

# 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/24/1260, FTS/HPC/PF/24/2750, FTS/HPC/PF/24/2751 and FTS/HPC/PF/24/2752.

Flat B, 2 Ferguslea Terrace, Torrance, Glasgow, G64 4BU ('the Property')

**The Parties:**

**Paul Martin ('the Homeowner')**

**91BC Property Services Limited ('the Factor')**

**Tribunal members:**

**Jacqui Taylor (Legal Member) and Ahsan Khan (Ordinary Member).**

**Background**

1. The Homeowner had submitted four applications to the Tribunal:

1.1 C2 application case ref **FTS/HPC/PF/24/1260** dated 15<sup>th</sup> March 2024.

The application stated that the Factor had failed to comply with section 3.1 of the 2021 Code of Conduct as the Factor has allocated common repairs incorrectly in invoices dated 31<sup>st</sup> January 2023 and 29<sup>th</sup> February 2023.

1.2 C2 application case ref **FTS/HPC/PF/24/2750** dated 17<sup>th</sup> June 2024

The application stated that the Factor had failed to comply with Sections 2.4, 2.5, 6.1, 6.2 and 6.3 of the Code of Conduct as the Factor had failed to carry out repairs that had been notified to them.

1.3 C2 application ref **FTS/HPC/PF/24/2751** dated 16<sup>th</sup> March 2024

The application stated that the Factor had failed to comply with Sections 1.1, 2.1, 3.1 and 4.3 of the Code of Conduct as the Factor had wrongly charged the Homeowner a fee for the Factor's online portal. (Section 7 of the application with the case papers had been incorrectly copied from application number 2750).

C2 application ref **FTS/HPC/PF/24/2752** dated 17<sup>th</sup> March 2024

The application stated that the Factor had failed to comply with Property Factor duties relating to the standard of gardening services carried out at the Property.

2. The Homeowner had notified the Factor of his complaints by emails dated 15<sup>th</sup> January 2024, 17<sup>th</sup> January 2024, 14<sup>th</sup> March 2024 and 17<sup>th</sup> June 2024.

3. C2 application ref **FTS/HPC/PF/24/2160**: By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 28 March 2024, he intimated that he had decided to refer the application (which application paperwork comprises documents received on 18<sup>th</sup> March 2024) to a Tribunal.

4. C2 application ref **FTS/HPC/PF/24/2750**: By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 19<sup>th</sup> June 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received on 18<sup>th</sup> June 2024) to a Tribunal.

5. C2 application ref **FTS/HPC/PF/24/2751**: By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 19<sup>th</sup> June 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received on 18<sup>th</sup> June 2024) to a Tribunal.

6. C2 application ref **FTS/HPC/PF/24/2752**: By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 19<sup>th</sup> June 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received on 18<sup>th</sup> June 2024) to a Tribunal.

7. The Factor had not provided any written representations.

8. Documents lodged by the Homeowner:

8.1 The Factor's Written Statement of Services.

8.2 Land Certificate title number STG5433 for the Property Flat B, 2 Ferguslea Terrace, Torrance, Glasgow, G64 4BU.

8.3 Letter from Gordon and Noble collections dated 5<sup>th</sup> March 2024 requesting payment of outstanding accounts within seven days. Outstanding balance was stated to be £663.18.

8.4 Email from the Factor to the homeowner dated 7<sup>th</sup> March 2024 stating that a late payment charge of £12.50 plus VAT would be charged.

8.5 Late payment invoices from the Factor to the Homeowner dated 31<sup>st</sup> December 2023, 5<sup>th</sup> February 2024 and 7<sup>th</sup> March 2024.

8.6 Invoices from the Factor to the Homeowner dated 31<sup>st</sup> January 2024, 29<sup>th</sup> February 2024.

8.7 (2750) Email from the Homeowner to the Factor dated 22<sup>nd</sup> March 2024 reporting required repairs namely yale lock and closing mechanism required to communal storage area; the grey waste 5" cast iron water pipe is fractured; the temporary plastic pipe needs to be replaced with cast iron and fixed to the wall and the drain pipe front left needs to be jetted to clear it.

8.8 (2750) Emails regarding cancelling the cleaning contract.

8.9 (2751) Invoices from the Factor to the Homeowner dated 31<sup>st</sup> August 2023, 30<sup>th</sup> September 2023 and 31<sup>st</sup> October 2023.

8.10 Photographs relating to gardening services.

9. The First Case Management Discussion.

A Case Management Discussion by conference call took place in respect of the applications at 10am on 24<sup>th</sup> July 2024.

The Homeowner attended.

The Factor was represented by Paul Callander, non executive Director of 91BC Property Services Limited.

As a preliminary matter the parties acknowledged that the correct invoice dates in relation to application 1260 are 31<sup>st</sup> January 2024 and 29<sup>th</sup> February 2024. They also acknowledged that Section 7 of application number 2751 that had been provided to the parties with the case papers had been incorrectly copied from application 2750. The correct copy of section 7 of application 2751 refers to sections 1.1, 2.1, 3.1 and 4.3 of the Code of Conduct. Mr Callander advised that he did not require additional time due to these discrepancies. The Tribunal agreed to the amendment of application 1260 to correct the date of the invoices referred to.

9.1 The parties confirmed the following facts:

9.1.1 The Factor started factoring the Property in June 2023.

9.1.2 The Homeowner purchased the Property in 2015.

9.1.3 The Property is a tenement flat that forms part of a traditional tenement building comprising tenement blocks 1 and 2 Ferguslea Terrace.

9.1.4 There are four flats in block 1 Ferguslea Terrace.

9.1.5 There are six flats in block 2 Ferguslea Terrace.

9.2 The Case Management Discussion was adjourned to allow the parties time to lodge additional documentation.

10. Direction dated 29<sup>th</sup> July 2024.

10.1 The Tribunal issued a Direction dated 29<sup>th</sup> July 2024 in the following terms:

*‘The Factor is directed to provide the Tribunal and the Homeowner with copies of the correspondence that was issued to owners in September and October 2023 advising them that the portal was going to be introduced together with a copy of the recent Written Statement of Services.*

*The documentation must be provided by 30<sup>th</sup> August 2024.’*

10.2 In response to the Direction the Factor sent the Tribunal an email dated 29<sup>th</sup> August 2024 with the following documents attached:

10.2.1 An example of the statement issued by the Factor on 1<sup>st</sup> September 2023 with link for important information.

10.2.2 A copy of the communication contained within the link.

10.2.3 A copy of the current written statement of services.

10.2.4 A copy of further communication issued on 2<sup>nd</sup> October 2023 by email.

## **11 Second Case Management Discussion.**

A Second Case Management Discussion by conference call took place in respect of the applications at 10am on 30<sup>th</sup> October 2024.

The Homeowner attended.

The Factor was represented by Paul Callander, non executive Director of 91BC Property Services Limited.

**The detail of the Homeowner’s applications and the parties’ representations (written and oral given at the First and Second Case Management Discussions) in relation to the detailed complaints are as follows:**

### **Application 1260.**

#### **The complaint.**

The Factor has not applied the allocation of communal repair shares stated in the title deeds.

#### **Section 3.1 of the Code of Conduct:**

**‘While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.’**

### **The Homeowner's representations.**

All ten owners are responsible for an equal share of all common repairs anywhere within the tenement. The Factor has taken it upon himself to impose unequal shares. He has been significantly over charged on multiple occasions within two disputed invoices dated 31<sup>st</sup> January 2024 and 29<sup>th</sup> February 2024. He acknowledged that dates of the invoices referred to in the application were incorrect as the correct year of the invoices was 2024 and not 2023 as stated in the application. The job numbers in dispute are:

14793 (a charge relating to water ingress). He had been charged a one sixth charge of the invoice.

15037 (a charge relating to a leaking water tank). He had been charged a one sixth charge of the invoice.

15392 (a charge relating to slipped roof tiles). He had been charged a one sixth charge of the invoice.

VAT had been charged on sub contractors' accounts that had already been subject to VAT and no comparison quotes had been obtained. For example, the invoice dated 31<sup>st</sup> January 2024 included a charge of 10% of £350 (job number 15392, slipped and broken tile, contractor 91BC inhouse roofer).

In addition, he had been double charged the maintenance charge of £7.50 plus vat in the invoice dated 31<sup>st</sup> December 2023.

### **The Factor's Representations.**

Mr Callander explained that the three invoices in question had been divided between the six owners of 2 Ferguslea Terrace in accordance with the title deeds. These charges relate to repairs that pertain only to number 2 Ferguslea Terrace.

The double maintenance charge in the invoice dated 31<sup>st</sup> December 2023 had been corrected in the invoice dated 31<sup>st</sup> January 2024, which shows the refund. He does not accept that the Homeowner has been charged double VAT on the charge for job number 15392.

### **The Decision of the Tribunal.**

There are three parts to this complaint:

First, the incorrect allocation of charges.

The title of the Property is Land Certificate STG5433. The Burdens that affect the Property are contained in the Deed of Conditions by Trustees of Ferguslea Bequest Trust recorded in the Division of the General Register of Sasines for the County of Stirling on 7<sup>th</sup> August 1968. The deed defines the 'common property' and also sets out burdens that apply to the two tenements 1 and 2 Ferguslea Terrace, Torrance. The deed defines the common property of 'one tenement only' which is, in summary, the common parts of the individual tenement that are used by each tenement only (including the roof).

The deed defines the 'whole common subjects' which are essentially the common parts of both tenements that are used by both tenements.

The deed also sets out burdens that apply to the two tenements 1 and 2 Ferguslea Terrace, Torrance.

Clause tenth details the provisions for the division of the expenses and charges for maintenance and renewal of the tenement. It states that should the expenses and charges relate to one tenement only they shall be borne by the proprietors of the

dwelling houses affected in the proportion of one fourth by the proprietor of each dwelling house in 1 Ferguslea Terrace and one sixth by the proprietor of each dwelling house in 2 Ferguslea Terrace.

Job 14793. The description of the charge is 'water ingress, roofing specialist visit and/ or parts.

Job 15037. The description of the charge is 'emergency call out (water ingress) contractor McNair maintenance.

Job 15392. The description is 'slipped and broken tiles.'

The Tribunal noted that the Homeowner had been charged a 10% share of Job 15392 in the invoice dated 31<sup>st</sup> January 2024 and this had been recharged (refunded) in the invoice dated 29<sup>th</sup> February 2024 and a corrected charge of a one sixth share of Job 15392 had been included in the invoice dated 29<sup>th</sup> February 2024.

The Tribunal accepted the evidence of Mr Callander that the works in relation to each of these jobs pertain only to 2 Ferguslea Terrace as this corresponds with the works description on the invoices.

The Tribunal find that job numbers 14793, 15037 and 15392 pertain to 2 Ferguslea Terrace and the Homeowner has been charged 16.67% (or a one sixth share) of these invoices.

The Tribunal determine that as the works specified in job numbers 14793, 15037 and 15392 only relate to 2 Ferguslea Terrace the Factor correctly charged the owners of 2 Ferguslea Terrace a one sixth share in terms of clause tenth of the Deed of Conditions.

The Tribunal do not find that the Factor has breached section 3.1 of the Code of Conduct in relation to this complaint.

Second, a double charge of VAT on Job number 15392. The Tribunal was unable to determine if there had been a double charge of VAT as insufficient details had been provided.

Third, a double maintenance charge in Invoice dated 31<sup>st</sup> December 2023. The Tribunal determine that the Factor had made an incorrect double maintenance charge in the invoice dated 31<sup>st</sup> December 2023 ( amounting to £7.50 plus VAT) but that the incorrect charge had been refunded in the invoice dated 31<sup>st</sup> January 2024. As the error had been corrected the Tribunal do not find that the Factor has breached section 3.1 of the Code of Conduct in relation to this complaint.

## **Application 2750**

### **The complaint.**

The Factor had been instructed to implement four essential repairs to the fabric of the tenement. Each of the instructions had been ignored. The first notification to the Factor was 22<sup>nd</sup> March 2024 followed by subsequent reminders which remain unanswered. The required repairs were:

- (i) A waste water pipe was left to leak foul water at the rear of his Property which created a health hazard to residents.
- (ii) A blocked drain pipe was left to overflow at the front of his Property which caused water ingress and other damage.

- (iii) A vandalised lock to a communal storage shed was left unrepaired resulting in further damage to stored contents.
- (iv) Structural cracks to masonry lintels were never investigated by a surveyor despite the real catastrophic implications.

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

**The Homeowner's representations.**

The Homeowner explained that the essential repairs do not need majority consent. He had sent an email to the Factor dated 22<sup>nd</sup> March 2024 notifying the Factor of the required repairs and did not receive an acknowledgement. He then sent an email to Alex Crudden direct on 26<sup>th</sup> March 2024. He did not receive a reply. The repairs have not been completed.

**The Factor's Representations.**

Mr Callander explained that on 1<sup>st</sup> September 2023 the Factors decided that all communication with the owners should take place through the Factor's portal. They had made the decision to change to the portal as they were finding the number of emails that they received unmanageable. The portal would enable the Factor to manage communication better. After 1<sup>st</sup> September 2023 if owners had sent the Factor emails instead of using the portal they would have received automatic responses advising them to communicate via the portal. A free phone number was also provided for use in an emergency. The Factor had not responded to the Homeowner's email dated 22<sup>nd</sup> March 2024 as it had not been sent via the Factor's portal.

However, the jobs have now been raised on the Factor's systems. The repair to the lock has been rejected by one of the owners. The other repairs are proceeding.

**The Decision of the Tribunal.**

The Tribunal determine that the Factor has not breached section 2.4 of the Code of Conduct in relation to this complaint as the Homeowner does not specify information or documents that the Factor has failed to provide in relation to this complaint.

**Section 2.5 of the Code of Conduct: A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.**

**The Homeowner's representations.**

The Homeowner explained that he had sent an email to the Factor notifying them of the required repairs. However, the only communication avenue offered by the Factor is the portal which he considers to be unacceptable. He could access the

portal if he wanted to but he chooses not to use the portal as he does not wish to pay the additional fee.

### **The Factor's Representations.**

Mr Callender made no further representations in relation to this complaint.

### **The Decision of the Tribunal.**

The Factor provides the homeowners with a communication mechanism via the Factor's portal. The Factor also provides an emergency telephone service to enable homeowners to report emergency repairs. The Homeowner has an email address and could use the Factor's portal if he chose to. He chooses not to use the portal as he does not want to pay the Factor's fee for providing the portal. The Tribunal determine that the Factor provides homeowners with a mechanism for reporting issues and making enquiries via the portal and the Factor has not failed to comply with section 2.5 of the Code of Conduct in relation to this complaint.

**Section 6.1 of the Code of Conduct: 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 representations.**

The Homeowner explained that the repairs that have been notified have been outstanding since March. The Property is being damaged due to the Factor's delay in having the repairs carried out. At the second Case Management Discussion he advised that he had repaired the cast iron waste pipe himself.

### **The Factor's Representations.**

Mr Callender advised that the Homeowner had been provided with an emergency repair phone number but the repairs referred to by the Homeowner had not been reported as emergency repairs by the Homeowner. At the second Case management Discussion Mr Callender advised that an estimate has been obtained for the drainage repair. The estimated cost is £1458. They are waiting to obtain the approval of the owners.

### **The Decision of the Tribunal.**

The Tribunal find that the Homeowner had chosen to notify the Factor of repairs required by email and not via the Factor's portal or emergency phone line.

The Factor's written statement of services states at paragraph 4 (headed 'Reporting a Repair'):

*'It is your responsibility to report repairs when you become aware of them. You can report a repair involving common parts by calling (emergency phone number). You can also report it by accessing our website on your pc or your mobile phone although this method of reporting a repair should not be used for reporting emergency repairs. ...'*

The Factor is not responsible for any delay in progressing the repairs caused by the Homeowner reporting the repairs by email and not the portal. The Factor has



confirmed the repairs (other than the repair to the lock) are proceeding. Accordingly, the Tribunal determine that the Factor has not failed to comply with section 6.1 of the Code of Conduct in relation to this complaint.

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

**The Homeowner's representations.**

The Homeowner advised that he was withdrawing his complaint in relation to section 6.2 of the Code of Conduct.

**Section 6.3 of the Code of Conduct: A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.**

**The Homeowner's representations.**

The Homeowner explained that the Factor did not reply to the Homeowner's email dated 22<sup>nd</sup> March 2024 notifying them of the repairs required.

**The Factor's Representations.**

Mr Callander reiterated that the reason for the delay was due to the fact that the Homeowner had not used the Factor's portal to report the repairs.

**The Decision of the Tribunal.**

The Factor introduced their portal in September 2023. The portal is the Factor's online system to enable homeowners to communicate with the Factor and notify them of repairs and other matters that are required. The Factor has made alternative arrangements for owners who do not have email addresses. The Homeowner does have an email address and could access the portal if he chose to. He chooses not to use the Portal as he objects to paying an annual fee to use the portal. The Tribunal determine that the Factor has not failed to comply with section 6.3 of the Code of Conduct in relation to this complaint.

**Application 2751**

**The Complaint.**

The Factor imposed a £360 annual charge on owners in an invoice dated 30<sup>th</sup> September 2023 described as a 'Portal Licence Fee'. He had not been given advance notice of this levy and it is not detailed in WSS.

It is unreasonable that owners must pay the portal licence fee. At no point was he ever offered the option to receive hard copies or email transcripts of proceedings.

The Factor instructed a reinstatement valuation of the tenement buildings without consulting the Homeowner. This demand appeared on an invoice without any explanation or consent from the Homeowner. The Homeowner delayed payment as a consequence and was promptly fined for doing so.

The Factor deliberately chose to wait five months into their tenure before invoicing for the improper payment. Operating costs incurred by the Factor should be borne by the Factor and not transferred to their clients.

Since he has refused to pay for the portal licence fee the Homeowner has been unreasonably fined for non payment which he considers to be an abuse of the Factor's position.

**Section 1.1 of the Code of Conduct: A property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code.**

#### **The Homeowner's representations.**

The Portal Licence fee of £36 per owner should be explicitly detailed in the Factor's written statement of services.

#### **The Factor's Representations.**

Mr Callander advised that the Factor's written statement of services was updated recently to include the details of the Factor's portal and associated fee and to refer to 'the customer-facing software application.' The link to the updated written statement of services was sent out to owners with the most recent invoices that have been issued.

#### **The Decision of the Tribunal.**

The Tribunal acknowledged that the Homeowner had provided the Tribunal with an undated copy of the Factor's Written Statement of Services ('the original Statement') which was in place when the Factor's Portal was introduced in September 2023 and the Factor has provided the Tribunal with a copy of their latest Written Statement of Services ('the latest Statement'). The Tribunal also acknowledged that the original statement did not refer to the Factor's fee for the provision of the portal but this was included in the latest Statement under the section headed 'Customer access to 91BC software application'. That section states 'The Company reserves the right to charge a fee for access to customer-facing software application...' The Tribunal determine that the Factor had failed to comply with section 1.1 of the Code of Conduct in relation to this complaint as the Original Statement did not refer to the Factor's charge for the portal. However. The Tribunal acknowledged that this has been corrected in their latest Statement.

**Section 2.1 of the Code of Conduct: Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they**

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

**The Homeowner's representations.**

The Homeowner explained that he believes that it is unreasonable for the Factor to insist that the portal is used. He was never offered a means of alternative communication by the Factor. He never received a response to the email he sent to the account manager.

**The Factor's Representations.**

Mr Callander explained that the Factor made the business decision that all communication with owners should take place via the portal. He acknowledged that there are some owners who are unable to access the portal. He explained that the Factor has made arrangements for the owners who cannot access the portal to receive correspondence through the post. He disputes the Homeowner's suggestion that he was not offered alternative means of communicating with the Factor. Owners who cannot access the portal can still phone the Factor. If people email the Factor they will receive an automated response advising them that the email address is no longer in use and that they should telephone the Factor.

**The Decision of the Tribunal.**

The Tribunal find that the Factor provides homeowners with access to the information that they need to understand the operation of the property factor by the provision of the Portal. The Homeowner has acknowledged that he is able to use the Portal but chooses not to do so. The Factor has not failed to comply with section 2.1 of the Code of Conduct in relation to this complaint.

**Section 3.1 of the Code of Conduct: While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.**

**The Homeowner's representations.**

The Homeowner explained that he believes the portal charge should be absorbed by the Factor as an operational cost. It should be covered by the management fee the owners pay.

**The Factor's Representations.**

Mr Callander advised that the Factor had decided to separately charge the owners the portal fee to ensure that they were being transparent. The Factor sent correspondence to the owners in September and October 2023 advising them that the portal was going to be introduced. In addition, the recent Written Statement of Services refers to the portal. He will provide the Tribunal with copies of the correspondence and the statement.

### **The Decision of the Tribunal.**

The Tribunal acknowledged that the Factor sent the Homeowner a statement dated 1<sup>st</sup> September 2023 advising them about the introduction of the portal and the charge that would be made. The Factor was transparent regarding the introduction of the portal and the charge. The Factor has not breached section 3.1 of the Code of Conduct in relation to this complaint.

**Section 4.3 of the Code of Conduct: Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.**

### **The Homeowner's representations.**

The Homeowner explained that he has refused to pay the charges for the portal, and the repairs accounts, referred to earlier. He also refused to pay for gardening services which he believes have not been properly carried out by the gardener employed by the Factor as the standard of work was poor. Due to the poor gardening services he had completed the work himself and invoiced the Factor £200 for his time but he never received a response. He advised the Tribunal that he did not advise the Factor that the gardener's work was substandard before he carried out the remedial work he considered necessary. As a result of these disputed invoices he has been unreasonably charged late payment fees.

### **The Factor's Representations.**

At the first Case Management Discussion Mr Callander confirmed that he would provide details of all of the late payment charges that have been incurred by the Homeowner. The Factor had omitted to provide the details to the Tribunal. However, at the Second Case Management Discussion, Mr Callander confirmed that the Homeowner had been charged nine late payment fees of £12.50 plus VAT each.

### **The Decision of the Tribunal.**

The Tribunal noted that the Homeowner's application to the Tribunal (application number 2751) and letter of notification dated 15<sup>th</sup> January 2024 only referred to his objection to the late payment charges being charged by the Factor for non-payment of the annual fee for the portal. The late payment charges in relation to the disputed gardening and repairs accounts had not been notified to the Factor or included in the application. Accordingly, the Tribunal cannot consider whether the late payment charges are unreasonable or excessive in relation to the disputed gardening and repairs accounts.

The Tribunal acknowledges that both the Original and the latest Statement detail the Factor's Debt Recovery Procedure and states that a final reminder will incur the application of a late payment fee of £12.50 plus VAT. However, the Factor only recently changed their written statement of services to refer to the charge for the portal. In the circumstances the Tribunal determine that the late payment charges in relation to non payment of the portal fee prior to the date of the new written statement of services were unreasonable and the Factor had failed to comply with section 4.3 of the Code of Conduct in relation to this complaint.

## **Application 2752**

### **The Complaint.**

#### **Failure to comply with Property Factor Duties.**

**The Factor has failed to comply with the following requirement of the Written Statement of Services:**

**Appointment of contractors to carry out common repairs and maintenance works.**

**Ensuring that necessary works have been completed to an acceptable standard.**

**Payment for the common works, division of the cost accurately and invoicing the correct apportioned share.**

#### **The Homeowner's representations.**

The Homeowner explained that the Factor employed a gardener to maintain the communal gardens. He considered the standard of work by the gardener to be very poor and as a result he had completed the work and invoiced the Factor £200 for his time. However, he never received a response from the Factor. He advised that he did not advise the Factor that the gardener's work was substandard before he carried out the remedial work he considered necessary. He also considered the gardener's workmanship to be inadequate. The gardener was not wearing a hi viz vest and he was not wearing personal protection clothing. Also, the strimmer being used by the gardener did not have a safety cover.

#### **The Factor's Representations.**

Mr Callander advised that the Factor employed a gardener to maintain the communal grounds. The first visit by the gardener took place on 27<sup>th</sup> July 2023. The owners were invoiced on 31<sup>st</sup> August 2023. The scope of works the gardener was contracted to do was to cut the grass, trim and blow the hard standing. The gardener was contracted for three hours work every two weeks. The scope had been communicated to the owners but he realised that the Homeowner had not been included in this communication as they did not have his email address at that time.

Mr Callander confirmed that the Factor checks that contractors are insured before they are employed. He notes the health and safety concerns highlighted by the Homeowner and explained that if the owners want to change the gardening contractor this will be arranged.

#### **The Decision of the Tribunal.**

The Tribunal determine that the Homeowner is not entitled to charge the Factor for gardening works carried out by the Homeowner. If the Homeowner considered the gardening works to be substandard he should have reported this to the Factor. The Tribunal determine that the Factor has not failed to comply with Property Factor duties in relation to this complaint.

## **12. Direction dated 12<sup>th</sup> November 2024.**

12.1 The Tribunal issued a Direction dated 12<sup>th</sup> November 2024 which directed the Factor to provide the Tribunal and the Homeowner with copies of all of the invoices detailing the late payment charges and copies of all of the outstanding accounts that

relate to the late payment charges. The Direction required the documentation to be provided by 30<sup>th</sup> November 2024.

12.2 The Factor did not provide the Tribunal with the required documentation.

### **13. 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 1.1 and 4.3 of the Code of Conduct.

The Tribunal then considered whether to issue a Property Factor Enforcement Order.

In connection with the Factor's failure to comply with section 1.1 of the Code of Conduct the Tribunal were mindful that the Factor had updated their Written Statement of Services and included the reference to the charge for the portal (referred to as the customer-facing software application). In the circumstances the Tribunal determined that it was not appropriate to make a Property Factor Enforcement Order in relation to this matter.

In connection with the Factor's failure to comply with section 4.3 of the Code of Conduct the Tribunal 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:

*'One. The Factor must provide the Tribunal with evidence of the date they issued the amended written statement of services that includes the paragraph 'Customer access to 91BC software application' and includes the provision that 'The Company reserves the right to charge a fee for access to customer-facing software application...'*

*Two. The Factor must repay the Homeowner the late payment charges that were issued before the date of issue of the amended written statement of services.*

*Three. The Factor must pay the Homeowner £75 for the inconvenience he has suffered from their own funds and at no cost to the owners.*

*The said sums to be paid and evidence to be sent to the Tribunal that the payments have been made within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'*

## 14. 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.**

Jacqui Taylor

Signed

Date 30<sup>th</sup> December 2024

Chairperson