to what is done”**. The Respondents have been arm’s length from the start. When the Applicant purchases a property, he speaks to neighbours and they set up committees to deal with repairs. There are no factors for his other properties. From the start there was an issue with the balcony window, and the Respondent did not deal

with it. More than 50% of the owners are landlords so it is difficult to get in touch with them. He tried to set up a committee, but the Respondents did not encourage it. However, the committee was set up, but the Respondent does not respond when they raise issues. They pay for a concierge, but she does not do what is needed and does not pass on his enquiries. This was his first experience of having a property factor.

- (g) **Section 2.2 – “Took months to get SAR through ICO only. Not complying with requests to access historic files for our building to ascertain proper maintenance.”**
- (h) **Section 2.9 – “maintenance manual lost, see 7.6.”** The Respondent sent documents introducing themselves on 21 February 2022. They provided a telephone number. A WSS was not enclosed but they said it was on the website. He did not receive it until December 2023.
- (i) **Sections 5.3, 5.5 and 5.6 – “My fellow owners had no idea that insurances are apportioned equal to whole estate (unclear after 14 years) and not clear so expansion vessel failure. Had to make my own insurance claim, no response or support.”** The property is a 1 bedroom starter flat. It’s very small. There are 242 units, but they are not all the same size. All 16 in the block where the property is located are the same size. There are 15 blocks in total, and some flats have 2 or 3 bedrooms and there are some 4 and 5 bedroom town houses. However, each property is invoiced for an equal share of the insurance premium. The title deeds refer to the blocks. The Applicant obtained a quote which was half of what is being charged. The Respondent was also asked about commission received but did not provide the information. He does not believe that the Respondent’s tendered for the insurance policy. The commission is disclosed only as a percentage and not as a figure. The commission received is excessive. The Applicant put in an insurance claim which was rejected. Nic Mayell dealt with it. Later they said that they would pay part of the claim. There was an occasion where the Respondent would not claim because they said the work was below the policy excess. The excess is always divided among the whole estate, whatever the claim, but it should only be among the proprietors in the block.
- (j) **Section 5.7, 5.8 and 5.9 – “Went through the process myself with EV not accepted. Refused any input that EV failure should have been resolved under snagging input”.** He asked several times why Marsh was instructed and told them he wanted competitive quotes. Page 377/6. He had discussions with Nic, but it was evident that they did not want to change. There were repeated failures in relation to expansion vessels leading to flooding. James Gibb should have notified the homeowners that there had been repeated failures.
- (k) **Section 5.10.** There was a revaluation last year. They do them every three years, he thinks he read that somewhere.
- (l) **Section 6.1. - “roof leaking for 4 months, repeated leak”.** Who is taking the reports about leaks? How do they assess if it is an emergency or not? Do they

have the right people? Pinnacle are not specialists. Clelland used a cherry picker despite health and safety issues. It's too dangerous without a hatch. They use the wrong people. North Facades would not go onto the roof in winter. Page 658 (the Respondent's response to the complaint). This shows that Nic did not know what had happened. The leak was reported on 26 November 2022. It was classed as non-emergency on 6 December 2022. He delivered three letters to the office. He wanted immediate action as he was concerned about damage. Pinnacle attended at the end of January and there was a discussion about a roof hatch. Pinnacle agreed with him, but they got the sack. Then Clelland were appointed. The Respondent refused to consider a roof hatch. Clelland came and didn't know the background and fixed the stair leak. They used a cherry picker. In March they went onto the roof but didn't contact the Applicant. In March they said that it was fixed. The Applicant got the work sheets and established that they had applied mastic. Having noted that the roof had not been fixed, the Applicant did not see the point in getting the ceiling re-instated. In November 2023, North Facades said that they would not go onto the roof until Spring. In Spring 2024, they carried out a repair. In November 2024 there was more water ingress. It drips. He investigated the situation himself and believes that the drips are due to condensation. This needs to be addressed. It's not a big job. The Respondent should have a handyman for this kind of thing. He can't deal with it himself, he is not allowed.

- (m) **Section 6.2– “Equally valid a specialist roofing contractor required by manufacturer for our roof.”** There is a fire risk above the balcony door. There is a reference to fire risks in the Diamond report.
- (n) **Section 6.3 (Question mark).** There must be a procedure. They classed it as a non-emergency. He contacted them repeatedly by email, but they did not respond. He also phoned. Page 32 covers emergency repairs. Their processes are flawed because they don't respond and they don't have skills to approve repairs.
- (o) **Section 6.4 – “Nobody in block knows what is happening”.** They don't have the skills to instruct repairs. Because they didn't have technical knowledge, they got North Facades. Lesley said that they had fixed the leak. But it was the stair leak that was fixed. They need a handyman. He can't touch the work, it's out of his hands.
- (p) **Section 6.5 – “J Gibb cannot supervise. No roof access so cherry picker needed and booked in advance.”** The roof cannot be fixed without a roof hatch. A cherry picker needs to be booked in advance. They should have got an expert. It costs £1000 every time for the cherry picker and it's negligent. He is not prepared to pay.
- (q) **Section 6.6 - ignoring all professional advice to urgently fix roof to avoid long term damage”** The tribunal noted that this section is not specified in the notification letter.
- (r) **Section 6.7 – No access allowed to historic records for inspection. Records to ascertain proper maintenance.** He thought he would get a

spreadsheet, a summary of what happens in relation to inspections. It's not on the website and there is no basic guidance. A specialist is needed for the roof, and the maintenance manual is required. The invoice should state who is doing the maintenance. They just get a summary sheet, not enough information. It would be different with a maintenance manual.

The Hearing on 6 January 2026

27. At the start of the hearing, the Applicant confirmed that he sold the property in early October 2025. He said that he had lost his tenants because the hole in the ceiling had never been repaired and knew that the repair had to be carried out before he could re-let the property. He decided to sell rather than re-let. After going back and forward with James Gibb, it was arranged that Property Revival Solutions would attend, although he can't remember who arranged this. The Applicant referred to his evidence at the last hearing and confirmed that the leak had not been as bad, but from November 2023 onwards there was an intermittent leak. The contractor agreed with the Applicant that the problem was that heat from the kitchen was hitting the aluminium roof, causing condensation. The Respondent had been told that this was the problem. However, they kept saying that the roof repair by Noth Facades had been a temporary repair and that further work was needed. They obtained a quote from North Facades for £4500. But this was for an upgrade, a separate matter. It was not essential work. He thinks that he told them what was causing the problem in December 2024. In response to questions from the Tribunal, the Applicant said that the cost of the recent work was covered by insurance and the excess was split among all the homeowners in the estate. That has always been one of his complaints and the Respondent recently changed their process so that it is now only split among the owners in the building. In response to further questions about the repair, the Applicant said that he organized the repair and it was carried out in June 2025. The contractor who provided the quote was not available, so he arranged for others, some handymen that he often uses, to do the work. He got them to fix the balcony as well.

28. The Tribunal noted that the recent submissions state that the Applicant had made enquiries and established that the insurance paid by the homeowners should be 50% cheaper. The Applicant said that he had phoned some insurers and they had confirmed this, but they would have been reluctant to put it in writing. He gave them information about the claims' history, and they quoted him about 50% of the current premium.

29. The Tribunal proceeded to hear evidence regarding the remaining Code complaints: -

(a) **Section 6.8 (marked with question mark?).** This is about the lack of an operating and maintenance manual. The manual would have a list of all the contractors being used. It does not exist so there is no evidence of public liability insurance.

- (b) **Section 6.9 (marked with question mark).** He has asked for all the documents that would be in the maintenance manual. Either they do not exist or they have not been disclosed.
- (c) **Section 6.10 (marked with question mark).** Commission and other payments are not disclosed. Again, without the maintenance manual, the position is not clear. Since the sum paid as commission by the insurance company is not disclosed (only as a percentage) then they would do the same with contractors. There was nothing in the files.
- (d) **Section 6.11 (marked with question mark).** The Respondent gets work from Barratt and therefore sides with Barrett when any issue arises in relation to building defects. The balcony was not finished but the Respondent didn't want to know. They do not support the homeowners in any dispute.
- (e) **Section 6.12. "No cooperation to use specialist to fix roof, after several months."** The letter from Leith Roofing in 2011 stated that a specialist roofer was required. This advice was not followed. They should have known that it is a non traditional roof and even now they are still using Clelland.
- (f) **Section 7.1. "ignoring emails so not provided to me."** It took a year to get the complaints procedure, and he had already made complaints. Instead of supporting him, he was abused. There was something on the computer, but there was no investigation. He went to the Respondent's office. There were two receptionists. One was supposed to be dealing with him when the other said that she was sorry to hear about his issues. The one who was dealing with him slammed down his pen and said that he was not serving him It was very upsetting. The Applicant believes that there was something on the screen about him which the receptionist saw. When he met with Nic Mayell, Nic told him that it had been wiped.
- (g) **Section 7.2 (marked with question mark).** The only complaint that was processed through to stage 5 was the one about the balcony.
- (h) **Section 7.6. "Refusal to replace the lost maintenance manual given to the previous factor by Barrett. They took over from the previous company so should do so. It tells them how to maintain the property properly."** The Respondent had taken over from LPS before he purchased the property.

Final submissions

- 30. The Applicant told the Tribunal that he has lost a long term property. It was a good property, and he had planned to live there eventually. He had to sell it because he doesn't trust the Respondent. In due course, major roof repairs will be required but there is no provision for this and they have ignored his suggestion about a roof hatch. As a result, it costs £700 every time to get access to the roof. The fire escape was not built properly and there should be an operating and maintenance manual. The Diamond report is horrific. He was subjected to personal abuse and this extended then to the committee with no

one on the committee prepared to listen to him. There was collusion between the committee and the Respondent. There has been mismanagement of the gym and the car park. There are now capital costs for something the owners don't own.

31. When asked what he was hoping to achieve from the case, the Applicant stated that an apology would not be enough. The development is under threat, and he is concerned about what is going to happen. He said that he could not take the risk of staying there. He has lost out financially by having to sell and feels aggrieved. The properties have not been built properly or maintained properly. The Applicant referred to his recent submissions headed "summary of unresolved complaints". There are issues with the decking and previously there were issues with the balcony, the roof and the expansion vessel. He concluded by stating that they did not deal properly with the roof issues, they subjected him to abuse on two occasions, and they would not install a roof hatch. They did not replace the maintenance manual and there have been issues with the insurance. They did not follow the BTO advice. They discriminated against him. They took a long time to arrange the repair when they had been told what was required

Findings in Fact

32. The Applicant reported a leak from the roof into the kitchen of his property in late November 2022.
33. The leak was reported again by the Applicant on 6 December 2022 and classed as a non-emergency by the Respondent.
34. The Respondent instructed Pinnacle to attend. The Applicant met at the property with the contractor who inspected the roof and advised the Applicant of the work they intended to carry out.
35. Pinnacle failed to return to carry out the work.
36. The Respondent then instructed Cleland to fix the roof.
37. Cleland carried out a repair in March 2023.
38. The Applicant was notified that the repair had been carried out in March 2023.
39. The Applicant was notified that a contractor had been instructed to re-instate the property following the Clelland repair to the roof. The Applicant refused to allow the re-instatement work to be carried out.
40. In November 2023, the Applicant notified the Respondent that there had been further water ingress into the property from the roof.

41. In April 2024 North Facades carried out work to the roof and recommended further work.
42. The Respondent did not instruct further work because the Applicant would not agree to this being carried out.
43. In October 2025, a repair was carried out in relation to the roof space at the property. Although a contractor estimate had been obtained, the work was carried out by handymen known to the Applicant. The work was paid for by the insurance company.
44. The contractors appointed by the Respondent to do the roof repairs were not Kalzip approved contractors
45. The property was built by Barrett Homes. There is no roof hatch in the communal hallway ceiling for access to the roof.
46. The Applicant asked the Respondent to arrange for a roof hatch to be installed but did not arrange a meeting of owners or otherwise consult with the other homeowners about the installation of a roof hatch.
47. The Respondent is not in possession of an operating and maintenance manual for the development.
48. The Respondent's WSS makes provision for communication between the Respondent and their clients. It states that communication by email is preferred but that telephone communication is permitted.
49. On 8 June 2022 the Respondent sent a letter to the Applicant which stated that they were only prepared to communicate with him by letter.
50. The Respondent did not provide the Applicant with their reasons for withholding telephone contact.
51. The Respondent did not return telephone calls from the Applicant or call him when he requested a telephone call by email.
52. The Applicant and Mr Bodden had an argument when Mr Bodden visited the property in June 2022.
53. In April 2023, a member of the Respondent's staff refused to serve him.
54. The Applicant was allowed access to the Respondent's records when he made a request for this.
55. When asked to do so, the Respondent provided the Applicant with information about the common building's insurance for the property.
56. During the period that the Applicant owned the property, the Respondent divided the cost of the premiums for the common insurance for the development

among all proprietors in equal shares.

57. There are a variety of different flat and house types in the development. The Applicant owned a one bedroom flat. There are also larger flats and houses.
58. The Deed of Conditions states that common charges are to be apportioned equally among the proprietors of each block within the development.
59. The Respondent discloses the commission they receive for arranging the common insurance as a percentage.
60. The information provided to the Applicant on 16 May 2023 that the roof had been fixed was not misleading or false.
61. The Respondent failed to make reasonable adjustments, namely facilitating telephone contact, when they were aware that the Applicant had problems with his vision which made written communication difficult.
62. The Respondent failed to keep a record of the Applicant's alleged abusive behaviour toward staff.
63. The Respondent failed to provide a response to the Applicant's subject access request until directed to do so by the Information Commissioner.

Reasons for Decision

64. At the CMD and Hearings, the Applicant was advised that the Tribunal could only consider those complaints which had been specified in the applications and properly notified to the Respondent prior to the applications being made. He was also told that the Tribunal could only consider those complaints which were clear and unambiguous. Although he lodged many documents and submissions, the precise nature of some of the complaints, and the basis for these complaints, remain unclear. The documents are not in paginated bundles, with inventories. Instead, the Applicant submitted numerous lengthy email chains, often duplicating documents which had already been submitted. In addition, some of the submissions are in the form of brief handwritten notes, which are not always legible or comprehensible. Some of the submissions lodged after the initial applications, and prior to the hearings, refer to matters which are not specified in the applications and/or relate to events which occurred after the applications were lodged.
65. The Applicant lodged two letters with the applications, based on templates available on the Tribunal website. They are both date stamped 5 April 2023. The Applicant advised the Tribunal that he took the letters to the Respondent's office and delivered them personally, being provided with a copy for the Tribunal. In addition, the Applicant submitted a copy of a typewritten email to the Respondent in relation to property factor duties' complaints. Based on these letters and emails, the complaints notified to the Respondent are as follows; -

- (a) Property Factor duties (applications 0253 and 2605):- The building has been leaking since November 2022, this is similar to a leak that previously affected a neighboring property, no proper maintenance access to the roof has been implemented, there has been no response to many telephone calls and emails, a roof hatch is required, no competitive quotes were obtained, the new contractor Cleland has not been in touch, repeated use of cherry picker is unsafe and expensive, there has been a failure in relation to proper management of the building and a failure to replace the maintenance manual,
 - (b) Code complaints (2605 only); - OSP 3, 4,5,6,7,9,10,11 and 12, Section 1 (can't get a copy of this), Sections 2.1, 2.2, 5.3, 5.5, 5.6, 5.7, 5.8, 5.10, 6.1, 6.2, 6.3, 6.4, 6.5, 6.7, 6.10, 7.1, 7.2 and 7.6. Failure to assist with cataracts condition, threatening and intimidating behaviour, refusal to allow access to historic records, failure to respond to calls and emails, failing SAR, allowing roof to leak for 4 months, causing long term damage to the roof, mismanagement of insurance, repeated instances of bad workmanship, lost maintenance manual.
66. Section 17 of the 2011 Act states “(1) A homeowner may apply to the First Tier Tribunal for determination of whether a property factor has failed to (a) carry out the property factor duties, (b) to ensure compliance with the property factor’s code of conduct as required by section 14(5) (the section 14 duty). (2) An application under subsection (1) must set out the homeowner’s reasons for considering that the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty. (3) No such application may be made unless – (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor duties, or, as the case may be to comply with the section 14 duty, and (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowners concern”.
67. The Tribunal is unable to consider the following complaints because they were not notified in terms of Section 17(3) or are complaints which are not specified in the applications or which postdate the applications: -
- (a) Issues in relation to abuse and intimidation by the residents committee.
 - (b) Issues in relation to the underground parking garage.
 - (c) Failure to employ a handyman.
 - (d) Issues in relation to balcony defects. There is no reference in the notification letters or the application to the balcony. There are emails relating to the balcony which date back to the purchase of the property. Although the Applicant mentioned the dispute about the balcony during the Hearing, it was not one of the complaints under consideration.
 - (e) Issues with heating expansion vessels.
 - (f) Health and safety failings in relation to decking and other matters.

- (g) Illegal votes and obligations.
- (h) Car parking issues.
- (i) Failing to assist the Applicant in relation to private parts of the building. This is not specified in the notification letters. It is also irrelevant, as the private parts of the property are outwith the Respondent's remit.
- (j) The following sections of the Code – OSP1, 2, 8, Sections 2.9, 5. 9, 6.6, 6.8, 6.9, 6.11, 6.12.

68. Some of the breaches of the Code cannot be considered due to the lack of fair notice as to the factual basis for the complaint. When asked to provide better specification of his complaints following the CMD, the Applicant submitted brief handwritten comments on a copy of the Code. Several sections of the Code were marked with a question mark. When asked for clarification, the Applicant stated that he was unable to provide a reason or basis for a failure to comply with these sections. At the Hearing, although he initially indicated a willingness to withdraw these complaints, he later retracted this statement and insisted that they be considered. However, the Tribunal is satisfied, having regard to Section 17 of the 2011 Act, that it would not be appropriate to do so. The sections in question are OSP 1, 2 and 8, Sections 6.3, 6.8, 6.9, 6.10 and 6.11.

Factual complaints and Property Factor duties

Failure to deal with the leak in the roof since it was reported in November 2022.

69. The relevant dates for the purposes of the applications are 26 January 2023, when the first application was submitted, and 2 August 2023, when the second application was received by the Tribunal and accepted. Since August 2023, the Applicant has lodged numerous submissions and documents about the roof repair. However, many of these appear to relate to new complaints about the roof. As the Respondent is entitled to be notified before the application is made, some of the submissions and evidence cannot be considered as they do not relate to issues and complaints which existed at the date of the applications.

70. The Applicant's principal complaint in the applications about the roof is the failure by the Respondent to get the roof repaired between November 2022 and March/April 2023. The Tribunal was told that the leak was reported in November 2022. The appointed contractor (Pinnacle) attended and told the Applicant what they proposed to do. However, they later failed to return to do the work, and another contractor (Clelland) was appointed. This contractor eventually carried out a repair to the roof in March/April 2023. After this repair, the leak stopped, although the kitchen ceiling was not repaired. In November 2023, further water ingress occurred and was reported. This was not as severe as before but appeared to occur when the wind and rain were in a particular direction. At some point the Applicant carried out his own investigations and decided that condensation in the roof space might be the issue. This appears to be a

separate and unrelated issue to the roof damage which was repaired by Clelland in April 2023. In April 2024, North Facades also carried out roof repair work. In later correspondence with the Applicant, the Respondent described this repair as temporary, because there were recommendations by the contractor for additional work. It is the Applicant's position that this additional work was not required to fix the roof, but was longer term, improvement work. He rejected the proposal put forward by the Respondent that the work be instructed. However, he continued to complain intermittently about water ingress and about the failure by the Respondent to get the ceiling repair carried out. Despite these complaints, he also told the Tribunal that he refused to allow the ceiling to be fixed, because he was not convinced that the roof repair had been successful.

71. The Tribunal did not find the Applicant's evidence in relation to the leak to be wholly reliable. He could not always recall what had happened, and when. His position also appeared to change over time. What is significant is that a repair to the roof space was recently carried out at a fairly modest cost before the flat was sold. This work was carried out by handymen and not specialist contractors.
72. The Tribunal is satisfied that the original roof leak was reported in November 2022 and not repaired until March 2023. As there was active water ingress during this time, this delay was unacceptable. It should have been a priority and attended to more quickly. The Respondent failed to offer any explanation for the delay. In the absence of a reasonable explanation, the Tribunal concludes that the failure by the Respondent to deal with this issue promptly was a failure to carry out property factor duties to a reasonable standard.
73. The Tribunal is not persuaded that the Applicant's complaints regarding the roof which occurred after this repair can be considered or upheld. These new issues arose after the applications were submitted. The Applicant conceded that there was no water ingress between the repair in April 2023 and November 2023. During the winter of 2023 and subsequent winters, it appears that there were intermittent leaks from the hole in the ceiling. The Applicant reported the leaks and further repair work was eventually carried out in April 2024 by North Facades. He also complained about the hole in the ceiling but would not let the Respondent arrange for the hole to be fixed or for North Facades to re-attend. Based on the available evidence and the information provided at the Hearing, the recurring water ingress may have been unrelated to the original leak or repair work carried out to address it.

Failure to arrange proper maintenance of the roof

74. Although related to the complaint about the leak, this is a more general complaint. The Applicant alleges that the Respondent has failed to maintain the roof properly, employing contractors without the necessary expertise. He submitted documents in support of this.
 - a) The first page of a letter from Leith Roofings dated 3 November 2011, addressed to the previous Property Factor. The Applicant found this letter

among the records held by the Respondent. The letter states that Leith Roofing had carried out a survey but could not get access to the roof. It contains a description of the roof and a possible reason for water ingress. The contractor recommended a closer inspection and certain remedial work. However, they stated that they did not specialise in this type of roof. They suggested alternative contractors for part of the repair work and provided a quote, presumably for the work they were able to undertake. The second part of the letter and the quote were not lodged.

- b) Email correspondence between the Applicant and Kalzip between March 2023 and January 2024. In the first email (March 2023) the Applicant states that he is looking for guidance as there are issues with the Respondent in relation to roof maintenance. He asks about warranties in relation to their roof and any “restrictions on maintenance and repairs” that would affect guarantees. There is a response on 27 March 2023. This refers to a telephone call, provides information about the roof type and states that “penetration details which require construction or maintenance should be carried out by an approved installer, to keep any warranty in place.” An approved installer is also suggested. There is a response from the Applicant asking about other approved contractors and whether they can check for the existence of any guarantees. The email goes on to indicate that the Applicant wanted a roof hatch installed and asks how often routine inspections should take place. It appears that Kalzip did not reply to this email. In January 2024, the Applicant sent a further email to Kalzip, asking for information. There is a response with information about what might be needed in terms of repair, and the same contractor is again recommended.
- c) An email from Alex McLeod, the contractor suggested by Kalzip, dated 22 May 2023, in response to an enquiry from the Applicant. This states that the contractor has seen an increase in damage to roofs as a result of repairs carried out by slaters and tilers. Having reviewed some photographs, the contractor indicates that incorrect materials have been used. A quote is provided for the installation of a roof hatch and work to the roof.

75. Based on the available evidence the Tribunal is not persuaded that the Applicant has established that the Respondent has failed to arrange for appropriate contractors to repair and maintain the roof. The Tribunal notes the following: -

- (a) The Tribunal can only consider the complaint about the Respondent in relation to their actions between the date of purchase (February 2022) and August 2023, when the second application was submitted.
- (b) There is no evidence that the roof is (or was) covered by any guarantees or warranties.
- (c) If there are/were guarantees or warranties, there is no evidence that these were affected by the use of inappropriate contractors or materials.

- (d) The Applicant believes that some issues with the roof may be due to defective installation by the builder, rather than defective maintenance by the Respondent. The Applicant believes that it is part of the Respondent's job to pursue the developer in relation to potential building defects and snagging. It is not clear why he does so. Prior to purchasing the property, the Applicant could have arranged for a full structural survey to rule out any issues. The Respondent is only responsible for ongoing maintenance and repair, from the date of their appointment.
 - (e) The recent work to the roof space appears to have addressed the water ingress experienced since November 2023. It did not require the services of a specialist roofer. The Applicant arranged for the work to be carried out by a team of handymen.
 - (f) The letter from 2011 is incomplete. It also appears to suggest that the contractor could do some of the work but suggested others may be required for the remainder.
 - (g) There is no conclusive evidence that the contractors used by the Respondent (Clelland and North Facades) carried out defective work.
 - (h) Kalzip were only able to provide the Applicant with the name of one contractor. They also only provided general guidance, in response to information provided by the Applicant. They did not inspect the roof.
 - (i) The contractor who provided a quote did so based on information and photographs provided by the Applicant. He did not inspect the roof. His quote also appears largely to relate to the installation of a roof hatch and work which might be required.
 - (j) The Respondent wanted to instruct North Facades to complete the works they started in April 2023. They said that North Facades were familiar with this type of roof. The Applicant refused to agree.
76. The Tribunal is therefore not persuaded that the Applicant has established that the contractors used by the Respondent have caused damage to the roof or that the use of alternative contractors was necessary for repairs and maintenance between February 2022 and August 2023.

Failure to arrange for a roof hatch to be installed and get competitive quotes for this work and continued use of a cherry picker

77. The Applicant produced emails which show that he had asked the Respondent on various occasions about a roof hatch, to make it cheaper and safer to carry out roof repairs. However, there is no evidence that the other homeowners in the block had made similar requests or that the Applicant was acting on behalf of the block when he raised the matter with the Respondent. The installation of a roof hatch in a communal area would not be routine maintenance or repair, it would be an improvement. As such, the agreement of **all** homeowners would generally be required. Despite feeling strongly that the hatch was necessary,

the Applicant appears to have done little to promote it. He could have raised the matter at a meeting of homeowners or called a meeting to discuss it. He could have sent a letter to the properties in the block to ask for their views. Had he secured the agreement of some of the other owners, he could then have made a formal request to the Respondent to investigate the matter. However, it should be noted that Property Factors are not generally obliged to facilitate improvements, although many will do so if the homeowners are in agreement.

78. The Tribunal is not persuaded that the Applicant has established that the failure to obtain quotes for, or arrange for the installation of, a roof hatch is a failure to carry out their property factor duties.

Failure to replace the maintenance manual

79. It was conceded by the Respondent that they do not hold an operating and maintenance manual for the property. They stated that it was not passed on by the previous factor. In the Applicant's submissions, there is an email from Barratt dated 10 March 2022. It was sent in response to a request from the Respondent for a copy of the manual. The email states that the Applicant had also contacted them and that a representative of Barratt had met with the Applicant to provide him with information. However, due to the age of the development, they "no longer hold an O & M manual or any other related technical information. It would be the factors responsibility to take ownership of such documentation at handover and retain for future reference".
80. The Tribunal notes that there is no evidence that the manual ever existed or, if it did exist, that it was given to the previous factor. The Code of Conduct does not require property factors to hold an O & M manual for new build properties.
81. The Applicant's main complaint is that the missing manual should have been replaced. He does not explain how the Respondent could have obtained a replacement manual for a development of this age, when the developer has not retained a copy. A surveyor might require to be instructed, and the associated costs for a development of this size could be significant. The whole development would have to agree. The Applicant stated that the manual would have a complete record of repairs carried out and a list of approved contractors. However, a replacement manual would not hold historical information. In any event, the Applicant did not provide conclusive evidence that the absence of a manual has had adverse consequences for the maintenance of the property. This would depend upon its contents and whether it was always used whenever maintenance was required.
82. The Tribunal is not persuaded that the Respondent's failure to hold or replace the manual is a failure to carry out their duties.

Failure to respond to telephone calls and emails

83. As a rule, communication failures tend to fall under the Code of Conduct rather than property factor duties. The Code imposes specific obligations on factors

in relation to enquiries and complaints. However, the Respondent's WSS sets out the Respondent's contractual undertakings in this regard.

84. Based on the documents lodged by the Applicant, it appears that the Respondent usually replied to the Applicant's enquiries and complaints when these were sent by email. The Applicant did not direct the Tribunal to any specific emails which were ignored. There is some evidence that the Respondent did not always return his phone calls. However, this appears to have been deliberate. The Applicant was notified that they were only prepared to communicate in writing. The WSS makes provision at section 6 for communication arrangements. This states that email is the preferred method of communication, although a telephone number is also provided. The WSS also states that multiple emails from the same client may not be individually acknowledged and response times may be affected. There are timescales for responding to written enquiries.
85. Having regard to the available evidence, the Tribunal is not persuaded that the Respondent had grounds to withhold telephone contact. A letter was issued on 8 June 2022. It stated that the Applicant made a call to the office on 6 June 2022 and requested a call back about an insurance claim. The letter goes on to say "As you are aware after your meeting with Roger Boden on 03/05/022 all contact is to be carried out via written letter. We would ask that you respond to this letter with your queries...". This letter seems to suggest that email communication is also being refused, although it is clear from the documents lodged that this was not enforced. The Respondent did not provide the Applicant with a proper explanation and only told the Tribunal (in very general terms) that the Applicant had previously been abusive. No details were provided. As a result, the Applicant could not respond to the allegation. It is not in dispute that the Applicant has had issues with his eyesight. The Tribunal is therefore satisfied that the refusal to allow telephone contact was a failure to carry out their duties, since the WSS permits contact by phone. However, it is noted that the Applicant often sent an email requesting or demanding a telephone call from the Respondent. He had no right to expect them to comply. If he was fit to send an email, it was reasonable for the Respondent to respond to him in the same way.

Additional factual complaints made in terms of the Code of Conduct

Failure to assist in relation to the Applicant's cataracts and threatening and intimidating behaviour.

86. The complaint about the Applicant's cataract issues has been covered in the previous section regarding telephone contact.
87. The Respondent did not participate in the hearing and Mr Bodden left the Respondent's employment after the first CMD. At that CMD, he told the Tribunal that he met with the Applicant to discuss his behaviour, because he had been abusive to staff. At the meeting the Applicant had been verbally abusive to him. No details were provided. As Respondent did not participate in the hearing, there was no further evidence or information about the incident, other than the

brief reference to it in the written representations. At the CMD, the Applicant said that Mr Bodden told him that he was not prepared to listen to him. At the hearing on 8 April 2025, in response to a request for further details of the incident, the Applicant was evasive. He made a general statement – that Mr Bodden had come to lay down the law and to intimidate him. When pressed for details, the Applicant told the Tribunal that Mr Bodden had said that he was not going to listen to him and when the Applicant tried to speak, Mr Bodden looked away and did not listen. As a result, he was shown the door.

88. Based on the information and evidence, the Tribunal is not persuaded that Mr Bodden was intimidating or abusive at the meeting in May 2022. There was certainly a disagreement. There also seems to have been a misunderstanding about the purpose of the meeting. Mr Bodden said that he wanted to speak to the Applicant about his behaviour. The Respondent clearly thought he had come to try and resolve some disputed matters. They were at cross purposes, and the meeting was terminated by the Applicant. But the Applicant's own account does not establish that Mr Bodden was verbally abusive, that he used aggressive or intimidating language or that he refused or failed to leave when told to do so.

89. The other example provided by the Applicant was the alleged behaviour of a staff member when he went to the Respondent's office in April 2023. The Tribunal was told that the receptionist threw down his pen, told the Applicant that he would not serve him and walked away. The Applicant believes that the member of staff behaved in this way because there was an alert or record on the computer system about the Applicant's behaviour. However, although Nic Mayell later admitted to the Applicant that there had been something on the system, later removed, there is no evidence that this is what triggered the incident. The Applicant had a conversation about his complaints with another member of staff who was present and who seemed to be sympathetic to his concerns. It appears that the receptionist may have taken exception to what the Applicant was saying or was annoyed that he was being ignored. The Respondent denied that the incident occurred. However, the Tribunal is not convinced by this denial. The Applicant provided evidence, in the form of date stamped letters, that he had been at their office. He provided the first name of the other staff member and sent emails to the Respondent complaining about his treatment. However, based on the Applicant's own account, the Tribunal is not satisfied that there was abusive or intimidating behavior. At best, the Applicant has established unsatisfactory behaviour by a staff member to a client and poor customer service. The Tribunal is therefore not persuaded that this complaint has been established.

Failure to allow access to historic records

90. The Tribunal did not hear evidence regarding this matter as it had been resolved by the date of the hearing. The Applicant submitted a number of documents which he had acquired following a visit to the Respondent's office to view the records. There are also emails from the Respondent which state

that they were prepared to allow him to view the records, but that they he had not previously asked to do so.

91. The Tribunal is not satisfied that this complaint is established.

Mismanagement of insurance.

92. Most of the correspondence lodged in relation to the relevant period is about the leak and the roof repair. However, the Applicant also submitted emails from 2022 about insurance. There is an email from the Respondent dated 3 February 2022, in response to a complaint which does not appear to have been lodged. This states that the writer understood that the Applicant was looking for more information about the insurance. The letter states “We use a broker, Marsh, who go out to the whole of the market to find the best cost for our clients. I have attached the Marsh tendering process as well as a couple of the insurance guides which can be found on our website, which I hope provides a little more information for you. I can see that the last re-instatement valuation for your development was carried out in August 2021”.

93. There is also a response from the Applicant on the same date simply asking for a phone call. A further email was sent by the Applicant on 13 February 2022 which is headed “Insurance”. The Applicant states “I have spoken briefly with my co-owners to highlight the extortionate insurance issue and will arrange a mandate from the whole block for review of the current policy.” A further email was sent by the Applicant on 5 April 2022 which states that the building’s insurance is extortionate and that his Home Report quoted £160 for his property. He states that the charge of £470 per annum must be investigated. On 14 April 2022, the Respondent sent an email to the Applicant which referred to a phone call and a request for information. The Respondent states that there are 242 properties in the development, all of whom contribute to the insurance in equal shares. The email outlines what is covered by the insurance and confirms that all the owners own the concierge’s office. The email also states that there had been one claim in relation to the Applicant’s block in the previous year which was for a leak in the communal hallway. Aside from the notification letter which refers to “mismanagement of insurance”, the Applicant did not direct the Tribunal to any other correspondence relating to insurance which predated the applications, although there is some later correspondence where it is mentioned.

94. There appear to be three aspects to the insurance complaint. The principal complaint is that, until recently, the Respondent wrongly apportioned the cost of the insurance. In addition, the Applicant states that the premiums were excessive and that the Respondent failed to disclose their commission.

95. Clause 8 of the Deed of Conditions sets out the obligations in relation to common insurance. It states that “ The factor shall keep the whole area and all plant, equipment, furniture and furnishings forming part of the mutual areas or the common parts constantly insured against damage or destruction by fire and all other risks....The amount for which such insurance is effected shall be determined from time to time by the Factor with the benefit of such professional

advice as he deems it prudent to seek. The insurance shall be effected by way of a common insurance policy or policies in the name of the Factor for behoof of the whole proprietors...”

96. Clause 1 of the DOC give the flat owners an “equal pro indiviso right of property in common with the other proprietors of flats in the same block to the common parts of the said block”. Clause 2 stated that each flat owner is under an obligation “jointly with the other proprietors of flats in the same block of upholding and maintaining in good order and repair and from time to time when necessary, renewing and restoring the common parts of said block and of cleaning, repairing and decorating the said common parts. All expenses and charges incurred under the forgoing obligation and of any other work done or services rendered in respect of the said common parts shall be payable by the whole proprietors of flats in the same block in equal proportions.” Clause 6 makes provision for the mutual areas shared by the whole development. Again, each proprietor in the development is to pay an equal share.
97. The insurance clause in the DOC does not deal with apportionment of the insurance premiums. The only guidance on apportionment is to be found in clause 2 which requires the common charges in a block to be shared equally by the proprietors in that block. The logical interpretation of these provisions is that the insurance costs for the block are also to be divided equally among the owners in that block. The Applicant told the Tribunal that all the flats in his block are the same size. His objection to paying the same share as the owner of a large flat or house is understandable. However, the mutual areas also required to be insured, and all owners would have to contribute to that.
98. The Respondent failed to provide the Tribunal with an explanation for their decision to divide the insurance costs equally. They only referred to the relevant clauses of the DOC. Equal shares are certainly the most straightforward approach. The Applicant told the Tribunal that the Respondent recently changed the way they apportion the costs. If this is the case, it suggests that they now accept that they were doing it wrong. In the circumstances, the Tribunal is satisfied that there has been a failure by the Respondent to carry out their property factor duties in way they apportioned the insurance costs during the period that the Applicant owned the property.
99. The Applicant’s evidence about the excessive insurance charges is less convincing. He submitted part of a letter from the insurance broker Marsh which is headed “Approach to alternative insurers for 2023”. The letter provides a list of 6 insurance companies who were approached but were not willing to provide insurance. The letter goes on to confirm the insurance arrangements and charges for the year. The Applicant claims that insurance could be obtained for 50% less. In the email correspondence, the Applicant based his argument on the estimate mentioned in the Home Report for the property. However, this may have been the estimated cost of insuring his flat and not the common areas in the block and throughout the development. The Applicant did not provide the Tribunal with any evidence. At the Hearing, he stated that he made some phone calls and was given lower quotes. The Tribunal is not persuaded that this complaint has been established.

100. The complaint about disclosure of commission will be addressed under the Code of Conduct complaints. The Tribunal is not persuaded that, if the Respondent did not disclose this information, it would be a failure to carry out their duties

Code of Conduct complaints

OSP 3 – You must provide information in a clear and easily accessible way.

101. When asked for better specification of his complaints at the CMD, the Applicant submitted a copy of the Code with handwritten comments and notes. In this specification document (“SD”), the Applicant states that there are “no concise reports on repairs”. At the Hearing he told the Tribunal that invoices do not have full details of the work that has been carried out and that the Respondent failed to provide this information when asked to do so. He referred to one of the invoices in the bundle of documents as an example of the lack of information. In their response, the Respondent stated that the Applicant has access to contractor invoices and that they have “sought” to share updates from contractors with him.
102. Both parties provided copies of invoices. These appear to be fairly standard. The date of the charge/contractor invoice, the name of the contractor and a brief description of the work are all provided. There is also no evidence that the Applicant made any enquiries about the content of any invoice.
103. The Tribunal also notes that this complaint was not properly notified before the applications were made. Although the notification letter mentions OSP 3, there is no reference to the content of invoices or the absence of information. Furthermore, the complaint does not appear to be relevant to the section of the Code. The Applicant objects to the lack of information rather the content of the information that has been provided.
104. A breach of this section is not established.

OSP 4 – You must not provide information that is deliberately misleading or false.

105. In the SD, the Applicant states “roof was not fixed”. In their response the Respondent states that this statement makes no sense in the context of a complaint under this section. At the Hearing, the Applicant said that he was told by email that the roof had been fixed when this was not true.
106. Once again, there is no evidence that the Applicant properly notified the Respondent of this complaint. Although the letter mentions OSP 4, it does not explain how this section was breached and there is no information about misleading or false communications. As the Respondent notes, the SD does not fully explain the complaint. The Applicant may have understood what he meant, but the Respondent did not and the Tribunal did not fully understand his position until the Hearing. The Applicant referred to one email from the

Respondent dated 16 May 2023. This states that the roof leak had been repaired by Clelland and goes on to advise the Applicant about the contractor who has been instructed to carry out the re-instatement works.

107. The Tribunal is satisfied that this complaint cannot be considered. However, had there been proper notice and proper specification, the Applicant would still have struggled to establish this complaint. The statement was not false – a repair to the roof had been carried out. Furthermore, the Applicant would have to show that the information was “deliberately or negligently” misleading or false to establish a breach of this section. At the time the email was issued, the Respondent understood that the leak had been fixed and the Applicant did not report further water ingress until six months later.

OSP 5 – you must apply your policies consistently and reasonably.

108. In the notification letter, the Applicant refers to this section and states that the Respondent failed to assist him with his cataract condition and threatened and intimidated him in his own home. In the SD he states that no telephone contact was allowed on the pretext that he was abusive. This is a reference to the letter he received which stated that future contact was to be by written communication only, because of his behaviour. During the Hearing, there was some discussion about the WSS and whether the Respondents have a policy for dealing with unacceptable behaviour. Section 7.10 of the WSS states that that “Verbal (or other forms of) abuse of staff will not be tolerated. Please see our Unreasonable Behaviour Guide located within the documents and guides section of our website”.

109. The Applicant did not make specific reference to the WSS, the Unacceptable Behaviour Guide or the Respondent’s policies in the notification letter or the SD. His complaint does not appear to be about a failure to apply their policies, but that the refusal to allow telephone and in person contact was a pretext designed to limit his ability to engage with them on any matter. As this complaint does not appear to be relevant to OSP 5 and does not appear to have been properly notified in terms of Section 17(3) or adequately specified in the application, the Tribunal is satisfied that it cannot be considered.

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.

110. In the SD, the Applicant states “No specialist roofer that is required by manufacturer”. In the notification letters there are references to the Respondent allowing the roof to leak for four months, causing long term damage to the roof, repeated instances of bad workmanship and a lost maintenance manual. In their response the Respondent only states that their staff are fully trained and that employees are supported by senior experienced staff.

111. Unlike some of the other complaints, it is evident from the documents lodged that the Respondent was made fully aware of the Applicant's concerns regarding delays in arranging the roof repair. There are also many emails about the selection of suitable contractors and the materials used to repair the roof, although these are much later. There are numerous emails to the Respondent between November 2022 and April 2023 about the leak. The Respondent does not properly address the delay in their response, only making a general statement about training and in-house experience.

112. The Tribunal is satisfied that there is evidence of a failure to act with "reasonable care and skill and in a timely way" in relation to the leak from the roof between November 2022 and March 2023. No explanation for the delay has been provided. However, the Tribunal is not convinced that the Applicant has established that the Respondent knew or ought to have known that they were using the wrong contractors and/or the wrong materials at the time of the applications. From the documents lodged between the date of the applications and the hearings, the situation is still unclear. A proper assessment of the condition of the roof is clearly required and until this is arranged, it cannot be definitively established that the work that was carried out in March 2023, and subsequently, was defective or otherwise.

OSP 7 – you must not unlawfully discriminate against a homeowner because of their age, disability sex, gender re-assignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation.

113. In the SD the Applicant states "Disability discrimination - no telephone contact" In the notification letter there is reference to OSP 7 and to a refusal to assist in relation with cataracts. In their response the Respondent denies discrimination, and states that telephone contact was refused due to abusive behaviour.

114. The Tribunal is satisfied that this complaint has been adequately notified and specified. There are also several emails to the Respondent where the Applicant stated that he preferred telephone contact/in person communication because of his eyesight issues. The Tribunal is also satisfied that the Respondent was entitled to refuse such contact if they had grounds to do so. However, as the Respondent did not participate in the hearing and provided very limited information about their reasons for deciding to withdraw in person and telephone contact, the Tribunal is not persuaded that the Respondent has established that they had grounds. No information is provided about the alleged abusive behaviour which predated the visit by Mr Bodden. The visit itself seems to have involved a disagreement or argument, but not abusive behaviour, by either the Applicant or Mr Bodden. The Applicant was told by Nic Mayel that there had been a note on the system about him. However, he did not provide the Applicant with the details and told him that it had been removed. The Respondent denied all knowledge of the incident at the Respondent's office when a member of staff refused to serve him.

115. Discrimination takes many forms. As well as direct and indirect discrimination, a refusal or failure to make reasonable adjustments can amount to discrimination in certain circumstances. The Respondent does not dispute the Applicant's claim that his cataract/eyesight issues resulted in a disability or that he was entitled to be classed as a disabled person at the relevant time.

116. As they have not provided any evidence to justify the withdrawal of telephone and personal contact, the Tribunal is satisfied that the Applicant has breached this section of the Code. They were aware of the Applicant's eyesight issues, and they withdrew (and refused to re-instate) the form of contact he requested. They failed to provide any evidence that they had grounds to do so.

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

117. In their response, the Respondents stated that they do not know what the Applicant is referring to and that they would not have a record of "direct verbal abuse". However, although the Applicant's complaints are not always clearly articulated, this one is unambiguous. The Applicant states that the Respondent wrote to him withdrawing telephone contact due to alleged verbal abuse. A copy of that letter was lodged. He argues that they should have a record of the alleged unacceptable behaviour to take this step. He asked to see their records. He was initially told that there was something on the system, which he was not permitted to see. Then he was told it had been deleted. This appears to be an admission that the Respondent does not have a record of the alleged episodes of verbal abuse. The Tribunal is satisfied that a failure to keep such a record, when action was taken against the Applicant based on his alleged behaviour, is a breach of this section of the Code.

OSP 10 – You must ensure you handle all personal information sensitively and in line with legal requirements on data protection

118. In the notification letter the Applicant says, "Failing SAR". In the SD he states, "Four months to get SAR (by ICO)". In their response the Respondent states that the timescale for a SAR is irrelevant to this section of the Code.

119. This complaint appears to relate to the alleged failure by the Respondent to respond to the Applicant's subject access request. The Applicant lodged a copy of an email from the ICO dated 2 February 2023. In the letter they state that the Respondent had not complied with their data protection obligations. The email also states that the ICO had asked the Respondent to respond to his SAR within 28 days. The Applicant also provided the first page of the Respondent's email in compliance with the ICO request. Based on this documentation, the Tribunal is satisfied that the Respondent failed to comply with data protection provisions and this complaint is upheld.

OSP 11 – You must respond to enquiries and complaints within reasonable timescales.

120. In the notification letter the Applicant refers to a failure by the Respondent to respond to his emails and telephone calls, although no details are provided. In the SD he states, “No response to any emails since roof found to be still leaking”. This appears to be a reference to emails sent since November 2023, and therefore not part of the applications or under consideration by the Tribunal.

121. The Respondent’s only comment is that there are no details provided by the Applicant. The Tribunal agrees with this statement. It is evident from the correspondence that the Applicant received responses to some telephone calls and most emails. As the documents were not lodged in a paginated bundle, but in a series of email chains, it is impossible to determine whether there were emails which were ignored. It is also impossible to determine whether there were unacceptable delays in responses to enquiries. The Applicant failed to direct the Tribunal to relevant correspondence.

122. Based on the available information and evidence, the Tribunal does not find this complaint to be established.

OSP 12 – You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

123. The Applicant’s complaints under this section of the Code relate to the visit from Mr Bodden and the incident at the Respondent’s office. For the reasons previously provided, the Tribunal is not satisfied that a breach of this section has been established.

Section 1.1 – A property factor must provide each homeowner with a comprehensible WSS setting out in a simple structured way, the terms of service delivery standards of the arrangements in place between them and the homeowner.

124. The Respondent did not respond to this complaint. In the notification letter the Applicant stated that he had not been provided with the WSS. In the SD he stated that he eventually received a copy in December 2023. He later indicated that he could not recall where he got it from. However, his evidence during the hearing was contradictory. He initially told the Tribunal that he was not contacted by the Respondent when he purchased the property. His first contact with them was when he reported an issue with the balcony at the property. Later, he stated that the Respondent wrote to introduce themselves on 21 February 2022, when he purchased the property. They did not enclose the WSS but stated that it was on their website.

125. The Tribunal is satisfied that, if a property factor directs a homeowner to their website, and the WSS is available on that website, they have complied

with this requirement, unless the homeowner asks for a hard copy. The Applicant did not claim that the WSS was not on the website, only that he had difficulty downloading it. There is no evidence that he contacted the Respondent to request assistance or a paper copy. The Tribunal is therefore not persuaded that a breach of this section has been established.

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 they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

126. In the notification letter, there are various complaints which are related to communication. In the SD the Applicant states “No effective communication, transparency, accountability. As no owner representation promoted. Negative relationship not consulting repairs or providing proper reports as to what is done”. In their response the Respondent states that there is no evidence produced to support a breach of this section of the Code.

127. The Applicant mentioned several issues in the hearing which did not appear to relate to this section of the Code. He did not provide any details or refer to any evidence which would establish a general failure in communication. His complaints about lack of effective communication, transparency and accountability were also not clearly established. The Applicant told the Tribunal that this was his first experience of owning a property which is factored, and he clearly had reservations about the situation from the start. He spoke about the Respondent being at “arm’s length”, although it is not clear what he meant by this.

128. Based on the available information and evidence, a breach of this section of the Code is not established

Section 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.

129. This is essentially the same complaint as under OSP 10. In the SD the Applicant states – “Took months to get SAR through ICO only. Not complying with requests to access all historic files for our building to ascertain proper maintenance.” The Respondent states that there is no evidence of non-compliance with data protection.

130. For the same reasons as set out in relation to OSP 10, this complaint is upheld. The ICO determined that the Respondent had failed to comply with their

data protection obligations. The Respondent appears to have accepted this decision.

Section 5.3 – A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change of insurance provider) with clear information demonstrating - the basis upon which their share of the insurance premium is calculated; the sum insured; the premium paid; the main elements of the insurance cover provided by the policy and any excesses which apply; the name of the company providing insurance cover and any other terms of the policy

- 131. As outlined previously, the Applicant provided very little correspondence about insurance issues which predate the applications. The notification letter itself only refers to “mismanagement of insurance”
- 132. The Applicant’s complaint under this section is about the way the insurance was apportioned. In the SD he states that the other owners did not know that everyone paid an equal share.
- 133. The Tribunal notes that some of the invoices lodged by the parties contain charges for insurance and these clearly show the share payable by each owner to be 1/242. The Tribunal is therefore satisfied that this information was provided. The Respondent also confirmed this by email to the Applicant in April 2022. This section of the Code is about the provision of information in relation to insurance – not whether the apportionment is correct. A breach of this section is therefore not established

Section 5.5 – A property factor must disclose to homeowners in writing any commission, administration fee, rebate or other payment or benefit that is paid to them in connection with the policy.

- 134. There is no clarification of this complaint in the SD. The handwritten note appears to relate to insurance claims. The Tribunal also notes that there is no reference to commission in the correspondence from 2022 and the notification letter only mentions “mismanagement of insurance”. The Tribunal is therefore not persuaded that this complaint has been properly notified. In any event, as is pointed out by the Respondent, the Development Schedule contains details of the commission. This is shown as a percentage. The Applicant objects to this and states that the actual sum should be disclosed. However, it is not unusual for property factors to disclose commission as a percentage. As premiums are likely to change from year to year, the sum they actually receive will also change. However, as long as the percentage is disclosed, a homeowner can calculate the commission, if they wish to do so. This complaint is not upheld.

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.

135. Again, there is no evidence that the Applicant notified the Respondent of this complaint prior to the application being made. In the SD he states “Not clear so expansion vessel failure. Had to make my own insurance claim, no response or support.” The Applicant did not direct the Tribunal to any correspondence that predates the application which mentions the expansion vessel issues or the claim. The Respondent stated that this was not an insured risk and that the claim was rejected. In any event, this section of the Code requires the Respondent to have a procedure for insurance claims, if that is part of the service they provide. The documents lodged by the Respondent demonstrate that they have a procedure. A breach of this section is not established

Section 5.7 – A property factor must take reasonable steps to keep homeowners informed of the progress of their claims or provide them with sufficient information to allow them to pursue the matter if required.

136. In the SD the Applicant states “went through process myself with EV. Not accepted. Refused any input. EV failure should have been resolved under snagging. For the same reasons as the preceding paragraph, this complaint is not upheld.

Section 5.8 – On request, a property factor must be able to demonstrate how and why they appointed the insurance provider including an explanation where the factor decided not to obtain multiple quotes.

137. Again, this complaint does not appear to have been notified. In any event, it is clear from the correspondence in February and April 2022, and the correspondence lodged by both parties from Marsh dated May 2023, that the homeowners were provided with this information. This complaint is not upheld.

Section 5.10 – A property factor must notify homeowner in writing of the frequency with which property valuations will be undertaken to establish the building re-instatement value for the purposes of buildings insurance.

138. There is no evidence that this complaint was notified in advance of the applications and the SD contains no further details. As the Respondent points out, the WSS contains this information. This complaint is not upheld.

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.

139. In the SD the Applicant states “Roof leaking for 4 months”. In their response, the Respondent states that the leak was reported in February 2023 and they instructed Cleland, who attended the same day and carried out a repair. They add that there was a recurrence in November 2023. Clelland was re-instructed, but the Applicant was not agreeable as he wanted a Kalzip approved contractor. They then arranged for North Facades to attend as they are familiar with this type of roof. They cut an inspection hole in the ceiling and provided a report. The Applicant was not willing for the recommended work to be carried out.
140. Based on both the Applicant’s evidence, and some of the documents, at least some of this submission is factually inaccurate. The leak was reported in November 2022 and not February 2023. The first contractor who attended was Pinnacle. The repair was not carried out until March or April 2023. The evidence does support the statement that there were no further reports until November 2023, with the Applicant’s evidence tending to suggest an unrelated cause of water ingress.
141. For the reasons previously outlined in relation to property factor duties the Tribunal is satisfied that this complaint has been established. The repairs which were carried out were not “prompt” in a situation where there was active water ingress. The issues from November 2023 onwards are outwith the Tribunals’ remit.

Section 6.2 – Property Factors may also agree by contract to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters eg firefighters lifts, rising fire mains etc or to ensure that common areas are kept free of combustible items and obstructions.

142. In the SD the Applicant states “Equally valid a specialist roofing contractor required by manufacturer for out roof”. The Tribunal agrees with the Respondent’s comment that this section only relates to fire safety and not to other contractors instructed by the property factor. A breach of this section has not been established.

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 had 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.

143. In the SD, the Applicant states “Nobody in block knows what’s happening”. The Respondent’s only comment is that the Applicant has not provided evidence.

144. The Tribunal is satisfied that the Respondent has breached this section of the Code. The repair to the roof was not completed within an appropriate timescale. The Respondent did not provide the Applicant with progress reports and did not advise him when the work was completed until he requested an update.

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.

145. In the SD, the Applicant states “J Gibb cannot supervise. No roof access so cherry picker needed to be booked in advance.” Neither the notification letter nor the correspondence lodged with the application state that the Respondent does not have a procedure to deal with out-of-hour emergencies. The WSS sets out the procedure, so it appears that the Respondent has complied with this section. The absence of a roof hatch is not relevant to this section of the code. As the Respondent points out, that is how the property was designed and the Applicant will have been aware (or should have been aware) when he purchased the property. A breach of this section of the Code is not established.

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 repair or maintenance must be balanced against 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 the homeowner.

146. In the SD the Applicant states “Ignoring my professional advice to urgently fix roof to avoid long term damage”. However, this section of the Code is about the selection of contractors, not the speed of repairs. The Applicant lodged correspondence between the parties for the period December 2022 and April 2023. In this correspondence the Applicant makes repeated demands for action by the Respondent to have the leak fixed. He does not appear to have taken issue with the contractors selected, although on one occasion he asks for quotes to be submitted. However, his complaints about the selection process appear to have been made much later and are not part of the applications before the Tribunal. At the relevant time he complained about the time taken to have the repair completed, the absence of a roof hatch, the concerns raised by his tenants and the possible long-term damage to the roof due to the delay in getting it fixed. A breach of this section is therefore not established.

Section 6.7 – It is good practice for periodic property visits to be undertaken by suitable qualified/trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

147. The comments in the SD under this section state – “resisting/no access allowed to historic records for inspection.” It is not sure how this complaint is relevant to this section of the Code. In any event, there is no complaint in the correspondence lodged about inspections or programmes of works. The Respondent states in their response that they do not have an agreement with homeowners regarding a planned programme of works. This complaint is not upheld.

Section 6.12 – If requested by homeowners, a property factor must continue to liaise with third parties ie contractors within the limits of their “authority to act”...in order to remedy the defects in any inadequate work or service that they have organized 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...

148. As previously noted, the Applicant did not provide evidence that he had challenged the qualifications of Clelland or the work that they carried out until a much later stage. He was in communication with Kalzip and their suggested contractor in May 2023, but he does not appear to have reported any further issues with the roof until November 2023. In the SD he states, “No cooperation to use specialist to fix roof after several months”. However, this appears to relate to events which occurred after November 2023, when he reported further issues with the roof. In the notification letter the Applicant mentions “repeated instances of bad workmanship”. However, no details of this were provided and there is no reference in the correspondence between the parties regarding earlier repairs.

149. Based on the available information and evidence, a breach of this section of the code in relation to events between the purchase of the property and August 2023, is not established.

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. The section then has a series of bullet points which relate to what must be included in the procedure.

150. In the SD the Applicant states “Ignoring emails so not provided to me”. At the hearing the Applicant said that he had made complaints by email, but these were ignored and it took a year to be provided with the Complaints Procedure. He did not direct the Tribunal to any documentary evidence. The

only comment in the response is that there is a complaints procedure, a copy of which was submitted.

151. The Tribunal notes that the Applicant uses the word “complaint” in many of his emails, but that it is not always clear from that correspondence that a formal complaint was being made. For the most part, these emails are demands for action to be taken or information provided. The Tribunal also notes that the Applicant lodged an email from the Respondent dated 1 April 2022. Attached to the email is a stage 5 response. In response to questions from the Tribunal, the Applicant said that this related to his dispute with the Respondent about the balcony. The email also states that the Applicant could now apply to the Tribunal. It appears that he did not do so and when he made an application 12 months later, the balcony issue was not included.

152. The Applicant only purchased the property in February 2022 and by April 2022 had gone through the Respondent’s five stage complaints process in relation to one matter. It therefore appears that he was aware of the procedure and knew how to use it. As his later correspondence did not make it clear that he was seeking to invoke the procedure again, the Tribunal is not persuaded that a breach of this section has been established.

Section 7.2 – When a property factor’s in house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

153. In relation to the complaint referred to in the previous paragraph, the Respondent complied with this section of the Code. Based on the available information and evidence, the Tribunal is not persuaded that the Applicant made other formal complaints which were not processed. A breach of this section is not established.

Section 7.6 – Complaints that have arisen in connection with the issues that arose during the appointment of a previous property factor should be dealt with by that property factor. Any unresolved issues that require to be addressed can be raised with the new, formally appointed property factor if the continuing failure is present after their appointment, This will be dealt with as a new complaint in accordance with their complaints procedure.

154. The Applicant states in the SD that the breach of this section relates to the failure by the Respondent to replace the lost maintenance manual given to the previous factor by Barrett. The Tribunal’s findings in relation to the O & M manual are covered earlier in this decision. In any event, this section appears to relate to homeowners who had a complaint against the previous factor. The Applicant did not own the property when it was factored by a different company so could not have made a complaint against them. A breach of this section of the Code is not established.

Conclusions

155. The Tribunal is satisfied that the Respondent failed to carry out its property factor duties in relation to the following: -

- (a) Failing to arrange for the roof repair to be carried out within a reasonable timescale.
- (b) Withholding telephone contact without a valid reason.
- (c) Incorrect apportionment of the insurance costs among the homeowners.

156. The Tribunal is satisfied that the respondent failed to comply with the following sections of the Code: -

- (a) OSP 6 – failing to arrange for the roof repair in a timely way between November 2022 and April 2023.
- (b) OSP 7 – discriminating against the Respondent by failing to make reasonable adjustments – allowing telephone contact – in relation to his disability.
- (c) OSP 9 – Failing to maintain records about the Applicant in relation to the alleged abusive behaviour.
- (d) OSP 10 and Section 2.2 – failing to comply with data protection provisions in relation to the Applicant’s subject access request.
- (e) Section 6.1 – failing to arrange a prompt repair to the roof when there was active water ingress.
- (f) Section 6.4 - failing to arrange for the roof repair within a reasonable timescale and provide progress reports.

Proposed Property Factor Enforcement Order

157. The Applicant has now sold the property and no longer has any dealings with the Respondent in their capacity as property factor for the development. In the circumstances, the Tribunal is satisfied that an award of compensation is the only appropriate disposal of this case. The Tribunal determines that an award of £750 should be made.

The Tribunal therefore proposes to make a Property Factor Enforcement Order (“PFEO”). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

Appeals

A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Josephine Bonnar

28 February 2026