



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number:

FTS/HPC/PF/24/1410 and 4245

Re: Property at 20, King Malcolm Close, Edinburgh, EH10 7JB (“the Property”)

The Parties:

Mr. Joe Di Rollo residing at the Property (“the Homeowner”)

Charles White Limited, having a place of business at 14 New Mart Road, Edinburgh, EH14 1RL (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not failed to comply with the Property Factor’s Duties and has not failed to comply with the Code of Conduct for Property Factors.

Background

1. By application received on 26 March 2024 (“the 2012 Application”) Mr. Di Rollo applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Code of Conduct for Property Factors 2012 and had failed to comply with the Property Factor Duties.

2. The 2012 Application comprised the following documents: -(i) application form dated 19 March 2024 in the First-tier Tribunal standard application form, Form "C2", indicating that the parts of the Code of Conduct for Property Factors complained of are Debt Recovery at Sections 4.2 and 4.3 and Carrying out repairs and maintenance at Section 6.4 and a failure to comply with Property Factor Duties in respect of not maintaining common trees in good order as per the detailed in the title deeds, (ii) copy intimation letter to the Property Factor intimating the before-mentioned complaints with reference to the Code of Conduct for Property Factors 2012 (iii) copy correspondence between the Parties dated January and February 2024 (iv) copy tree survey report dated 6 April 2023 and obtained by Mr. Di Rollo and (v) a copy of the Property Factor's written statements of services (WSoS).
3. On 3 April 2024, a legal member of the Chamber with delegated powers of the Chamber President accepted the 2012 Application and a Case Management Discussion (CMD) was fixed for 25 June 2024 at 10.00 by telephone conference call. Prior to the CMD, the Property Factor submitted detailed written representations and productions.

Case Management Discussion

4. The CMD took place on 25 June 2024 at 10.00 by telephone conference call. Mr. Di Rollo was present on the call and was unrepresented. The Property Factor was represented by Ms. R. Rae, one of their associate directors.
5. At the CMD, the Tribunal drew the Parties' attention to a preliminary matter being Mr. Di Rollo's error in following the correct statutory process as he had used the wrong Code of Conduct for Property Factors in both his letter of intimation under Section 17 of the Act and in the 2012 Application, itself.
6. The Tribunal explained that, if Mr. Di Rollo wished to pursue breaches of arising after 16 August 2021, another application would be needed. The Tribunal explained that the complaint in respect of the Property Factor's failure to comply with Property Factor Duties could still be pursued as this complaint is not time bound in the way in which the Codes are time bound. Mr. Di Rollo stated that he would continue with the 2012 Application in respect of the complaint of the Property Factor's failure to comply with Property Factor Duties.
7. The outcome of the CMD was that the 2012 Application in respect of Property Factor Duties was adjourned to a Hearing and the following Direction was issued:

"The Homeowner is directed to :

i) specify what acts or omissions of the Property Factor (individually or cumulatively) are relied upon by him with reference to a failure to comply with property factor

duties and to specify why he considers these acts or omissions to be a failure to comply with property factor duties and ii) lodge a copy of the title deeds or a title sheet print which shows the burdens or title conditions relevant to his complaint. This Direction should be complied with no later than 3 August 2024 and should be provided by email or hard copy to the Tribunal and the Property Factor.

2. The Property Factor is directed to submit any response to Mr. Di Rollo's compliance with the above Direction no later than 31 August 2024 by email or hard copy to the Tribunal and the Homeowner.

3. With regard to documentary evidence on which the Parties intend to rely at a Hearing of evidence, both Parties are directed to have regard to Practice Direction No.3 and the "Guidance to Tribunal Administration and Parties Documentary Evidence", copies of which have been issued to the Parties, and to submit productions in a hard copy format, paginated (page numbers) and with an indexed inventory (List of contents).

4. With regard to documentary evidence already submitted, if this is to be relied on at a Hearing of evidence, both Parties are directed to re-submit this in accordance with Practice Direction No.3 and the "Guidance to Tribunal Administration and Parties Documentary Evidence".

5. The Parties are directed that the bundles of documentary evidence should be lodged by email or hard copy with the Tribunal and the other Party no later than 14 days before the date of the Hearing to be fixed.

6. The Parties are advised that the Hearing will be conducted as follows: (a) Mr. Di Rollo will present his case first; (b) the Homeowner and his witnesses, if any, will give evidence in respect of the property factor duties complaint and the Property Factor will challenge the evidence by cross-examination; (c) The Property Factor will present their case; (d) The Property Factor and any witnesses will give evidence in respect of the property factor duties complaint and the Homeowner will challenge the evidence by cross-examination; (e) The Parties, if they wish, will sum- up their evidence, with the Homeowner speaking first and (f) The Tribunal will close the Hearing and issue a written decision at a later date."

8. The Parties complied with the Direction.

Second Application.

9. Following the CMD and by email dated 12 September 2024, Mr. Di Rollo submitted a second Application ("the 2021 Application") which comprised the following documents: -(i) application form dated 12 September 2024 in the First-tier Tribunal standard application form, Form "C2", indicating that the parts of the Code of Conduct for Property Factors complained of are Communications and Consultation at Section 2.2 and Debt Recovery at Sections 4.4 and 4.9, (ii) copy intimation letter to the Property Factor intimating *inter alia* the before-mentioned complaints, (iii) copy

correspondence between the Parties and (iv) copy invoices and a Statement of Account issued by the Property Factor to Mr. Di Rollo.

10. The 2021 Application was accepted by the tribunal chamber and was conjoined with the 2012 Application.

Hearing

11. A Hearing in respect of both Applications was held on 3 December 2023 at 10.00 in the Edinburgh Training and Conference Venue. Mr. Di Rollo was present and unrepresented. The Property Factor was represented by Ms. R. Rae, one of their associate directors.
12. The Tribunal, firstly, dealt with the Property Factor Duties as complained of in the 2012 Application and, secondly, dealt with the Code breaches as set out in the 2021 Application.
13. With regard to the core issue, the Parties agreed that this arose from the maintenance of trees on the common ground relative to the development of which the Property forms part, and, in particular, the maintenance of a sycamore tree which was situated on both the common ground and within the Property. The trees are subject to statutory Tree Preservation Orders ("TPO"). A further issue in respect of rendering of accounts flowed from the dispute over the tree maintenance.

Mr. Di Rollo's Evidence – Property Factor's Duties

14. Mr. Di Rollo's position was that the Property Factor has clear and binding duties as set out in the Deed of Conditions by Bryant Homes Scotland Limited recorded in the General Register of Sasines (Midlothian) on 10 July 1995 which affects the Property and the development of which it forms part. The duty which he asserted that Property Factor had failed to comply with is (Burden TENTH) which requires the Property Factor to maintain the common ground in "good order and repair." Mr. Di Rollo stated that the Property Factor refused to undertake regular maintenance of the common trees, including pruning overgrown branches and assessing tree health. He stated that regular maintenance is necessary to prevent property damage and ensure the health and safety of the trees. Mr. Di Rollo's stated that this duty is delegated to the Property Factor who has not carried it out properly and professionally.
15. Mr. Di Rollo's accepted that the Property Factor had obtained a tree safety survey by the Tree Consultancy Group in 2023 but stressed that this only addressed immediate safety concerns, did not address broader maintenance requirements and so was flawed. He stated that the surveyor did not conduct

a complete inspection as no assessment was taken from within the Property. He stated further that the survey report was not issued until four months after the inspection and the report itself was lacking in detail and specification. Mr. Di Rollo's position is that the inadequacy of the report was a clear breach of the duty to maintain the common ground properly.

16. Mr. Di Rollo stated that, on moving in to the Property around 15 years ago, he had notified the Property Factor that he was concerned about the safety and stability of a large sycamore tree which was partly within his Property. At that time, the Property Factor, with the consent of Edinburgh City Council ("ECC"), had work carried out to prune the trees. Since then, the Property Factor refuses to undertake similar work and refuses to seek permissions from ECC. His position is that the Property Factor is using the TPO legislation as a reason for not maintaining overgrown trees, despite the fact that permission for necessary maintenance is not uncommon and that Section 160 of the Town and Country Planning (Scotland) Act 1997 exempts trees which are causing a nuisance from requiring planning consent. He stated that this failure to keep the common ground in good order and repair is failure of duties as the result is that there are overgrown and potentially hazardous trees remaining unaddressed.
17. With regard to the background to the dispute and with reference to the most recent 2023 survey report, Mr. Di Rollo advised that he had previously been the Chairperson of the owners association and so had knowledge of the tree surveys and works which had been carried out in the past. He stated that he was aware that, previously, more detailed and less restrictive surveys had been carried out with more detailed recommendations being made. It was his view that the Property Factor was now using different contractors on a more restricted specification. He pointed out inaccuracies in respect of the photographic schedule which accompanied the recent report. Mr. Di Rollo referred to an email from the Property Factor to the tree surveyor in which the Property Factor described him as "a bit of a pain" and stated that this unprofessional comment could influence the surveyor's report and undermine his concerns.
18. With regard to the 2023 survey report itself, Mr. Di Rollo's position is that it missed significant issues of concern. The report did not address a previous concerns regarding deterioration of both a beech tree and a Dutch elm, the latter of which was removed by ECC. The report contained photographs from past surveys and so the report was not representative of the trees on the day of the survey. His position is that the surveyor did not follow industry standard practice and methodology as a 360 degree inspection was not carried out.

Property Factor's Evidence – Property Factor's Duties.

19. On behalf of the Property Factor, Ms. Rae advised that the Property Factor did not dispute the factual position of Mr. Di Rollo's case. However, Ms. Rae

disputed strongly that the Property Factor had failed to comply with the property factor duties.

20. Ms. Rae's stated that the Property Factor's position is that the Property Factor has carried out the tree and ground maintenance work as requested by the owners and as required by the Deed of Conditions.
21. Ms. Rae stated that a tree survey had been carried out by the Tree Consultancy Group in 2019 which had no recommendations for work to be carried out. The survey had 3 -5 observations which were discussed at an owners' meeting. She stated that the 2019 survey was not a full and detailed survey, but a survey to highlight works which were needed and, as no works were needed, none was carried out.
22. Ms. Rae stated that she was aware of Mr. Di Rollo's correspondence in respect of a further survey and was aware that in 2023 Frontier Forestry had been instructed to attend to look at the sycamore tree. Frontier Forestry had reported that there were no issues with the tree and that ECC were unlikely to allow work to the tree. She was aware that Edinburgh Tree Surgeons had then attended in April 2023. She maintained that she was not fully aware of Mr. Di Rollo's issue as he had not followed the complaints process through. He had abandoned a complaint and then restarted his complaint.
23. With regard to the sycamore tree, Ms. Rae stated that the Property Factor had advised that Mr. Di Rollo could cut this back but he had cut it down. Following discussion with Mr. Di Rollo, Ms. Rae accepted that ECC had advised in error that the tree was not subject to a TPO and had allowed the tree to be removed.
24. Ms. Rae's position is that she did not know if or why the Property Factor has recently taken a less robust and less detailed approach to the tree survey and stated that the Property Factor had taken instruction from the owners' association. Ms. Rae explained that the instruction was given to the tree surveyor by way of a plan which identified the trees and that owners from the owners' association had accompanied the surveyor during the survey. She was aware of the survey which Mr. Di Rollo had obtained but did not consider that it was binding on the Property Factor.
25. With regard to the 2023 survey report, Ms. Rae maintained that it did not recommend any works to any of the trees and that it did not categorise the sycamore to be a danger or a statutory nuisance. Ms. Rae was aware of Mr. Di Rollo's concerns about the 2023 survey report and had asked the surveyor to comment. The surveyor stood by his report and explained that a photograph had been reused as there had been no change to the tree.

Mr. Di Rollo's Evidence – Code of Conduct for Property Factors 2021

Section 2: Communication and Consultation

2.2 Factors are required to comply with current data protection legislation when handling their client's personal data, and to ensure that this information is held and used safely and appropriately.

26. Mr. Di Rollo's position is that the way in which the Property Factor referred to a collective debt for the development clearly identified him as the debtor. The Property Factor's method of communication was to write of this to all owners in a newsletter. His grievance with this is that he was not a debtor who was unable to pay but was a service user in dispute and refusing to pay or withholding payment for good reason and the Property Factor ought to have made this clear. He stated that the Property Factor was wrong to refer to the unpaid penalties as a "shortfall" on the development funds as the amounts were penalties which the Property Factor had awarded to themselves. He stated that the Property Factor, having identified him, also advised the co-owners in the newsletter that a court decree had been obtained when this was not the case.

27. Mr. Di Rollo accepted that his co-owners, or most of them, were aware of his dispute with the Property Factor and that he was refusing to pay or withholding payment.

Section 4 Debt Recovery

4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.

4.9 A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.

28. Mr. Di Rollo's position is that the Property Factor did not follow its procedure correctly as the Property Factor proceeded to pursue the disputed accounts by applying late payment penalties and instructing debt collectors. Mr. Di Rollo stated that by doing so, the Property Factor deliberately inflated the sum due by him. He stated that the Property Factor was well aware that the "debt" could be recovered from him and so had no need to spread the debt to co-owners.

29. Mr. Di Rollo advised that, following the newsletter being issued, he paid the sums due by him and that the penalties and debt collection costs had been written off or withdrawn from his account.

Property Factor's Evidence – Code of Conduct for Property Factors 2021

Section 2: Communication and Consultation

2.2 Factors are required to comply with current data protection legislation when handling their client's personal data, and to ensure that this information is held and used safely and appropriately.

30. Ms. Rae stated that the Property Factor's position is that the Property Factor had a legitimate aim to collect debt and so was entitled to advise the other owners of the debt. She stated that this was done sensitively and that it was necessary to issue the newsletter as the debt was having a detrimental effect on the development. Ms. Rae explained that, when a late payment penalty or administration fee is charged, the Property Factor treats this as a fee rendered and deducts the amount from the development account. Therefore, the development account surplus will become depleted and factoring services will be withdrawn.

31. She did not accept that Mr. Di Rollo was inadvertently identified. She did not accept that the Property Factor was aware that the debt was disputed and so should have suspended debt recovery action. She did accept that reference to a decree being obtained was incorrect. She maintained that the sole purpose of the newsletter was to have the debt paid.

Debt Recovery

4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.

4.9 A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners

which could have implications for them, while ensuring compliance with data protection legislation.

32. Ms. Rae stated that the Property Factor has applied its policies properly and consistently. With reference to the productions lodged, she stated that each stage was carried out. She did not accept that neither the Property Factor nor the owner's association committee has authority to spread debt across the development and that only the owner's association itself can do this.

Further evidence available to the Tribunal.

33. In addition to the evidence at the Hearing, the Tribunal had the benefit of the Applications, the Property Factor's written submissions and responses with indexed productions dated May 2024, July 2024 and November 2024, and Mr. Di Rollo's written submissions and productions dated May 2024 and November 2024. As part of this

further evidence, the Tribunal had the benefit of correspondence between the Parties, the Property Factor's Written Statement of Services, the Deed of Conditions affecting the Property and the newsletter issued by the Property Factor.

Findings in Fact.

26. The Tribunal found the following facts established:

1. The Parties are as set out in the Application;
2. The Property Factor's WSoS relates specifically to the development known as Kings Manor and of which the Property forms part;
3. There is an Owners' Association at the development;
4. There is a Committee for that Owners' Association;
5. Deed of Conditions by Bryant Homes Scotland Limited recorded in the General Register of Sasines (Midlothian) on 10 July 1995 affects the Property ("the D of C");
6. (Burden TENTH) of the D of C requires the proprietors of the development "to uphold and maintain the common ground" in "good order and repair.";
7. Mr. Di Rollo is mistaken in considering that (Burden Tenth) applies to the Property Factor;
8. (Burden FOURTEENTH) of the D of C provides for the appointment of a factor for the maintenance of the common ground;
9. (Burden FIFTEENTH)(iv) of the D of C delegates to the factor "full right, power and authority to take charge of all matters pertaining to the maintenance and preservation of the common ground;
10. (Burden FIFTEENTH)(iv) of the D of C defines "full right, power and authority" as the rights, power and authority which could be exercised by a majority of proprietors at a proprietor's meeting;
11. (Burden FIFTEENTH)(vi) of the D of C allows the Owners' Association, or Committee if so empowered, to instruct the factor to employ a gardener or other staff for the maintenance of the common ground;
12. (Burden FIFTEENTH) Declaring (Two) of the D of C relates to "expenses and charges incurred by the owners' association" including remuneration of the factor;
13. The final sentence of (Burden FIFTEENTH) Declaring (Two) of the D of C states that "Failing recovery of unpaid charges after all competent legal processes have been exhausted the remaining proprietors shall bear the same equally amongst them";
14. Section 11.4 of the Property Factor's Written Statement of Services allows the Property Factor to recover its fees from the management fees paid;
15. Section 16.1 of the Property Factor's Written Statement of Services

states that debt will be spread where the debt cannot be reasonably recovered and in accordance with the Title Conditions (Scotland) Act 2003 and the Property Factor's own procedure;

16. The Property Factor instructed the Tree Consultancy Group to carry out a tree survey in or around 2019;
17. The Tree Consultancy Group reported in June 2019;
18. In that report, no works were recommended other than an annual visual inspection and a three year professional survey;
19. In or around the end of 2022, Mr. Di Rollo entered into correspondence with the Property Factor requesting that a tree survey be carried out as the three year recommended period had expired and he had concerns in respect of the sycamore at the Property;
20. The Property Factor's view was that a five year survey was the industry standard;
21. In or around April 2023, the Property Factor instructed Frontier Forestry to carry out a visual inspection of the sycamore, in particular;
22. Frontier Forestry found no issues with the sycamore and reported that they could not recommend an application to ECC for tree works;
23. Mr. Di Rollo did not accept this view nor did he accept the Property Factor's view on five yearly inspections and made a formal complaint;
24. Mr. Di Rollo's complaint did not proceed beyond Stage 1 of the Property Factor's complaints procedure;
25. In addition, Mr. Di Rollo notified the Property Factor that he was withholding payment of their fees;
26. The Property Factor invoked its debt recovery procedure and began applying administration fees and late payment penalties to Mr. Di Rollo's account;
27. The Property Factor treated the administration fees and late payment penalties as fees due to it and deducted the sums from the development account;
28. In or around the beginning of 2023, Mr. Di Rollo instructed his own tree survey which was carried out by Edinburgh Tree Surgeons;
29. Edinburgh Tree Surgeons reported in April 2023 that the sycamore tree which was partly within the Property required to be removed or cut back significantly;
30. Mr. Di Rollo submitted the Edinburgh Tree Surgeons' report to the Property Factor;
31. The Property Factor did not take action in respect of the Edinburgh Tree Surgeons' report;
32. An AGM at the development was held in June 2023 at which both Mr. Di Rollo and the Property Factor attended;

33. The requirement for an updated tree survey was discussed and agreement was given to progress a survey;
34. In or around August 2023, a survey was carried out by the Tree Consultancy Group;
35. The Tree Consultancy Group reported in December 2023 broadly in the same terms as in their report of April 2019;
36. Mr. Di Rollo raised concerns with the report;
37. The Property Factor raised these concerns with the Tree Consultancy Group who provided explanations;
38. In or around August 2024, Mr. Di Rollo requested permission from ECC to cut back the sycamore tree within his Property;
39. ECC wrongly advised that permission was not required as the sycamore was not protected;
40. In or around August 2024, Mr. Di Rollo, in good faith, removed the sycamore tree;
41. In or around May 2024, the Property Factor issued a letter and a newsletter to the owners in the development which advised of a development debt and advised that the development debt would be spread across all owners' accounts;
42. On 3 May 2024, Mr. Di Rollo sent an email to most, if not all of his co-owners, identifying himself as the owner who had not paid the factoring accounts under explanation of his dispute with the Property Factor;
43. The Property Factor made an incorrect reference to having sought a court decree in its sent a letter to all owners;
44. In or around May 2024, Mr. Di Rollo and the Property Factor came to an arrangement by which the Property Factor refunded some debt recovery costs in the sum of £247.14 from Mr. Di Rollo's account which related to the period between 13 September 2023 and 23 December 2023;
45. Mr. Di Rollo made payment of sums due to the Property Factor.

Issues for the Tribunal

27. The issues for the Tribunal were a) did the Property Factor fail to comply with property factor's duties as set out in the 2012 Application and b) did the Property Factor breach the 2021 Code breaches as set out in the 2021 Application?

Decision of the Tribunal and Reasons for the Decision.

Property Factor's Duties

28. In reaching its decision the Tribunal noted that the facts of the complaint were not disputed and that the dispute centred on the way in which the Property Factor had acted in line with the Deed of Conditions (“D of C”). The Tribunal’s view is that it is this document together with the Written Statement of Services which set out how the Property Factor should carry out and conduct its business and so comply with its duties.
29. The D of C at (Burden FIFTEENTH)(iv) gives the Property Factor a wide and unfettered authority with regard to maintenance of the common ground. The Tribunal had no evidence that the Property Factor exercised this authority in a perverse or unreasonable way. The Property Factor arranged tree surveys and acted on the outcome of those surveys. When Mr. Di Rollo raised issues, the Property Factor reported these to the tree surveyor and obtained his comment and explanations. From the AGM Minutes lodged by the Property Factor, it is clear that the Property Factor is acting in accordance with the development owner’s wishes. The fact that Mr. Di Rollo did not agree with the Property Factor and had wanted the Property Factor to act differently, particularly in relation to the sycamore tree, is of no relevance.
30. The Tribunal had no hesitation in finding that the Property Factor had not failed to comply with the property factor duties.

Code of Conduct for Property Factors 2021

Section 2: Communication and Consultation

2.2 Factors are required to comply with current data protection legislation when handling their client’s personal data, and to ensure that this information is held and used safely and appropriately.

31. The Tribunal had regard to the chronology of the issue of the newsletter, the Property Factor’s letter to the owners of 3 May 2024 and Mr. Di Rollo’s email to his co-owners also on 3 May 2024, and found that it was Mr. Di Rollo who identified himself. Taken on its own without Mr. Di Rollo’s email, the newsletter does not compromise Mr. Di Rollo, nor does the letter of 3 May 2024. The identification is only made known by Mr. Di Rollo’s own actions. There is also a copy of an email appended to Mr Rollo’s C2 application, dated 12 September 2024, and sent from his own iPhone to the other owners in the development where he says that ‘....I admit to having incurred a negative balance with our factors account. This is largely due to late penalty fees and withholding quarterly service fees as I have been in dispute with them for some time.....’.
32. The Tribunal had no hesitation in finding that the Property Factor had not failed to comply this part of the Code.

Debt Recovery

4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other Mr. Di Rollos in the group if they are jointly liable for such costs.

4.9 A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.

33. The Tribunal finds that the Property Factor's procedure for debt recovery is set out in paragraph 16 of its Written Statement of Services and that the procedure sets out the steps which will be taken. The procedure states that debt will be spread if it cannot "reasonably" be recovered and in accordance with the Title Conditions (Scotland) Act 2003. The Tribunal's view is that "reasonably" does not mean the exhaustion of all legal processes but a range of attempts to have the debt paid. The Title Conditions (Scotland) Act 2003 allows for action to be taken against a potential debtor without the need for a debt proved in court.

34. The D of C states that in respect of costs incurred by the owners' association all debt recovery processes be "exhausted" before the debt is spread. In this case, the debt is not an owners' association debt but a debt by an individual owner and so the D of C restriction does not apply.

35. The Tribunal found that the Property Factor has both a procedure and followed that procedure and so had no hesitation in finding that the Property Factor had not failed to comply these parts of the Code.

36. This decision is unanimous.

Signed

Karen Moore, Chairperson

30 December 2024