Housing and Property Chamber
First-tier Tribunal for Scotland

Decision

Section 17 and 19 (3) of the Property Factors (Scotland) Act 2011 ("the Act") and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference numbers: FTS/HPC/PF/25/1833 and FTS/HPC/PF/25/3316
Re: 2/2, 37 Annette Street, Glasgow, G42 8EH ("the Property")

The Parties:

Mrs Jasbir Kaur Aulakh ("the Applicant")

Mr Jasbir Virhia
("the Applicant's Representative")

W.M. Cumming, Turner and Watt
("the Respondent")

Tribunal Members:
Martin J. McAllister, Solicitor, (Legal Member)
Peter McEachran, Chartered Surveyor, (Ordinary Member)
(the "tribunal")

Decision

I) The Respondent has breached the Property Factors (Scotland) Act 2011 Codes of Conduct for Property Factors 2021 (2012 and 2021 versions) and has failed to comply with the property factor's duties.

II) The tribunal proposes to make a property factor enforcement order ("PFEO") requiring the Respondent to pay the sum of SEVEN HUNDRED and FIFTY POUNDS (£750) to the Applicant within thirty days of service on it of the Decision and the PFEO.

III) The tribunal proposes to make a property factor enforcement order ("PFEO") requiring the Respondent to provide to the Applicant copies of all documents relating to the claim it submitted to Covea Insurers. This should include correspondence to and from Covea Insurers and any agents or loss

adjusters appointed by it. The information requires to be provided within thirty days of service of the decision and the PFEO.

Background

1. These are applications by Jasbir Kaur Aulakh in respect of the property which she owns. They are in connection with the Respondent's actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act) and alleged breaches of the Property Factors (Scotland) Act 2011 Code of Conduct. A version of the Code was promulgated in 2012 ("2012 Code") and it was replaced by the 2021 version of the Code which was effective from 16 August 2021 ("the 2021 Code"). One application (1833) is in respect of the 2012 Code and the other (3316) is in respect of the 2021 Code. The applications also state that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act. The applications were accepted by the Tribunal for determination on 1 August 2025. The applications were accompanied by a number of documents.

2. At the hearing on 18 March 2026, the Applicant made some concessions in relation to the sections of both versions of the Code which she considered had been breached.

3. The alleged breaches of the Code to be considered are:

   3.1 2012 Code:
   Paragraphs 2.1,2.4,5.5,6.4 and 7.2

   3.2 2021 Code:
   Overarching Standards of Practice 2,3,4 and 11
   Paragraphs 2.1,2.4 and 7.2

Case Management Discussion

4. A case management discussion was held by audio conference on 10 December 2025.

5. Each party submitted written representations and documents prior to the Hearing on 18 March 2026.

Hearings

6. Hearings were held in Glasgow Tribunal Centre on 18 March 2026 and 11 September 2026. At both hearings, the Applicant was present and was represented by her brother, Mr Jasbir Virhia, who also provided evidence. Evidence was heard at both Hearings.

7. At the Hearing on 11 September 2026, Mr Imran Haq attended and provided evidence.

8. The Respondent did not attend either Hearing. The tribunal was satisfied that it had received appropriate notification of the Hearings and proceeded in its absence.

9. After some evidence had been heard at the Hearing on 18 March 2026, it was determined that it would require to be adjourned pending parties' response to the tribunal's request for further information. This was also to give an opportunity for the Applicant to consider documentation submitted by the Respondent immediately prior to the Hearing.

10. A direction was issued on 22 March 2026. The Applicant responded to the Direction and submitted representations. The Respondent did not respond to the Direction.

11. **Findings in Fact**

11.1 The Applicant is the owner of the Property.
11.2 The Respondent is the property factor authorised to manage the common parts of the tenement where the Property is situated ("the tenement").
11.3 The Property is on the second floor of the tenement.
11.4 In January 2016, it was identified that there were significant structural issues with the tenement and all its occupiers were evacuated.
11.5 The properties in the tenement have not been occupied since January 2016.
11.6 The Respondent timeously submitted a claim to Covea Insurance plc ("Covea"), the insurers of the tenement.
11.7 The insurance claim was rejected by letter to the Respondent dated 8 February 2016.
11.8 The Respondent did not advise the Applicant of the submission of the claim or its rejection and she became aware of this in 2017.
11.9 Glasgow City Council issued a Dangerous Building Notice in respect of the tenement on 15 June 2017. The Council sought demolition of the tenement.
11.10 The owners of the properties in the tenement resisted the Dangerous Building Notice in court and the matter remains unresolved.
11.11 The owners of the properties in the tenement appointed two firms of solicitors to represent their interests.
11.12 The Applicant appointed G4 Properties, Mr Raz Parnez, Mr Lal Sangray and her brother, Mr Jasbir Virhia to represent her in various aspects relating to the Property.
11.13 By email dated 1 August 2017, the Respondent asked Covea to review the claim.
11.14 Stabilisation works were carried out on the tenement in 2020.
11.15 The stabilisation works were funded by Covea on a without prejudice basis.
11.16 The owners of the tenement submitted a Damages Claim to the Coal Authority, in terms of the Coal Mining Subsidence Act 1991, in February 2018.

11.17 The Coal Authority rejected the claim on 23 April 2018 and the owners submitted an appeal to the Lands Tribunal for Scotland in December 2019. These proceedings are ongoing.

11.18 In November 2020, a report was prepared by Mr Adrian Dolecki, a chartered engineer and chartered geologist which stated that his view was that the collapse of the tenement was not caused by mining subsidence.

11.19 In his report, Mr Dolecki refers to the structural failure in 2016 being caused by the age of the Tenement, lack of maintenance and reasonable repairs and possibly overstressed foundations.

11.20 The Coal Authority has had internal access to the tenement and has received an independent structural engineer's report which did not alter its view on its liability.

11.21 Covea have stated that it is their belief that the tenement was not properly maintained prior to 2016.

11.22 Correspondence sent to the Respondent which related to the insurance claim had not been passed on to the Applicant.

11.23 The Respondent has not responded to requests for information by the Applicant or her agents.

Matters not in dispute

12. The Property is a flat in a tenement of eight residences which enter from a common close. The tenement is situated in a terrace with blocks of flats on either side. The tenement blocks on either side of the tenement where the Property is located are intact and occupied.

13. The Applicant has owned the Property since 2013 when it had been gifted to her by her father.

14. The Property and the other flats in the tenement have been unoccupied since January 2016. On 15 June 2017, a Dangerous Building Notice was put on the tenement by Glasgow City Council. The Council sought demolition of the tenement. This was opposed in court by the owners and the matter is unresolved.

15. The rear wall of the tenement has been stabilised and is propped up. This work was carried out in 2020 and was funded by Covea. The cost was in excess of £330000.

16. Mr Virhia has a portfolio of buy to let properties and looks after his sister's interests in relation to the Property.

17. Management of the Property, prior to the dangerous building notice, had been delegated to Mr Imran Haq of G4, a letting agent, who manages a number of properties for Mr Virhia and his family. It collected rent and paid for all repairs and outgoings for the Property, including the charges made by the Property Factor. Subsequent to the dangerous building notice being served, G4 continues to act as an agent of the Applicant in respect of the Property.

18. The Property is on the second floor of the tenement. In January 2016, it had been reported to G4 that there was a possible leak from it, which was causing water

ingress to a flat on the ground floor. It was established that water ingress was not emanating from the Property and that there was another reason which caused the considerable amount of water in the ground floor flat.

19. The tenement has not been occupied since 2016 and the close remains sealed.

20. The owners of the properties in the tenement have submitted a subsidence damage claim to the Coal Authority which has accepted no responsibility for the damage to the tenement and has stated that any issues are not due to historic mine workings.

21. Owners of properties in the tenement have submitted an appeal to the Lands Tribunal for Scotland in respect of the Coal Authority's determination to repudiate the claim of the owners in the tenement. This is ongoing.

22. Covea has repudiated the claim by the owners of properties in the tenement.

Evidence

23. Mr Imran Haq of G4 Properties said that he was the letting agent who managed the Property for the Applicant. He said that he managed properties for Mr Virhia and his family.

24. Mr Haq said that, in his capacity as letting agent for the Property he got a call on 18 January 2016 which indicated that there was a possible leak of water from the Property to the flat downstairs. Mr Haq said that he went to the tenement to investigate and determined that there was no leak from the Property but that there was a significant amount of water in the ground floor flat. Mr Haq described the situation he found in the ground floor flat. He said that he had to wade through water and he suggested that the occupier of the flat had not sought assistance sooner because of particular health issues which she had.

25. Mr Haq said that it was his view that a water main had burst. Mr Haq noticed a bulge in the rear tenement wall and, as a consequence, Glasgow City Council became involved and the occupiers of the tenement were evacuated because of safety concerns. An internal wall in the ground floor flat had collapsed.

26. Mr Haq said that, on the day he visited the Property, he telephoned the Respondent and advised it of the situation.

27. Mr Virhia said that the occupiers' furniture is still in the various flats.

28. Mr Haq said that it was his belief that a claim to the insurers should have been on the basis of damage caused by a burst water main. He said that, if the insurers declined a claim on that basis, a challenge could have been possible. Mr Haq said that he continued to represent the Applicant after the incident in 2016.

29. The Applicant said that, when she became aware of the situation which arose in 2016, she assumed that the issues would be dealt with by the Respondent. Both

the Applicant and Mr Virhia said that they knew nothing about any insurance claim submitted by the Respondent. They now know that this had been done in 2016 and had been rejected by the insurers. Mr Virhia said that, in 2016, the Applicant had not been made aware of this.

30. Mr Virhia said that two owners of other properties in the tenement had been active in dealing with the issues arising from the structural failure of the tenement. He said that Mr Raz Pernez and Mr Lal Sangray, owners of properties in the tenement, dealt with the Council, and had the authority of all the owners to do so. He agreed that it was possible that, as representatives of the owners, they may have received information from the Respondent in relation to the insurance claim. He said that Mr Pernez and Mr Sangray arranged for money from the other owners, including the Applicant, and instructed Mellicks, solicitors, to challenge the Council's position that the tenement should be demolished. Mr Virhia said that, as far as he knew, the Respondent was not involved in dealing with the challenge to the Dangerous Building Notice. He said that Mellicks were dealing with the Council's solicitors and that the matter has still not been resolved. Mr Virhia said that Mr Parnez was primarily involved in liaising with the various owners and giving instructions to the solicitors on their behalf.

31. Mr Virhia said that the rear wall of the tenement had been taken down and that the rear of the tenement had been shored up. He referred to photographs which he had submitted. Mr Virhia was referred to a letter from DAC Beachcroft, solicitors for Covea, dated 4 July 2023. He said that neither he nor the Applicant had seen this letter until it had been submitted to the Tribunal on 17 March 2026.

32. The letter sets out the chronology of the claim. It states that the Respondent notified the claim to Covea on 19 January 2016 and that it appointed loss adjusters. The letter makes reference to the insurance claim having been rejected and the Respondents being advised of this by letter dated 8 February 2016.The letter states that the decision "was not disputed by any of you at that time." Covea's coal mining engineer had concluded that the damage to the tenement was not due to coal mining subsidence but that it is more likely *"due to the collapsed wall having been acting as an unintended load bearing wall from the time of its construction, when the wall does not appear to have been designed for that purpose."* The letter goes on to state*: "In our expert's opinion, the wall has eventually failed due to overloading."* The letter states that the insurance policy excludes cover for damage caused by *"gradual deterioration and wear and tear, for damage caused by a property's own faulty or defective design; and for damage caused due to a property's own collapse or cracking."* Mr Virhia and the Applicant were clear in stating that they had been unaware of the information contained in the letter.

33. The letter from DAC Beachcroft referred to Glasgow City Council being *"seriously concerned with the state of the building and the lack of maintenance of it and it seems that repeated attempts by the council to persuade owners to repair the building were not met with success at that time."*

34. The letter goes on to state that owners raised proceedings at Glasgow Sheriff Court challenging the Council's Dangerous Building Notice, and that on 1 August 2017, the Respondent asked Covea to review the claim. The letter from DAC Beachcroft

states that their clients carried out extensive investigations and determined that there was no evidence of an insured peril in place.

35. Mr Haq said that Mr Varhia and his family were very particular in attending to repairs which were required to any properties he managed for them. He said that there are often difficulties in persuading other owners to participate in repairs to common property. He said that the terms of his appointment as letting agent for the Property were that he would deal with the Respondent in relation to any repairs.

36. Mr Haq said that he had some memory that there had been some correspondence from the Respondent over the years in relation to repairs. He said that he was certain that if, repairs had been recommended, the Applicant would have consented to them being done. He said that there may have been difficulties in persuading other owners to participate in any programme of repairs.

37. In the bundle of documents submitted by Mr Virhia is a letter dated 30 January 2018 from DAC Beachcroft to Mellicks, solicitors acting for the owners in its case with Glasgow City Council. It states: *"We can see that the council, prior to the damage in January 2016, had been trying for several years, without success it would appear, to persuade the various owners of the tenement and 37 Annette Street/232 to 238 Allison Street….to undertake repairs to the building, repairs deemed necessary by the council."*

38. The letter from the solicitors acting for the insurer referred to a lack of maintenance of the tenement. The Applicant said that she was unaware of any instance where the Respondent had proposed maintenance of the tenement which had been thwarted by lack of engagement of the homeowners.

39. The submission of the Respondent dated 16 March 2026 refers to it continuing to pay for the building insurance and that they have received *"no funds from a very large majority of the owners."* The letter states that the total arrears due to the Respondent from the proprietors of properties in the tenement is £35,705.47. The Applicant says that she continues to pay the insurance premium due by her. Mr Virhia said that it is his understanding that the Applicant is the only owner paying. He said that it appeared that some owners had lost interest in their properties. He said one owner had died and one was no longer in the country. Mr Virhia said that it was important that the owners continue to insure the building and he said that he had made his views known to Mr Parnez.

40. The letter from DAC Beachcroft stated that, by letter dated 8 February 2016, the Respondent was notified that the claim was declined The Applicant and Mr Virhia said that the Respondent had not advised them of this at the time.

41. In the bundle of documents submitted by Mr Virhia, there is an email from Mr Parnez to the owners where he states that he only became aware in 2017 of the insurers' failure to accept the claim.

42. The letter from DAC Beachcroft stated that Covea had expended in excess of £330,000 in relation to the claim and that owners had agreed that this was not to

be taken as an admission of liability. Mr Virhia said that he assumed that the money spent by the insurers had been used to fund the work carried out on the rear wall of the tenement.

43. In the bundle of documents submitted by Mr Virhia was a copy of a letter sent to the Respondent by the insurers. The date of the letter is not clear but it must have been prior to the stabilisation works carried out to the tenement. It states: *"There is a possibility that the damage might be related to historic coalmine workings which lie underneath the building. However, regrettably, due to the dangerous state of the building at 37 Annette Street, the investigations into the cause of the collapse remain inconclusive and further work in this respect is required. The work cannot take place until the building has been made safe."* The letter goes on to state that, since the cause of the damage has not yet been determined with sufficient certainty, the insurer continues to reserve its rights. The letter states that the insurers were prepared to fund works that are required to stabilise the property to make it safe so that further investigations could be made.

44. The letter from the insurer states that the works would cost £334,580 exclusive of VAT and that, if the building required to be demolished, the costs would be around £84,000 exclusive of VAT.

45. The insurers sought undertakings form the owners of properties that they recognised that the works would be done on the basis that no admission of liability was made by the insurers and that, if the claim was ultimately rejected, the insurers would not look to the owners for reimbursement of the funds expended.

46. The Applicant said that she had no recollection of signing any undertaking. She accepted that the insurers proceeded to fund the works which would indicate that it had the required undertakings of the proprietors. She said that Mr Parnez was dealing with matters on behalf of all the owners and was liaising with the Council and solicitors instructed by the owners.

47. Mr Virhia said that Glasgow City Council had been pressing for action to be taken by the owners. He said that the furniture of the tenement's occupants was still in the building and that the Council had three requirements. These were that the contents of the flats should be removed, growth around the tenement dealt with and work done to ensure that the lintels in the flat were made safe. His evidence was that this work has not been done.

48. Mr Virhia said that the works required by the Council comprised what he described as the first phase and that, thereafter, decisions would have to be made about the building. He said that this would be either redevelopment or demolition.

49. Mr Virhia said that the Coal Authority had refused to agree that it had an obligation to carry out repairs or reinstatement. Reference was made to a letter sent by the Coal Authority to the Applicant on 23 April 2018 where, in relation to the Authority's refusal to accept the owners' claim for damages, it states: *"The reason for this is that the damage to your property is as a result of overloading on the internal building structure and prolonged damage from water ingress due to a lack of regular maintenance on the main building structure."*

50. Mr Virhia said that Mr Parnez, on behalf of the owners, had undertaken proceedings in the Lands Tribunal for Scotland against the Coal Authority. He produced a copy of a document dated 31 July 2026 which had been sent to the owners by the Lands Tribunal and which stated that they had until 31 October 2026 to submit certain documents. When questioned, Mr Virhia explained the case was an appeal against the Coal Authority's decision to reject the claim that the damage was caused by historic coal workings. He said that Mr Parnez was gathering up *"all the emails"* to submit to the Lands Tribunal. He had no knowledge of any other evidence that was to be submitted to it.

51. In the documents submitted to the tribunal was a document from the Coal Authority entitled 'Expert Report on Subsidence' which is dated November 2020. This report was prepared by Mr Adrian Dolecki on behalf of the Coal Authority and was to provide an expert opinion *"on the root cause of the collapse, specifically whether it was caused by shallow mining."* It is clear from the report that it was instructed by the Coal Authority in connection with the owners' application to the Lands Tribunal.

52. The Report states that Glasgow City Council self-funded a programme of consolidation of old abandoned mine workings in 2017 which included the properties at 37 Annette Street and 234 Allison Street. The document states that, whilst coal seams were identified, no mine voids were encountered: *"In my opinion there is no evidence to suggest that shallow mine workings are proven to exist at 37 Allison Street and 224 Allison Street and without these mine workings present there can be no mining subsidence."*

53. Mr Dolecki's Report states that the structural damage, on the balance of probability, is due to *"structural defects due to the age of the property, lack of maintenance and reasonable repairs and possibly overstressed foundations."*

54. In the bundle of documents submitted by Mr Virhia is a letter from Lisa Pinney, the Chief Executive of the Coal Authority to Mr Anas Sarwar, MSP dated 14 September 2022. The letter states that legal proceedings have been sisted for over two years to allow further investigations to be made.

55. Ms Pinney's letter states that, following the intimation of the claim, the Coal Authority carried out investigations which included a site visit and examination of its records. It issued a notification of rejection on 23 April 2018. The letter states that on 9 December 2019, the Coal Authority received notification from the Lands Tribunal for Scotland that the owners of the properties in the tenement had submitted an application to dispute the determination of the Authority. The letter refers to the owners having solicitors to represent them.

56. Ms Pinney stated that the Coal Authority had obtained two independent reports which supported the Authority's determination of the damages claim and that these have been submitted to Messrs Mellicks. The letter states that the Authority had carried out a further visual investigation after having access to the tenement and a supplementary independent engineer's report had been obtained which supported the Authority's views on causation of the structural failure of the tenement. The

letter states: *"We have not had sight of any reports or causation evidence produced on behalf of the residents or their insurers."*

57. Mr Virhia said that he had calculated that the losses incurred by the Applicant as a consequence of the issues with the Property since 2016 amounted to somewhere in the region of £500,000. He said that this was made up of loss of rental, expenses, capital loss and the liabilities of having to deal with the Property and the tenement.

Submissions

58. Mr Virhia submitted that the Respondent had failed to comply with the various paragraphs of the Codes set out by him and that it had failed to carry out the property factor's duties.

59. Mr Virhia submitted that the Respondent should be ordered to produce to the Applicant its complete file relating to the insurance claim and that this should include all correspondence with Covea Insurers and its representatives.

60. Mr Virhia submitted that the Respondent should repay all management charges which had been paid by the Applicant since 2016.

61. Mr Virhia submitted that the Respondent should pay compensation to the Applicant.

62. In its submission dated 16 March 2026, the Respondent advised that the claim to the insurers was submitted on 19 January 2016.

63. The Respondent stated that it had little or no correspondence with the owners of the tenement

64. The Respondent referred to an email dated 14 June 2023 which had been sent to the Applicant in which it stated that the insurers had declined the claim, having completed all its investigation work. With the letter was sent copies of the letter from DAC Beachcroft and coal reports. Owners had been advised to contact Glasgow City Council or the solicitors which had been instructed.

65. The Respondent stated that the only reason it had continued to deal with the tenement was because of the likelihood that it would be difficult for the owners to arrange insurance with another provider.

66. The letter from the solicitors acting for the insurer referred to a lack of maintenance of the tenement. The Applicant said that she was unaware of any instance where the Respondent had proposed maintenance of the tenement which had been thwarted by lack of engagement of the homeowners.

67. The Applicant said that she wrote to the Respondent on 12 June 2023 seeking information and did not receive what was requested. The relevant email was before the tribunal.

68. Mr Virhia said that Mr Parnez, on behalf of the owners had submitted a letter of complaint to the Respondent on 8 September 2024 and had not received a substantive response.

Discussion

69. This is an extremely complex matter. The Applicant is in an invidious position. The Property sustained extensive damage in January 2016. It has not been able to occupied since then. Not only has the Applicant not had income from the Property, but there is a potential for significant costs having to be met by her in the future.

70. The Applicant, Mr Virhia and Mr Haq provided useful and credible evidence. The documents submitted by Mr Virhia were of considerable assistance to the tribunal.

71. It was unfortunate that the Respondent had chosen to not more fully engage with the Tribunal process, and had submitted only minimal written representations.

72. The overarching position of the Applicant was that the Respondent's failures to comply with both versions of the Code and to carry out the property factor's duties has caused delay in resolution of the issue with the building, and subsequently caused her to sustain loss. The Applicant considered that the Respondent could have done more to advance her interests in the matter and had not kept her informed.

73. It appears that there is no consensus with regard to the cause of the structural issues with the tenement. The evidence provided to the tribunal set out a number of possibilities. Mr Haq suggested that it might be as a result of a burst water main. The owners submitted a Damages Notice to the Coal Authority and this was rejected. This is subject to ongoing procedure in the Lands Tribunal. The insurers rejected the claim of the tenement owners on the basis that the failure of the building was potentially caused by the failure of an internal wall, and failure over a number of years to carry out repairs to the tenement.

74. It is not for the tribunal to determine the reason for the structural failure of the tenement. Its purpose is to determine whether the Respondent breached the two versions of the Code and failed to carry out the property factor's duties. It also has no locus to determine whether the Respondent has been negligent. The tribunal's function is to examine the Respondent's actions in respect of the Code and property factor's duties.

75. It is clear, from the evidence of Mr Haq and the documents which had been submitted, that the Respondent had been advised of the issue with the tenement's structural failure and had timeously submitted an insurance claim. This had been rejected and the Respondent had, in due course, asked Covea to reconsider its position. There was no evidence that the Respondent had informed the Applicant of the submission of the claim or its rejection.

76. In 2017, Mr Parnez had been made aware of the rejection of the insurance claim and had intimated this to the owners, including the Applicant. It was significant that, in the bundle of documents submitted by Mr Virhia, there was evidence of a course

of lengthy correspondence between Mr Parnez and the tenement owners, including the Applicant and her agent, Mr Haq. In 2017, the Applicant was aware of the situation with the insurance claim.

77. The documentation submitted by Mr Virhia demonstrated that the Applicant had joined with other owners in instructing Mellicks, solicitors, to challenge Glasgow City Council in its action to have the tenement demolished. The Respondent appears to have facilitated the process by collecting funds from owners to pay the solicitors.

78. The owners appear to have also instructed another firm of solicitors, Messrs Hardy McPhail, in matters concerning the issue with the tenement.

79. There was reference in the letter from the insurer's solicitors and in Mr Dolecki's report that the owners of the properties had failed to maintain the tenement. Mr Haq was clear in his evidence that the Applicant would have authorised repairs to be done. He had a recollection that perhaps repairs had been suggested by the Respondent.

80. It is perhaps significant that, in the bundle of documents submitted by Mr Virhia and which contain, *inter alia*, email communications amongst the owners, there is no sense of a rejection of Covea's suggestion that there had been failure to maintain the Property over a number of years. No evidence was led by the Applicant to repudiate the claim that the tenement had not been properly maintained over the years.

81. The tribunal did not find that the Respondent had failed in respect of ensuring repairs were carried out to the tenement. There was no evidence to support this. The written statement of services was silent in relation to programmes of work. The tribunal considered it significant that, other than the Applicant, the owners of properties in the tenement are not paying their share of the insurance premium. They appeared to be relying on the goodwill of the Respondent in this regard. Mr Haq's evidence was that he had some recollection of common repairs being proposed for the tenement. It appeared that, in not paying for the tenement to be insured, the owners (other than the Applicant) displayed a relaxed attitude to their responsibilities as owners.

82. The insurers repudiated the claim but, in 2020, spent over £330000 in stabilisation works. Whilst these works were done on a without prejudice basis, it demonstrates that, although the insurers had rejected the insurance claim in 2016, they had re-engaged significantly by spending over £330,000 in stabilisation works. There was therefore no prejudice caused to the Applicant by the Respondent failing to advise her in 2016 that the insurance claim had been rejected. In 2017, her agent, Mr Parnez knew the position. The Tribunal considered that, notwithstanding the lack of prejudice caused to the Applicant, she should have been informed about the insurance claim and its rejection.

83. The insurers appear to have commissioned the stabilisation works because there was no certainty as to the cause of the structural failure of the tenement and the works would allow other investigations to be made.

84. In November 2020, the report of Mr Dolecki was unequivocal in his view that the structural damage was not due to mining subsidence.

85. It is assumed that the letter from the Coal Authority to Mr Sarwar MSP was in response to a letter sent by him as a consequence of one of the owners (perhaps Mr Parnez) contacting him on the matter.

86. From the evidence before it, the tribunal determined that there was no certainty of the cause of the tenement's structural failure. The owners of the properties in the tenement are pursuing a claim against the Coal Authority at the Lands Tribunal. What success they will have is not certain. Mr Virhia's evidence was that Mr Parnez *"was gathering up emails"* to assist in this claim. He had no knowledge of any professional evidence being submitted in opposition to Mr Dolecki's report. The letter from Ms Pinney referred to the owners having produced no substantive evidence to challenge the Coal Authority's position on causation. Ms Pinney referred to the tenement owners having legal representation in the Lands Tribunal case. It is not clear from Mr Virhia's evidence that this continues to be the case.

87. Mr Virhia's evidence also was that further investigations are proposed but that this could not happen until the requirements of Glasgow City Council were met: removal of vegetation, furniture being taken out of the various properties and lintels being made safe. No evidence was led about what steps were being taken by the owners in this regard.

88. A property factor is employed by owners to manage the common parts of a building. In this particular case, there was a catastrophic failure in the structure of the building. The Respondent timeously intimated a claim to Covea, the insurers. Thereafter, the owners themselves dealt with Glasgow City Council and instructed two firms of solicitors.

89. It is not for the tribunal to make findings with regard to what could or should have been done by the owners but it may have been appropriate to seek specialist structural engineering and coal mining expertise. It may still be possible for the owners to do this and challenge the repudiations by the insurers and the Coal Authority. The tribunal did not find that, in this respect, the Respondent had an obligation to procure this. The owners had their own legal advice.

Alleged Breaches of the Code

<u>2012 Code</u>

2.1 You must not provide information which is misleading or false.

90. Mr Virhia's position was that the Respondent did not provide information to the Applicant. The tribunal found no evidence to suggest that the Respondent provided information which was misleading or false.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of

homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

91. There was no evidence that the Respondents had charged, or had attempted to charge, additional fees in addition to work relating to the core services.

5.5 You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.

92. The tribunal determined that the Respondent had failed to comply with this paragraph of the Code. It had timeously intimated to claim to the insurers and this had been rejected. The Respondent had not advised the Applicant of this and she would not have been aware of what had occurred with the claim until Mr Parnez became aware in 2017.

6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

93. There was no evidence that the service agreed with homeowners included periodic property inspections. This was not reflected in the Respondent's written statement of services.

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the First-tier Tribunal.

94. There was no evidence that the 2012 version of the Code had been breached.

<u>2021 Code</u>

Overarching Standards of Practice

OSP 2. You must be honest, open, transparent and fair in your dealings with homeowners.

95. There was no evidence that the Respondent had been dishonest in its dealings with the Applicant. The tribunal accepted the submission of the Applicant that the Respondent had not been transparent in relation to provision of information in relation to the insurance claim. The action or inaction of the Respondent in connection with the submission of the claim in 2016 and its subsequent rejection was not relevant because this preceded the 2021 version of the Code. The evidence suggested that a copy of the letter from DAC Beachcroft to the Respondent was not timeously sent to the Applicant and, in this regard, the Respondent had not been transparent.

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

96. The Respondent may not have provided information to the Applicant which it should have but there was no evidence that any information which was provided was not clear or accessible.

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

97. Mr Virhia conceded that there was no failure to comply with this particular overarching standard of practice.

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

98. As detailed further in this decision, the Respondent did not deal with enquiries and complaints in a timeous manner.

Paragraphs of the 2021 Version of the Code

2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

99. The Respondent had not responded to a request for information from Mr Parnez, on behalf of the Applicant on 3 September 2024. The Respondent had not responded to the request for information made by the Applicant on 12 June 2023.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

100. The Respondent had not provided the information the Applicant had asked for on 12 June 2023. In this regard the Respondent has not complied with the Code.

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.

101. It appears from the documents before the tribunal that the Applicant's agent, Mr Parnez has not been advised of the final decision in relation to the complaints

letter that he submitted and that, in this regard, the Respondent has not complied with the Code.

Property Factor's Duties

102. On the basis of the Respondent's failure to send details to the Applicant of the insurance claim and the letter from the insurer's solicitors, the tribunal determined that the Respondent had failed to carry out the property factor's duties.

Disposal

103. The Applicant is seeking information from the Respondent in respect of matters concerning the insurance claim. It seemed reasonable that a PFEO should be made which required the Respondent to provide this.

104. The Applicant is seeking refund of management fees. It is an understandable position. However, an element of management has still been carried out by the Respondent. It has communicated with the insurers and is still paying the insurance premium for the Property. It has not required to deal with the management of repairs which would have been carried out prior to 2016.

105. The Respondent's failures in communication and responding to the Applicant were breaches of the Code and failure to carry out the property factor's duties. The tribunal did not accept that, for the reasons set out in this decision, significant prejudice was caused to the Applicant. The tribunal determined that the Respondent should pay compensation to the Applicant. In assessing such compensation, the tribunal apportioned part of it to an element of a rebate for some of the management fees. In all the circumstances, the tribunal determined that a PFEO should include a requirement for the Respondent to pay the sum of £750 to the Applicant.

106. **In terms of section 19 (2) of the 2011 Act, in any case where it is proposed to make a property factor enforcement order, the Tribunal must give notice of the proposal to the property factor, and allow parties to make representations to it.**

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.

Martin J. McAllister,
Legal Member
6 October 2026