

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').**

**Chamber Ref:FTS/HPC/PF/23/0716 and FTS/HPC/PF/23/0717**

**Flat 7, 149 Crown Road South, Glasgow, G12 9DP ('the Property')**

**Timothy Lemay residing at Flat 7, 149 Crown Road South, Glasgow, G12 9DP ('the Homeowner and Applicant')**

**Redpath Bruce Property Management ('the Factor and Respondent')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Carol Jones (Ordinary Member).**

### **Decision of the Tribunal**

The Tribunal determines that the Factor has failed to comply with sections 6.1 and 6.4 of the 2021 Code of Conduct.

The decision is unanimous.

### **Background**

1. The Homeowner is heritable proprietor of the property Flat 7, 149 Crown Road South, Glasgow, G12 9DP ('the Property'), which he owns jointly with Sonya Brander, Jacqueline Lemay and Christian Lemay. They purchased the Property in June 2016.
2. Redpath Bruce are factors of the Property and were registered as a property factor on 7<sup>th</sup> December 2012.
3. The Homeowner submitted two applications to the Tribunal both dated 6<sup>th</sup> March 2023:

C1 Application: FTS/HPC/PF/23/0716

C2 Application: FTS/HPC/PF/23/0717

The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the Property Factor's duties and specified sections of the Property Factor Code of Conduct 2012 and the Property Factor Code of Conduct 2021.

4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 17<sup>th</sup> March 2023 he intimated that he had decided to refer the application (which application paperwork comprises documents received on 8<sup>th</sup> March 2023) to a Tribunal.

### **Case Management Discussion.**

5. An oral conference call Case Management Discussion (CMD) took place in respect of the application on 24<sup>th</sup> May 2023 at 10am

The Homeowner attended on his own behalf together with his son Christian Lemay, who attended as a supporter.

The Factor was represented by Stuart McMillan, a Director of Redpath Bruce.

Both parties had lodged written representations and productions with the Tribunal.

5.1 Mrs Taylor explained to Mr Lemay that the Two Codes of Conduct are not identical and the content of the various sections of the Code are different in both versions. Mr Lemay explained that he had not been aware of these differences and would like an opportunity to amend the C2 application to ensure that it refers to the correct paragraphs of the 2021 Code of Conduct. Mrs Taylor explained that if Mr Lemay amends his application to include additional sections of the Code of Conduct the alleged breaches of the additional sections of the Code of Conduct should be notified to the Property Factor.

5.2 Mr Lemay agreed to provide the Tribunal with a copy of the Land Certificate of the Property, including the title plan. He described the Property to the Tribunal. He explained that the Property is a first floor flat within a block of 12 flats. The block was built on a slope between Crown Road South and Hyndland Road. There are two penthouse flats on the top floor of the block. Flat 11, which is one of the penthouse flats, is situated above his Property but flat 11 is not built over the full extent of his Property. Part of the roof is exposed above Flat 7 and part of the exposed area of roof forms the Balcony of Flat 11.

5.3 Mr McMillan confirmed that Redpath Bruce had acted as factors of the development at 149 Crown Road South for over 15 years.

5.4 Mr McMillan confirmed that he was aware of the general nature of the applications and had received a copy of the application detail from Mr Lemay.

5.5 Mr Lemay confirmed that he had been in email correspondence with the Property Factor regarding his complaints but he had not followed the formal complaints

procedure. Mr McMillan advised that he accepted that the matter was now before the Tribunal.

5.6 Mrs Taylor explained that the extensive productions provided by Mr Lemay are not numbered or indexed and consequently it will be difficult for the Tribunal to refer to the Productions during the hearing. Mr Lemay agreed to provide the Tribunal with a further copy of his productions which will be indexed and numbered.

5.7 Mrs Taylor confirmed that the CMD will be adjourned to a Webex hearing. She explained that at the hearing the parties will be invited to make their oral representations in relation to each section of the Code of Conduct and the property factor duties that are referred to in the applications. Each complaint will be considered in turn. She explained that it would be of assistance at the hearing if the parties were able to refer the Tribunal to specific evidence that has been produced in relation to each individual breach of the Code of Conduct and each individual breach of Property Factor duties that are referred to in the applications.

5.8 The parties agreed that they would have a discussion to see if any agreement could be reached.

5.9 In the circumstances the case management discussion was adjourned to a hearing.

## **6. Direction**

The Tribunal issued a Direction dated 24<sup>th</sup> May 2023 which required the Homeowner to provide the Tribunal with a copy of the Land Certificate and Title Plan of the Property Flat 7, 149 Crown Road South, Glasgow, G12 9DP and an indexed and numbered copy of the Productions he had lodged with the Tribunal. The Homeowner complied with the Direction and produced the required documents.

## **7. Written Representations**

### **7.1 Written Representations by the Homeowner:**

#### **7.1.1 The Homeowner's principal written representations:**

The complaint concerns water damage to the Homeowner's Property which had taken place over a period of five years since February 2018 when mould was noticed on the lounge ceiling and the Homeowner contacted the Factor. The Factor sent someone to inspect the ceiling of the Property, following which they wrote to the Homeowner on 14 February 2018:

"Craftsman Cladding have been instructed to check the balcony of flat 11 as the rot contractors believe this is the source of the dampness. They will be in touch with you and the owner of flat 11 directly in early course to arrange access for an inspection."

Nothing further was heard for over three months until the Homeowner asked for an update in late May 2018.

The Factor responded on 29 May 2018:

“The contractors who installed the roofing system have gone into liquidation and we have had some difficulty in sourcing another firm to take over the remaining portion of the guarantee which expires in 2020. Evana Roofing are able to do this and they are arranging access via Mr Burges who owns the top flat at number 11 to check the roof coverings. Further advices will follow once we have their report.”

Access was said to be arranged for the following morning, i.e 30 May 2018. No such report was received.

On 31 January 2019 Mr. Jamie Glasgow of J.H. Horn Plumbing & Heating, recommended by the Factor, attended the Property and advised that the stains on the living room wall were due to an external leak. The Homeowner immediately asked for help from the Factor as soon as possible. Subsequent to that message the Homeowner never heard anything more about the progress of taking over the guarantee or of undertaking repairs to the roof, until he made further complaints due to leakage into the living room ceiling of the Property.

Correspondence from the Factor on 27 May 2021 enclosed its charges for the period 29 November 2020 to 28 May 2021, including this entry:

“9 December 2020 - Evana Roofing - Permanent roof repair as priced above Flat 11 - £690.00”.

The Homeowner did not know the details of these repairs or if they related to the leakage into his Property.

In November 2021 the Factor sent its record of services covering the period 29 May to 28 November 2021, which showed no record that gutter clearing had been done.

On 8 December 2021 the Homeowner sent an urgent report of a leak in the living room ceiling to the Factor.

In response, the Factor suggested the Homeowner should contact the owner of Flat 11 to inquire about possible leaks from his flat. The Homeowner did this and the response from him was in the negative. The Factor also advised the Homeowner to contact Sedgwick loss adjusters regarding the “trace and locate condition on the Homeowner’s building’s insurance policy and stated it was “unlikely” the problem was in the roof.

Following several attempts to contact Sedgwicks in December 2021 and January 2022, the Homeowner finally heard from Carol Brown of that firm on 11 January 2022 that there was no buildings insurance coverage on the common areas of the building, only liability insurance.

The Homeowner advised the Factor the same day. They replied explaining that they would get Evana Roofing to look at the roof.

After a week there had been no contact from Evana and no one came to inspect the roof.

The Homeowner again appealed to the Factor on 19 January 2022, advising that their contractors Bell & Higgins were waiting to effect interior decoration but needed confirmation that water ingress had been stopped.

The Factor advised that Evana attended on 7 February 2022 and he was chasing them for follow-up.

The Homeowner re-iterated on 9 February the need for a solution so that his interior works could begin.

Three weeks later, on 2 March 2022 the Factor wrote that Evana roofing had attended and "...they had unblocked the pipe, cleaned out the pan connector and carried out a water test. This was successful. When they returned to second time, they believed there was further water ingress but confirmed that all was well and not more water had run on to your ceiling. After the recent storms we have had, they are confident that if no more water ingress has occurred, the room can be decorated as the fault has been repaired."

On 14 March 2022 the Homeowner contacted the Factor seeking an early meeting at the Property with a view to resolving the situation. They met on 29 March 2022.

In an email from the Homeowner to the Factor on 12 April 2022 he referred to the meeting and sought further assistance:

Dear Steven, Thank you for meeting with us at the flat on 29 March. As mentioned, due to the pipe installed on the deck belonging to the flat above ours, water ran into our ceiling and down one wall. The roofers sent by the Factor fixed the pipe but there is damage to the ceiling and wall. Water ran down the living room wall, you can see the outline of the decking through the plaster on the ceiling and the ceiling light fixture is not working. The ceiling appears to be bowed. I understand the Factor will arrange to have a contractor come and look above the ceiling, cut a hole in the plaster to see what damage there is and recommend how to deal with it. Would you kindly advise when this will be done. We are keen to have it dealt with and avoid any further damage.'

Menzies & Sons, contractors attended nearly a month later on 10 May but could not get access to Flat 11 to view the roof area, due to the presence of a coded security door installed at the top of the stairway outside Flat 11. The Factor had advised that he would arrange such access.

On 13 June 2022 the Homeowner again urgently contacted the Factor seeking an update.

On 26 May 2022 the Factor sent the Homeowner their invoice for services from 29 November 2021 through end of May 2022 which included a £400 charge from Evana for pipe cleaning but indicated that no gutter cleaning had been carried out during that period.

No gutter cleaning had been carried out during the entire year from May 2021 through May 2022.

The Homeowner found this to be surprising given the repeated advice the Factor sends to flat owners of the importance of regular gutter cleaning to be undertaken by the factors to prevent exterior and interior damage.

On 21 June 2022 the Factor wrote to the Homeowner noting that there had been no action on repairing the leaks, to which the Factor replied, mentioning that Menzies (who had still not visited the roof area) had referred to a possible “cold spot in the roof below the balcony area”, and that the Factor would arrange Menzies’ attendance.

In the first half of July the Homeowner was urged by the Factor to arrange with Flat 11 the access by Menzies to the roof area there, however he had no contact information and could not access Flat 11’s door due to the intervening security door.

On 15 July 2022 the Factor relayed to the Homeowner Menzies’ opinion that they “could not see any sign of damage to the balcony above” and that the problem in our flat was “condensation, as it was all black spores to the ceiling and the room was quite dark with curtains virtually closed and no ventilation to the room. There was no real sign of any damp or water staining to the ceiling.”

On 26 August 2022 the Factor wrote to the Homeowner re-iterating Menzies’ conclusion that the problem was one of condensation and urging the Homeowner to settle it “privately”.

The Homeowner replied that Menzies had never undertaken their promised follow-up visit and requested that a contractor attend soonest.

On 30 August 2022 Mr. Clark advised that the Factor was changing contractors from Menzies to AGM roofing, that both Flat 7 and Flat 11 would need to be viewed, and seeking a suitable time for same. Nearly two weeks later, having heard nothing by 13 September 2022 the Homeowner contacted the Factor asking when AGM would visit. Fifteen days later on 28 September the Factor replied with apologies that “instruction failed to email the contractor”.

On 30 September 2022 the Homeowner wrote to the Factor advising that a contractor had come, seeking access to Flat 11, that it was now raining and water

was again leaking into the living room. On 5 October 2022 the Factor wrote to advise that AGM Roofing said the slabs on the deck/roof above the living room needed removing, and recommended a “primer & liquid plastic coating to seal all areas”.

AGM had noted that owners of Flat 11 “advised that this has been ongoing for 7 years”.

It rained heavily in Glasgow on the evening of 6-7 October 2022. At around 3:00 a.m. the Homeowner was awakened by the sound of water pouring into the flat through a bedroom ceiling light, an adjacent door frame and inside the wall between our bedroom and the living room. He informed the Factor immediately.

On 10 October 2022, Mr. John Thomson of HCS Construction Ltd. attended the property on behalf of the Homeowner on an emergency basis. HCS took damp meter readings in the flat which indicated red, examined where the water entered the ceiling light fixture and advised that the flat was uninhabitable.

On 19 October 2022 Mr. George Kelly, an investigator for Building Validation Solutions Ltd. (BVS) attended on behalf of the Homeowner’s home insurer Royal & Sun Alliance (RSA) to inspect damage to the flat and furnishings. RSA has denied the Homeowner’s claim for relief under the policy.

BVS’s 28 October 2022 declinature letter states: “damage to the Property is considered to be due to rainwater ingress over a period of time and not the result of an insured cause”.

Royal Sun Alliance advised the Homeowner on 15<sup>th</sup> November 2022 that the Homeowner’s insurance policy excludes damage caused by wear and tear and this is defined in his policy as ‘Any loss, damage, liability, cost or expense of any kind caused by or resulting from wear and tear, depreciation, corrosion, rusting, damp, insects, vermin, fungus, condensation, fading, frost or anything which happens gradually, the process of cleaning, dyeing, repair, alteration, renovation or restoration or any consequential loss. The build up of leaves and vegetation happened gradually and not as a result of a one off incident.

The entry by George Kelly following his visit to the Property on 19<sup>th</sup> October 2022 concluded that “the claim has been declined as the damage was due to the flat roof being choked with leaves and vegetation.”

The areas affected by this influx of water were found by BVS to be damp upon inspection - even as late as nearly two weeks after the ingress - and consistent with the flooding as reported by the Homeowner.

On 25 November 2022 the Factor sent its billing for services from 29 May through 28 November 2022 which, though it includes charges from Gilmour & Son for roof repairs, indicated that no gutter cleaning had been carried out during that period.

The Gilmour roof repairs occurred on 7 October 2022 (i.e. the morning after the Property was flooded) and 19 October 2022.

Assuming that the Gilmour repairs may have included some element of gutter and drainage clearing, it appears that no gutter cleaning had been carried out during the entire one-and-a-half years from May 2021 through at least 7 October 2022.

It appears that water built up and overflowed from the gutters or drain servicing the balcony of Flat 11 above.

HCS Construction, retained by the Homeowner, attended on 21 November 2022; the outcome of that visit was summarised in an email to the Factor the same day:

'HCS construction have been in today, installed dehumidifiers in affected rooms and cut exploratory holes in walls and ceiling. We also visited an upstairs neighbour so the contractor could see how drainage is meant to occur from the roof. His view is that water is entering at the point where the sliding door on the exterior wall meets the surface of the roof/balcony above (a common area). Water from the exterior, then enters at or under the flashing and travels into the ceiling and walls of our flat. This area needs to be properly sealed to prevent further ingress.'

The Homeowner understands similar work was done to Mr Stewart's penthouse flat (a mirror image of the Burgess flat above us) some 15 years ago.

Agreement is being sought from all of the flat owners, but in the meantime the Homeowner has paid the balances owing from several other flat-owners in the building so that repair work to the exterior common areas can begin immediately.

The Homeowner's own contractors advise that works to restore and decorate the interior of the Property cannot and should not begin until the exterior leakage issues have been identified and rectified. This is the responsibility of the Factor.

#### **7.1.2 The Homeowner's written representations in response to the Factor's written representations:**

The Factor's list of invoices confirms the Homeowner's submission that no gutter clearing occurred during the more than one-and-a-half years between 1 March 2021 and 19 October 2022, the latter date being nearly two weeks after the flooding of the Homeowner's Property. This accords with the insurer's conclusion (per BVS) that the roof was "choked with leaves and vegetation."

There are references to work carried out on the roof above Flat 11. Such repairs have no connection to the Homeowner's Property, the roof of which is formed by the underside of Flat 11.

Reference to repairs done in February 2020 to Flat 12 have no connection to the Homeowner's Property, which is below Flat 11 and not Flat 12.



With reference to the condensation issue, the Menzies employee attended without prior notice and without identification at 7:30 am when the occupants were still in bed, at which time the curtains were closed as they are at night. Menzies has proved itself an unreliable source of advice in this matter, as the history shows, and in any event there is no evidence that the damage complained of in this application was due to condensation.

The factor exempts itself from liability for 'defective workmanship', however the question here is rather one of 'no workmanship'. Over a period of years the problem was not seriously diagnosed or attended to, despite our repeatedly drawing attention to it.

## **7.2 Written Representations by the Property Factor:**

Firstly, and to clarify our role as Property Factor, we are appointed by the collective group of owners within the block at Beechgrove, 149 Crown Road South, and with specific reference to our Written Statement of Services, as it pertains to 'Repairs and maintenance', would be to assist as follows:

- Arranging common repairs and maintenance by instructing contractors and service providers on behalf of the homeowners, which may be subject to the availability of homeowner funds.
- Entering into contracts where appropriate with contractors and service providers, i.e for gardening, lift maintenance, cleaning, utilities, etc. and arranging the employment and remuneration of on-site staff.
- When requested, investigating any complaints of unsatisfactory work and making every effort to resolve these complaints.
- Where appropriate, obtaining competitive quotations from several tradesmen and seeking the authority of the homeowners before proceeding.
- Provision of advice on maintenance, repairs and improvements if necessary.

Furthermore, and with reference to our Written Statement of Services, the following is stated:

**Appointment of Contractors as Agent for Homeowners. All routine instructions to contractors are given by us as "Agent" on behalf of the homeowners. We will only instruct contractors on your behalf who have provided the necessary public liability insurance. We accept no responsibility for defective workmanship or for works performed to an unacceptable standard. However, should you contact us and inform us that you are dissatisfied with the standard of the completed work, we will contact the contractor on your behalf and make every effort to resolve the issue to your satisfaction.**

Generally, and when issues are reported to us, relating to damage to either a common area or within a private apartment, but potentially linked to a common source, it is necessary for the cause to be established. Having reviewed our records since 2018 I note that over this period, various contractors and service suppliers have been appointed by our firm on behalf of the owners, in an effort to identify the cause of the water ingress, to provide advice and input on potential solutions, or to carry out works that may in turn help to alleviate and resolve the water ingress from occurring. Please find undernoted the details of the work carried out during this period, together with details of the contractor/service supplier, the service undertaken and the cost for the same (on a common basis). Whilst various common repairs have been carried out, I note that contractors had also highlighted condensation as a potential contributory factor within the apartment in question, which was duly shared with the owner. Copies of the associated contractors' invoices can be provided. We would also highlight that these demonstrate that proactive cleaning of roof gutters also being undertaken annually in this regard.

All repairs detailed in the table below were carried out to the development at 149 Crown Road, South.

<b>Repair Date</b>	<b>Total invoice Amount</b>	<b>HO share of invoice</b>	<b>Description</b>	<b>Contractor</b>
09/05/2018	336	27.98	Gutter cleaning	SALTIRE ACCESS LTD
20/06/2018	155.46	12.94	Clear blocked outlets on porch roofs	J H HORN PLUMBERS LTD
20/06/2018	696	57.97	Roof repair	EVANA ROOFING & BUILDING LTD
21/02/2019	336	27.98	Gutter cleaning	AGM ROOFING & CONSTRUCTION LTD
10/04/2019	168	13.99	Temp covering at roof outlet flat 11	EVANA ROOFING & BUILDING LTD

22/01/2020	336	27.98	Gutter cleaning	SALTIRE ACCESS LTD
04/02/2020	1680	139.94	Roof / Gutter repairs as priced	EVANA ROOFING & BUILDING LTD
06/02/2020	163.32	13.60	Investigating water ingress from flat 12	J H HORN PLUMBERS LTD
09/12/2020	828	68.98	Permanent roof repair as priced above flat 11	EVANA ROOFING & BUILDING LTD
01/03/2021	336	27.98	Gutter cleaning	SALTIRE ACCESS LTD
27/01/2022	480	39.98	Clear choked pan connector at downpipe	EVANA ROOFING & BUILDING LTD
07/10/2022	607.18	50.58	Roof repair	Gilmour Building Services
19/10/2022	516	42.98	Gutter Cleaning	Gilmour Building Services

Over the course of the period in question, whilst concurrently engaging with contractors and service suppliers on their behalf, they have also communicated with the group of homeowners, and in particular approval was recently sought to progress with a specific repair to areas above the homeowner's property, on the basis of advice provided by attending contractors. Whilst they were initially unable to obtain the full funding requested, with the assistance of the applicant, who contributed an additional sum to meet the works shortfall, these have been instructed. Arrangements are being made for works to be progressed, with access requiring to be agreed directly with the homeowners of Apartment 11 and the appointed contractor Glasgow Property Maintenance to facilitate the same.

In relation to the recent report of water ingress from the applicant in January 2023, the input from the attending contractors was that this also relates to the area where

works have been instructed, and it is hoped that this will be resolved by the imminent repairs as mentioned.

Whilst it is of course regrettable that these issues have arisen and the homeowner has experienced water ingress, they are satisfied they have sought to assist wherever at all possible and have engaged with owners, contractors and service suppliers, with the intention of investigating matters, and to progress works, in line with the recommendations provided by those firms.

In most instances, unless works are being supervised or have been specified in advance by way of a Building Surveyor or Consultant, any advice given or works carried out will be on the basis of the findings and recommendations of the individual contractor appointed, on behalf of the owners.

With works currently pending, they appreciate that the owner will be required to continue to monitor the affected areas post completion, so that the success of the repair work can be fully known to have resolved the issues.

In the event that problems were to persist, then further advice would have to be sought by the group of owners on potential next steps, from contractors or a Consultant / Surveyor, to ascertain the most appropriate course of action to be taken thereafter in terms of the ongoing maintenance and repair of their building.

Taking all of the above into consideration, they do not feel that it would be appropriate or reasonable for the Factor to be considered liable to provide compensation for issues or damage experienced by the owner of the property and ultimately, the homeowner is responsible for the reinstatement of the private areas within their own apartment.

Whilst it is unfortunate that issues have arisen in the first place, this is unfortunately not uncommon within multiple ownership developments, and in this instance, the cause has primarily been as a consequence of building issues, which the Factor has been seeking to assist the homeowners who are responsible for the maintenance and repair of the common parts of the block with rectifying, demonstrated by the repair work that has been undertaken.

## **8. Findings in Fact.**

**8.1** The Homeowner is heritable proprietor of the property Flat 7, 149 Crown Road South, Glasgow, G12 9DP which he owns jointly with Sonya Brander, Jacqueline Lemay and Christian Lemay. They purchased the Property in June 2016.

**8.2** Redpath Bruce are factors of the Property.

**8.3** In terms of the Factor's Written Statement of Services the Factor has delegated authority to carry out repair and maintenance works to the Property that cost less than £500 per property without prior authorisation unless specific health

and safety or emergency issues arise which require the Factor to authorise higher levels of expenditure.

**8.4** The common repairs to the property Beechgrove, 149 Crown Road South, Glasgow instructed by the Factor during the period 2018 to 16<sup>th</sup> August 2021 were less than £500 per property.

**8.5** The Factor has details of the access code of the security door and provides this to contractors.

**8.6** Alliance Timber and Damp Specialists report dated 5<sup>th</sup> February 2018 states that there was very slight water ingress to the Property and low levels of condensation.

**8.7** By 4<sup>th</sup> February 2018 the Factor had instructed Craftsman Cladding to check the balcony of flat 11.

**8.8** The Homeowner sent emails to the Factor dated 14<sup>th</sup> February 2018 and 24<sup>th</sup> May 2018 which asked for an update on the condensation issue.

**8.9** By 1<sup>st</sup> February 2019 Evana Roofing had been instructed.

**8.10** On 8<sup>th</sup> December 2021 Jacqueline Lemay sent an email to the Factor advising that an urgent repair was required which was described as being 'a slow drip every now and then'.

**8.11** A repair was carried out on 27<sup>th</sup> January 2022.

**8.12** On 9<sup>th</sup> February 2022 the Homeowner sent an email to the Factor advising that he was 'particularly concerned about any water damage in the space between the roof and the ceiling of the sitting room as the leak has been going on for a long time'.

**8.13** The contractor Menzies visited the Property on 10<sup>th</sup> May 2022.

**8.14** The contractor AGM was instructed by the Factor on 28<sup>th</sup> September 2022 and they inspected the water damage on 30<sup>th</sup> September 2022.

**8.15** On 30<sup>th</sup> September 2022 Jacqueline Lemay sent an email to the Factor advising that there was a further leak.

**8.16** AGM inspected the property on 30<sup>th</sup> September 2022.

**8.17** AGM reported to the Factor on 5<sup>th</sup> October 2022 and advised that the slabs on the flat roof need to be lifted and the flat roof needed to be primed and sealed.

**8.18** A repair was carried out on 7<sup>th</sup> October 2022.

**8.19** The common repairs to the property Beechgrove, 149 Crown Road South, Glasgow instructed by the Factor during the period from 16<sup>th</sup> August 2021 to 2022 were less than £500 per property.

## **9. Hearing.**

A video hearing via webex took place in respect of the application on 31<sup>st</sup> July 2023 at 10am.

The Homeowner attended on his own behalf.

The Factor was represented by Stuart McMillan, a Director of Redpath Bruce.

The Homeowner had lodged an amended C2 application with the Tribunal.

At the start of the hearing the parties agreed that the roof above the Homeowner's property and the patio that had been formed on the roof that was used by the owners of flat 11 was common property.

### **9.1 The detail of the Homeowner's applications and the parties' representations in relation to the detailed complaints are as follows:**

**Section 6.1 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**"You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required."**

#### **The Homeowner's complaint:**

Insufficient work was carried out by the Factor to rectify the leak. There was insufficient communication from the Factor with the result that he did not know what works were being carried out. The repair took over four years to be resolved.

#### **The Factor's response:**

Mr McMillan explained that it is unfortunate that the water leak occurred. The Factor employs contractors on behalf of homeowners. The Factor uses contractors that are known to them. The Factor relies on the advice they receive from contractors.

The Factor's contract with the Homeowner is detailed in the Factor's Written Statement of Services:

*Repairs & Maintenance Requests*

*'We expect all homeowners to notify us promptly of any common property requiring repair or maintenance. Our repairs department will take all routine common repair enquiries during normal business hours. For repairs and maintenance completed under our delegated authority, homeowners should not expect to receive updates on the progress of these jobs ....'*

The Factor's management fee reflects the level of reporting contained in the written statement of services.

The Factor sends half yearly invoices to homeowners which details the works carried out.

The Factor's Property Specific Schedule of Services states that where practicable the Factor will not instruct works exceeding £500 per property without prior authorization unless specific health and safety or emergency issues arise which require the Factor to authorize higher levels of expenditure.

### **The Tribunal's Decision:**

The Factor's Written Statement of Services specifically states that *'For repairs and maintenance completed under our delegated authority, homeowners should not expect to receive updates on the progress of these jobs ....'*

The Factor's Property Specific Schedule of Services states, under the heading 'Delegated Authority': *'We have no agreed limits of instruction with the majority of co-owners. However, where practicable we will not instruct works exceeding £500 per property without your authorisation...'*

The Tribunal find as a matter of fact that the common repairs to the property Beechgrove, 149 Crown Road South, Glasgow instructed by the Factor during the period 2018 to 16<sup>th</sup> August 2021 were less than £500 per property.

The Factor was not contracted to provide the Homeowner with progress reports in relation to ongoing repairs that cost less than £500 per property.

The Tribunal determine that the Factor has not breached section 6.1 of the 2012 Code of Conduct.

### **Section 6.2 of the 2012 Code of Conduct (Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.**

### **The Homeowner's complaint:**

The fact that there was water ingress to the Homeowner's Property meant the required repair was clearly an emergency. Repairs were delayed as the Factor had not provided proper access to contractors due to contractors being unable to gain access. The Homeowner explained that there is a security door at the top of the communal stair case that gives access to the two top floor flats, numbers 11 and 12. The Homeowner does not have contact details for the owner of number 11 and does not know the access code of the security door.

#### **The Factor's response:**

Mr McMillan advised that the Factor has details of the access code to the security door that leads to flats 11 and 12. They provide the contractors with access details as required.

The Factor has emergency procedures in place and they are set out at page three of the Factor's Written Statement of Services.

He also referred the Tribunal to the email from the contractor Gilmours dated October 2022 which refers to access being gained to the flat roof above the Homeowner's Property by ladder.

#### **The Tribunal's Decision:**

The Tribunal find as a fact that the Factor has emergency arrangements specified at page three of their written statement of services, which refers homeowners to the repairs notification service on the Factor's website, contact telephone numbers where there is a recorded message with details of emergency contractors.

The Tribunal accept the evidence of Mr McMillan that the Factor has details of the access code of the security door and provides this to contractors as required.

The Tribunal acknowledged that the Homeowner's complaint that the Factor did not provide access to contractors does not fall within the requirements of section 6.2 of the 2012 Code of Conduct.

Section 6.2 of the 2012 Code of Conduct requires the Factor to have emergency procedures in place to report repairs and to provide access. The Tribunal determine that the Factor has not breached section 6.2 of the 2012 Code of Conduct.

#### **Section 6.9 of the 2012 Code of Conduct Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**"You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor."**



**The Homeowner's complaint:**

The problem with the water ingress to his Property has still not been resolved. He kept reporting the problem to the Factor. He is not aware of the Factor having pursued the contractors.

The Homeowner explained that he was initially aware of water ingress to his Property as there was staining on the ceilings. By March 2022 there was bowing to the ceiling and the ceiling struts became visible.

**The Factor's response:**

Mr McMillan explained that water ingress to properties can be difficult to resolve. It can take several investigations to determine the root cause of the problem. Once repairs have been carried out if the problem persists they may employ a building surveyor.

He does not believe that any of the contractors who carried out the work to the Homeowner's Property provided inadequate work. He does not believe that there has been a glaring defect by contractors.

**The Tribunal's Decision:**

The Factor's Written Statement of Services at page Two states that the Factor does not carry out the service of inspecting or supervising repairs or maintenance. Also at page Three under the paragraph headed 'Appointment of Contractors as agents for Homeowners' states 'We accept no responsibility for defective workmanship or for works performed to an unacceptable standard. However, should you contact us and inform us that you are dissatisfied with the standard of the completed work, we will contact the contractor on your behalf and make every effort to resolve the issue to your satisfaction.'

The Homeowner did not provide the Tribunal with any evidence that he had contacted the Factor between 2018 and 16<sup>th</sup> August 2021 and reported that he was dissatisfied with the standard of work that had been completed by contractors during this period. The Tribunal determine that the Factor has not failed to comply with section 6.9 of the 2012 Code of Conduct.

**Section 7: Complaints Resolution**

The Homeowner confirmed that whilst he ticked box 7 on the C1 application form this is no longer part of his complaint.

**Property Factor Duties Application C1 (complaint up to 16<sup>th</sup> August 2021):**

**Summary of the Homeowner's complaint that the Factor had breached Property Factor duties up to 16<sup>th</sup> August 2021:**

The Factor's failure to carry out their duties as property factor are complaints that they have failed to comply with the Code of Conduct and their own Written Statement of Services, including: Per Redpath Bruce's Written Statement of Services

- *Failure in their duty to arrange timely common repairs and maintenance, including long delays in responding to our requests, arranging attendance of competent contractors as well as access by them to common roof areas, provision by them of timely and accurate diagnosis and remedy of leakage from those areas "Provision of advice on maintenance, repairs and improvements if necessary" "Employing contractors at our discretion based on our experience that the contractor is reliable and capable of completing a repair satisfactorily ..." "We expect all homeowners to notify us promptly of any common property requiring repair or maintenance. You can expect emergency matters reported to us to be intimated to a contractor immediately. You can expect routine repairs to be instructed by us on the same day as your instruction – time scales given: Roofing emergency within 24 hours, Roofing non-emergency within 21 days. We expect contractors appointed on your behalf to attend within the following timescales ... Plumbing emergency within 4 hours Plumbing non-emergency within 7 days. Roofing emergency within 24 hours. Roofing non-emergency within 21 days.*

- *Failure, contrary to its own repeated guidance, to maintain regular cleaning of gutters in order to prevent water from draining into the gutters and down the downpipes causing gutters to overflow, which could cause water ingress into property or could damage the fabric of the building.*

**THE FIRST COMPLAINT of a breach of Property Factor duties during the period 2018 to 16<sup>th</sup> August 2021:**

**Failure in their duty to arrange timely common repairs and maintenance, including long delays in responding to requests from the Homeowner, arranging attendance of competent contractors as well as access by them to common roof areas, provision by them of timely and accurate diagnosis and remedy of leakage from those areas.**

#### **The Homeowner's Representations:**

The Factor is under a duty to arrange for competent contractors to carry out repair works. The contractors employed by the Factor were incompetent as they failed to identify the true cause of the water ingress into his Property. Some of the contractors wrongly stated that the water ingress had been caused by condensation.

The Factor delayed in instructing the repairs to the roof above the Homeowner's Property.

### **The Factor's response:**

Mr McMillan advised that the Factors employ contractors who they have used in the past and are competent contractors. The contractors are bonafide contractors that are also used by other property factors. In his experience some repairs may not go to plan, as happened in the repairs that were carried out to the common roof above the Homeowner's Property. He acknowledged that five contractors had reached different conclusions. None of the contractors had advised the Factor that it was necessary to instruct a building survey in relation to the water ingress problem at the Homeowner's Property. He consulted his case management system during the hearing and reported that in 2018 the Factor had obtained a report from a damp specialist which reported that the cause of the damp pointed towards condensation. He acknowledged that he had not provided the Tribunal with a copy of the report. He also explained that in general the Factor would only consider employing a building surveyor to advise on repairs if approximately £1200 plus Vat had been incurred in unsuccessful repairs. This was not the position in relation to the repairs to the Homeowner's Property.

If owners are concerned about defective works they could pursue contractors through the courts.

### **The Tribunal's Decision:**

There are four separate complaints listed by the Homeowner under the First Complaint that the Factor had breached Property Factor duties during the period 2018 to 16<sup>th</sup> August 2021 ( in terms of the C1 application). Considering each in turn:

#### **(i) Failure in their duty to arrange timely common repairs and maintenance.**

#### **The Factor's Written Statement of Services on page three states:**

'We expect contractors appointed on your behalf to attend within the following timescales....however these timescales cannot be guaranteed:

Roofing emergency: within 24 hours.

Roofing non emergency: within 21 days.'

From the parties written representations and documents produced, the following required repairs were intimated to the Factor during this period and the response times are detailed:

Dated Repair intimated by	Details	Date of Contract or's	Contractors' details	Defect reported
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Homeowner		Invoice		
Before 1 <sup>st</sup> February 2018	In terms of the Report from Alliance Timber and Damp Specialists Ltd dated 5 <sup>th</sup> February 2018 they inspected the ceiling of the Property on 1 <sup>st</sup> February 2018 and reported very slight water ingress to a small section of the ceiling and the wall/ ceiling junction and also low levels of condensation. The area above is a roof garden and water ingress may be occurring from this point. Tradesmen should be employed to check and repair as necessary. The report was produced to the Tribunal following the hearing.			
14 February 2018	14 February 2018 (confirmed by email from Robert Campbell to the HO dated 14.2.18 advising that Craftsmen Cladding have been instructed to check the balcony of flat 11). Then email dated 29.5.2018 from Robert Campbell to the HO advising that contractor had gone into liquidation and Evana Roofing would take over roofing guarantee access was being arranged.	20 <sup>th</sup> June 2018	Craftsman Cladding/ Evana	The Homeowners email to the Property Factor dated 14 <sup>th</sup> February 2018 was headed 'Condensation issue' and thanked Factor for arranging visit and asking if there had been any feedback. Email from Homeowner to the

				Property Factor dated 24 <sup>th</sup> May 2018 asking if there has been any outcome re condensation issue.
31 January 2019 (email from HO to Robert Campbell dated 31.1.2019)	1 <sup>st</sup> February 2019 (email from Robert Campbell to HO dated 1.2.2019 confirming Evana instructed.	10 <sup>th</sup> April 2019.	Evana Roofing	External leak identified by J H Horne reported to Mr Campbell, employed by the Factor (email dated 31 <sup>st</sup> January 2019.

As stated, the above details have been extracted from the information provided by the parties. The exact date the works were carried out by the contractors is not known as the parties have not provided this information.

The Written Statement of Services states on page three that the dates that contractors carry out works cannot be guaranteed.

In connection with the 2018 repairs detailed above, the Factor referred to the Report from Alliance Timber and Damp Specialists Ltd dated 5<sup>th</sup> February 2018 during the hearing and produced a copy to the Tribunal following the hearing. During the hearing the Homeowner advised that he was not aware of the report. The fact that the Homeowner did not have a copy of the report did not form part of the Homeowner's complaint. The detail of the report dated 5<sup>th</sup> February 2018 did not form part of the Homeowner's complaint as he was not aware of the Report until it was mentioned during the hearing. The emails from the Homeowner to the Factor dated 14<sup>th</sup> February 2018 and 24<sup>th</sup> May 2018 were asking for an update on the condensation issue. They were not advising the Factor that repairs and maintenance were required. The Tribunal determine that the Factor has not breached the Property Factor duty to arrange timely common repairs and maintenance as specified in their Written Statement of Services in relation to the condensation issue referred to in the Homeowner's emails dated 14<sup>th</sup> February 2018 and 24<sup>th</sup> May 2018.

In connection with the required repairs notified to the Factor on 31<sup>st</sup> January 2019, the Factor instructed the repairs on 1<sup>st</sup> February 2019. The Tribunal determine that

the Factor has not breached the Property Factor duty to arrange timely common repairs and maintenance as specified in their Written Statement of Services in relation to the repairs notified to the Factor on 31<sup>st</sup> January 2019.

**(ii) Long delays in responding to requests from the Homeowner.**

The Tribunal determine that the Homeowner has not specified the particular requests and delays in terms of the Factor's written statement of services that the Homeowner is referring to in relation to the period February 2018 to 16<sup>th</sup> August 2021. The Tribunal also noted that no complaint had been brought under section 2.5 of the 2012 Code of Conduct. The Tribunal are unable to uphold this complaint due to lack of specification.

**(iii) Long delays in arranging attendance of competent contractors as well as access by them to common roof areas.**

The Tribunal determine that the Homeowner has not specified the particular delays in arranging the attendance of competent contractors and access by them to common roof areas in terms of the Factor's written statement of services that the Homeowner is referring to in relation to the period February 2018 to 16<sup>th</sup> August 2021. The Tribunal are unable to uphold this complaint due to lack of specification.

**(iv) Long delays in the provision of timely and accurate diagnosis and remedy of leakage from those areas.**

The Tribunal determine that the Homeowner has not specified the particular delays in the provision of timely and accurate diagnosis and remedy of leakage from those areas, in terms of the Factor's written statement of services that the Homeowner is referring to in relation to the period February 2018 to 16<sup>th</sup> August 2021. The Tribunal are unable to uphold this complaint due to lack of specification.

**THE SECOND COMPLAINT of a breach of Property Factor duties during the period 2018 to 16<sup>th</sup> August 2021:**

**Failure, contrary to its own repeated guidance, to maintain regular cleaning of gutters in order to prevent water from draining into gutters and down the downpipes causing gutters to overflow which could cause water ingress into property or could damage the fabric of the building.**

**The Homeowner's Representations:**

During the period May 2021 to 19<sup>th</sup> October 2022 the gutters had not been cleared. The Factor's invoice dated 19<sup>th</sup> October 2022 confirms that the debris was cleared on 7<sup>th</sup> October 2022, the morning after the flood.

There are tall trees at the back of the Property and they deposit a large amount of leaves. He does not understand why the gutters were not cleared in May 2022. He referred the Tribunal to letters from the Factor dated November 2018 advising the Homeowners of the importance of having gutters cleared. He explained that this places the Factor under a duty to arrange gutter clearing. It was his understanding that the Factor provided a gutter clearing service.

**The Factor's response:**

Mr MacMillan advised that the gutters are cleaned each calendar year. In between times if contractors are on site and advise that the gutters need an additional clearance this would be arranged. Evana attended the Property in January 2022 and did not advise that additional gutter clearing was necessary.

The Factor provides a proactive gutter cleaning service. If additional gutter clearing is required it would be for the Homeowners to advise the Factor that additional works are needed. The Homeowners did not request additional gutter clearing. There is no mention of gutter clearing in the Property Specific schedule of works that the Factor provides. The Factor does not provide the service of inspecting gutters annually. The letters sent to the homeowners in connection with the gutters were sent to homeowners in a large number of the Factors' developments to reduce the overall cost for owners.

**The Tribunal's Decision:**

The Tribunal determine that the Factor's written statement of services does not oblige the Factor to provide a regular gutter clearing service. In addition, the letter to the Homeowner dated November 2018 does not create a contractual obligation of the Factor to provide a gutter clearing service. The letter recommended that gutters are cleared on an annual basis but it did not state that the Factor would provide an annual gutter cleaning service. The Homeowner's complaint is that the gutters were not cleaned between May 2021 and October 2022. The breach of property factor duties under application C1 is in relation to the period 2018 to 16<sup>th</sup> August 2021. The Tribunal noted that the quarterly invoices included an entry dated 1<sup>st</sup> March 2021 'Annual gutter clean'.

The Tribunal determine that the Factor was not under a property factor duty to provide a regular gutter cleaning service and they are therefore unable to uphold this complaint.

**Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

**This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can**

**help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.**

**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. The Homeowner referred the Tribunal to his earlier submissions, his productions and the fact that the Factor had not carried out the repairs to his Property promptly.

**The Factor's response:**

Mr McMillan advised that the Factor uses external contractors. They acknowledge they are under a duty to carry out prompt repairs to a good standard. He believes that they comply with this duty.

**The Tribunal's Decision:**

The Tribunal prepared a table showing the repairs notified to the Factor after 16<sup>th</sup> August 2021 and the responses from the information contained in the parties' representations:

<b>Date</b>	<b>Details</b>	<b>Date of Contractor's Invoice</b>
8 <sup>th</sup> December 2021	Email from Jacqueline Lemay to PF reporting leak through living room ceiling which needs urgent attention.	N/A
9 <sup>th</sup> December 2021	Email from Jacqueline Lemay to PF refers to the leak being a slow drip every now and then.	
9 <sup>th</sup> December 2021	Email from PF to Jacqueline Lemay advising that she should first contact the upstairs neighbours.	
13 <sup>th</sup> December 2021	Email from Jacqueline Lemay to PF advising that they have contacted the upstairs neighbours and they have not found a leak. She recalled that there had been an issue in the past with the roof of the building leaking when it rained.	
14 <sup>th</sup> December 2021	Email from PF to Jacqueline Lemay advising that it is unlikely to be the roof if the owner of the flat above is not experiencing any leaks. The next step is to contact Sedgwicks, the Loss Adjusters.	



11 <sup>th</sup> January 2022	Email from the Homeowner to the PF advising that Sedgwicks had advised that there is no insurance cover for leaks or other structural issues for the building. He expressed concern that he wanted to sort out the problem before the damage spreads.	
11 <sup>th</sup> January 2022	PF sent email to Tim Lemay advising that the best step is to get a contractor to view the leak. He would arrange for Evana to inspect.	N/A
18 <sup>th</sup> January 2022	Jacqueline Lemay sent an email to PF chasing up contractor.	N/A
19 <sup>th</sup> January 2022	PF email to Jacqueline Lemay repairs team have been asked to chase Evana Roofing. If they are too busy another contractor will be instructed.	N/A
7 <sup>th</sup> Feb 2022	Email from HO to PF acknowledging that Evana have investigated and carried out an initial repair.	27.1.22 (£480)
9 <sup>th</sup> Feb 2022	Email from PF to HO, Evana have been asked to reattend to confirm if the work is complete.	N/A
9 <sup>th</sup> Feb 2022	Email from HO to PF 'we are particularly concerned about any water damage in the space between the roof and the ceiling of the sitting room as the leak has been going on for a long time.	N/A
2 <sup>nd</sup> March 2022	Email from PF to HO Evana had reported the issue had been resolved. They had unblocked the pipe cleaned the pan connector and carried out a water test, which was successful. They were confident that the water ingress issue had been resolved.	
12 <sup>th</sup> April 2022	Email from Sonya Brander to PF, reference to meeting with PF on 29 <sup>th</sup> March. She acknowledged that the pipe had been fixed but referred to outstanding damage to the ceiling and the wall and the fact that the ceiling was bowed.	N/A
12 <sup>th</sup> April 2022	Email from PF to Sonya Brander and HO. Menzies were instructed 6 days previously. He would chase.	
16 <sup>th</sup> May 2022	Email from Jacqueline Lemay to the PF chasing an update on the ceiling/ roof issue. Menzies visited the Property on 10 <sup>th</sup> May 2022 but said he needed access to Flat 11. She expressed concern that the	

		problem was worsening.	
23 <sup>rd</sup> 2022	May	Email from PF to Jacqueline Lemay advising repairs support team will follow up with Menzies and arrange access to flat 11.	
13 <sup>th</sup> 2022	June	Email from Jacqueline Lemay to the PF asking for an update on Menzies visiting the Property.	
21 <sup>st</sup> 2022	June	21 <sup>st</sup> June 2022  PF email to Sonya Brander explaining that PF Property Support Team will coordinate repair and that Menzies reported problem was being caused by cold spot on roof below balcony area.	
5 <sup>th</sup> July 2022		Access gained to flat 11 but not the Property (flat 7).	
15 <sup>th</sup> 2022	July	Email from PF to Jacqueline Lemay and HO advising that Menzies had inspected flat 11 (they had been unable to gain access to flat 7) no damage to balcony evident. Reason for the ceiling issue in flat 7 was condensation based on previous inspection. If the ceiling shows damp or wet marks they would ask the roofer to reattend.	
19 <sup>th</sup> 2022	July	HO sent email to PF advising that there was misinformation re damage to Flat 7 and requesting a call.	
19 <sup>th</sup> 2022	July	PF email to HO to arrange call.	
23 <sup>rd</sup> 2022	August	PF email to Homeowner enquiring if the matter has been resolved.	
24 <sup>th</sup> 2022	August	Email from Homeowner to PF advising that there has been no progress. He asked if anyone has inspected the flat above as they still do not know the extent of the damage to their living room ceiling.	
26 <sup>th</sup> 2022	August	Email to Homeowner from PF referring to email of 15 <sup>th</sup> July 2022 and the fact that the contractor believed the issue to be related to condensation and they could not find a fault with the flat above.	
28 <sup>th</sup>	August	HO sent email to PF advising that the conclusions are premature given that Menzies had not inspected	

2022	his Property and referring to visit by the Factor (Mr Morrison) when he viewed the bowing ceiling in 2021 but the matter is still unresolved. He requested that a contractor inspect asap to determine the nature and extent of the damage.	
30 <sup>th</sup> August 2022	Factor advised that they were changing contractors from Menzies to AGM Roofing.  Email from Sonya Brander to Factor chasing contractors visit. It is imperative that access is given to both flats 7 and 11 at the same time.	
13 <sup>th</sup> September 2022	Email from Homeowner to PF chasing up inspection.	
28 <sup>th</sup> September 2022	Email from PF to Homeowner apologising for the delay in replying. Advising that the contractor had not yet been instructed. Contractor now instructed.	
29 <sup>th</sup> September 2022	Email from Jacqueline Lemay to PF 28.9.23 saying the contractor to inspect on Friday.	
30 <sup>th</sup> September 2022	Email from Jacqueline Lemay to PF advising that the contractor had inspected and was looking to get access to Flat 11. It was raining hard and they had another leak.	
4 <sup>th</sup> October 2022	Email from Jacqueline Lemay to the Factor advising that there is another leak and the matter is urgent.	
4 <sup>th</sup> October 2022	Email from PF to Jacqueline Lemay advising that the contractor had been chased.	
5 <sup>th</sup> October 2022 (AGM reported the work required)	AGM got access to flat 11 and reported that the slabs on the roof would need to be lifted and primer and liquid plastic coating applied to all areas.	
6/7 October 2022	Water pouring into the Property.	

7 <sup>th</sup> October 2022	Roof repaired	£607.18
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The Tribunal reviewed the timeline of events. They considered that there were three separate events in relation to the leaking roof.

The **First event** started on 8th December 2021 when Jacqueline Lemay advised the Factor that an urgent repair was required which she described as being ‘a slow drip every now and then’. In response the Factor, not unreasonably advised Jacqueline Lemay that she should first contact the upstairs neighbour and then the insurance company. On 11<sup>th</sup> January 2022 it was determined that the leak was not covered by insurance and the repair was carried out on 27<sup>th</sup> January 2022. The Tribunal determine that this repair was timeously carried out in terms of the Written Statement of Services as it was carried out within 21 days of the date the Factor was advised that the repair was not covered by insurance. The Tribunal reflected that the Homeowner could have advised the Factor that they did not want to wait until they had clarified matters with the insurance company and they could have instructed the Factor to proceed with the repair sooner but they did not do this.

The **Second event** started on 9<sup>th</sup> February 2022 when the Factor was advised by the Homeowner that he was ‘particularly concerned about any water damage in the space between the roof and the ceiling of the sitting room as the leak has been going on for a long time’. The contractor advised the Factor that the matter had been resolved (email from the Factor to the Homeowner dated 2<sup>nd</sup> March 2022). The details of the meeting between the Homeowner and the Property Factor on 29<sup>th</sup> March 2022 were not provided. The contractor Menzies had been instructed on 6<sup>th</sup> April 2022. The contractor visited the Property on 10<sup>th</sup> May 2022 but advised that access was required to Flat 11. Access was gained to Flat 11 on 5<sup>th</sup> July 2022. The parties have not provided any information as to the reason for this delay and whether or not the delay was due to the owners of Flat 11 being unavailable. Following the inspection of Flat 11 on 5<sup>th</sup> July 2022 the contractor Menzies reported that the issue was condensation. From the email the Homeowner sent to the Factor dated 19<sup>th</sup> July 2022 it seems that the Homeowner did not agree with that analysis of the problem and he arranged a telephone call with the Factor. The details of that discussion were not provided to the Tribunal. The email from the Homeowner to the Factor dated 28<sup>th</sup> August 2022 restated the fact that the Homeowner did not agree with the suggestion that the problem was one of condensation. The contractor was changed on 30<sup>th</sup> August 2022 and the new contractor AGM was instructed on 28<sup>th</sup> September 2022 and they inspected the water damage on 30<sup>th</sup> September 2022.

Insufficient evidence has been provided to the Tribunal to enable them to determine if the Factor was responsible for the delay in the inspection of Flat 11.

The Tribunal find that the Factor cannot be held responsible for the delay in arranging a further inspection due to the contractor Menzies reporting that the cause of the dampness was condensation. The Factor is entitled to rely on the advice they receive from professional contractors they employ. In this connection the Tribunal noted that the matter of condensation had been raised by Alliance Timber and Damp Specialists Ltd dated 5<sup>th</sup> February 2018.

The Tribunal determine that the Factor did delay in instructing AGM Roofing to inspect both Flat 7 and Flat 11 after 30<sup>th</sup> August 2022 as they were not instructed until 28<sup>th</sup> September 2022, being more than 21 days after it was agreed that they should inspect, as required by the Written Statement of Services.

The **Third event** started on 30<sup>th</sup> September 2022 when Jacqueline Lemay advised that there was a further leak. AGM had inspected on 30<sup>th</sup> September 2022. It is not clear from the emails provided if AGM were advised of the leak at the inspection. AGM reported to the Factor on 5<sup>th</sup> October 2022 and advised that the slabs on the flat roof need to be lifted and the flat roof needed to be primed and sealed. The repair was carried out on 7<sup>th</sup> October 2022. The Tribunal determine that the Factor did not delay in having the leak repaired that was intimated on 30<sup>th</sup> September 2022 as it had been carried out within 21 days, as required by the Written Statement of Services.

**Section 6.3 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

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

**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. The Homeowner advised that notwithstanding the Factor's procedures to enable homeowners to notify them of repairs required the repairs were not carried out promptly or competently as is evidenced by the fact that water ingress that was reported to the Factor in 2018 was only finally resolved in June 2023 and he still is not confident that the issue has been satisfactorily resolved.

**The Factor's response:**

Mr McMillan advised that the Factor does have procedures to enable homeowners to notify them of repairs that are required as has been evidenced.

**The Tribunal's Decision:**

The Tribunal find as a fact that the Factor specifies the required arrangements to enable the Homeowner to notify the Factor of matters requiring repair, maintenance or attention at page three of their written statement of services, which states that the

Factor's repairs department will take all routine common repair enquiries during normal business hours. Also the Tribunal notes that the Homeowner accepts that the Factor has procedures to enable homeowners to notify them of repairs required.

Section 6.3 of the 2021 Code of Conduct requires the Factor to have procedures in place to enable homeowners to report repairs. The Tribunal determine that the Factor has not breached section 6.3 of the 2021 Code of Conduct.

**Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

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

**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. Insufficient work was carried out by the Factor to rectify the leak. There was insufficient communication from the Factor with the result that he did not know what works were being carried out. The repair took over four years to be resolved.

**The Factor's response:**

Mr McMillan referred the Tribunal to his earlier comments.

**The Tribunal's Decision:**

As previously stated, the Factor's Written Statement of Services specifically states that *'For repairs and maintenance completed under our delegated authority, homeowners should not expect to receive updates on the progress of these jobs ....'*

The Factor's Property Specific Schedule of Services states, under the heading 'Delegated Authority': *'We have no agreed limits of instruction with the majority of co-owners. However, where practicable we will not instruct works exceeding £500 per property without your authorisation...'*

The Tribunal finds as a matter of fact that the common repairs to the property Beechgrove, 149 Crown Road South, Glasgow instructed by the Factor during the period from 16<sup>th</sup> August 2021 to 2022 were less than £500 per property.

The Tribunal determine that the Factor was not contracted to provide the Homeowner with progress reports in relation to ongoing repairs that cost less than £500 per property.

In connection with the obligation that repairs this must be done in an appropriate timescale the Tribunal refer to their decision under section 6.1 of the 2021 Code of Conduct and as stated therein they determine that the Factor did delay in instructing AGM Roofing to inspect both Flat 7 and Flat 11 after 30<sup>th</sup> August 2022 as they were not instructed until 28<sup>th</sup> September 2022, being more than 21 days after it was agreed that they should inspect, as required by the Written Statement of Services.

Consequently, the Tribunal determine that the Factor has breached section 6.4 of the 2021 Code of Conduct.

**Section 6.5 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

**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.**

**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. The Homeowner referred the Tribunal to his earlier comments.

**The Factor's response:**

Mr McMillan referred the Tribunal to his earlier comments.

**The Tribunal's Decision:**

As previously stated, the Tribunal find as a fact that the Factor has emergency arrangements specified at page three of their written statement of services, which refers homeowners to the repairs notification service on the Factor's website.

The Tribunal accept the evidence of Mr McMillan that the Factor has details of the access code of the security door and provides this to contractors as required.

Section 6.5 of the 2021 Code of Conduct requires the Factor to have emergency procedures in place to report repairs and to provide access. The Tribunal determine that the Factor has not breached section 6.5 of the 2021 Code of Conduct.

**Section 6.7 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

**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.**

**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. The Homeowner advised that the gutters had not been cleaned as often as was necessary. The building is surrounded by trees and gutter cleaning is essential. He referred the Tribunal to the letters from the Factor dated November 2018 and November 2022 which made this point.

**The Factor's response:**

The Factor does not carry out a planned programme of cyclical maintenance for this Property. Usually this would be a long term plan in relation to capital projects for items that will require to be replaced over time such as lifts etc.

The gutters had been cleared once per annum since 2018. The letters referred to by the Homeowner were sent out at the same time as gutter cleaning was being arranged for other properties they managed. This resulted in a lower cost for owners. The letters were not sent out in response to an identified need in relation to the Homeowner's property.

**The Tribunal's Decision:**

The Tribunal determine that the Factor's written statement of services does not include cyclical maintenance and therefore the Factor has not breached section 6.7 of the 2021 Code of Conduct.

**Section 6.12 of the 2021 Code of Conduct (Application C2 (complaint after 16<sup>th</sup> August 2021):**

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



**The Homeowner's complaint:**

Repeated failures to undertake/ complete repair work and to inform the Homeowner of progress of the same within appropriate timescales. The Homeowner referred the Tribunal to his earlier comments.

**The Factor's response:**

Mr McMillan referred the Tribunal to his earlier comments.

**The Tribunal's Decision:**

As previously stated, the Factor's Written Statement of Services at page Three under the paragraph headed 'Appointment of Contractors as agents for Homeowners' states 'We accept no responsibility for defective workmanship or for works performed to an unacceptable standard. However, should you contact us and inform us that you are dissatisfied with the standard of the completed work, we will contact the contractor on your behalf and make every effort to resolve the issue to your satisfaction.'

The Homeowner did not provide the Tribunal with any evidence that he had contacted the Factor between 16<sup>th</sup> August 2021 and October 2022 and reported that he was dissatisfied with the standard of work that had been completed by contractors during this period and that the contractor should be required to complete defective work. The Tribunal determine that the Factor has not failed to comply with section 6.12 of the 2021 Code of Conduct.

There were no complaints of a breach of Property Factor duties in the C2 application.

**10.** The Homeowner advised that he considered that the Factor was liable for the repairs necessary to his Property including costs of:

- Drying and repair/replacement of wall between lounge and bedroom 1.
- Repair/replace living room and bedroom 1 ceilings where water entered from above.
- Checking and remedial work undertaken on his behalf by HCS Construction and Bell & Higgins to date.
- Removal of soaked and mouldy bed plus cost of replacing same.
- Alternate accommodation for the occupants of the flat, hotel and also including travel to stay with partner's parents near Manchester and in Vienna to minimise hotel expenses.

- Hotel charges for co-owners Timothy Lemay and Sonya Brander in Glasgow while dealing with contractor, factors and arranging removal of damaged furnishings.
- Increased electricity costs due to installation of dehumidifiers to dry lounge and bedroom 1.
- Stress, inconvenience and interruption of work, caused by the flooding, the delays of RB in dealing with and rectifying leakage from the external common roof areas of the building.

Estimates were provided. The value of the estimates was £39722.81.

## **11. Property Factor Enforcement Order.**

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with sections 6.1 and 6.4 of the 2021 Code of Conduct.

The Tribunal acknowledged the detail of the Homeowner's claim for compensation. However, the Tribunal can only take account of losses caused by the breaches of the Code of Conduct determined by the Tribunal. The Homeowner has not provided evidence to the Tribunal that the losses claimed are a result of the Factor's breaches of sections 6.1 and 6.4 of the 2021 Code of Conduct due to the delay in instructing AGM Roofing to inspect both Flat 7 and Flat 11 after 30<sup>th</sup> August 2022 until 28<sup>th</sup> September 2022.

In addition, the Tribunal noted that the email produced by the Homeowner dated 3rd March 2023 from John R Thomson of HCS construction is in the following terms:

'As instructed inspection of the existing Flat No 11 Balcony.

The balcony has a membrane to the finished surface and lead work to the surrounding parapet walls. The finished surface is only visible in small areas as it is covered with a rubber play mat thru-out, this is showing signs of weather damage and has visible signs of green mould growing on the surface. This would indicate that it is subject to periods of saturation and possibly in standing water. There is a single 100mm dia outlet in one corner of the balcony that until a couple of weeks ago has been covered with the same rubber mats, this has been drastically restricting its ability to allow water to escape from the entire area. I would assume that the area floods due to this restriction as there is water damage to the existing timber threshold into the property, this would have occurred due to it being submerged when there are significant downpours of rainwater. Two of the rubber mats have been very recently removed and a crows nest was introduced in the last two weeks to allow rain water to flow freely into the downpipe, there was also debris removed from the downpipe at the same time. This outlet is positioned directly above one of the leaks to the property below indicating a leak in or around the pipework. As this outlet has partially blocked the outfall this has caused a build up of water in and around the

pipe allowing water to find its way into a weak joint or damaged section of the membrane. The area below the timber threshold is directly above the area of the second leak to the property below this may be where the rainwater is entering the ceiling and finding its way into the Property below in large volumes depending on the external weather. In conclusion, the area is in a poor state of repair and is showing signs of water build up over a long period, this outlet must be kept clear at all times and the rubber deck that has been put down should be a product that is set on raised stools to allow water to reach the outlet unrestricted in all directions.'

The Tribunal acknowledges that the Homeowner has suffered stress and inconvenience as a result of breaches of sections 6.1 and 6.4 of the Code of Conduct due to the delay in instructing AGM Roofing to inspect both Flat 7 and Flat 11 after 30<sup>th</sup> August 2022 until 28<sup>th</sup> September 2022.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

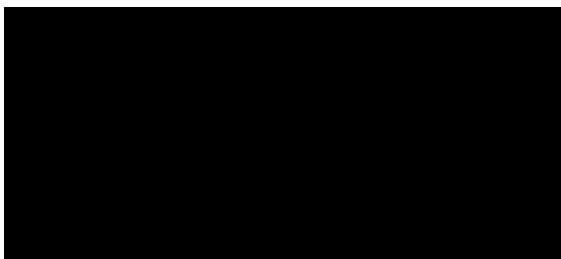
Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

*'The Factor must pay the homeowner £500 for the inconvenience he had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'*

## **12. Appeals**

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



Signed .....Date 8<sup>th</sup> September 2023

Chairperson