Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 (1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/23/2570

Re: Property at Gillsland Grove, 4 Gillsland Road, Edinburgh, EH10 5BW ("the Property")

The Parties:

Mr Lorence Fizia, Gillsland Grove, 4 Gillsland Road, Edinburgh, EH10 5BW ("the Applicant")

Charles White LTD, 14 New Mart Road, Edinburgh, EH14 1 RL ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mr A. Murray. (Ordinary Member)

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* ("The Code").

[2] The paragraphs of the Code alleged to have been breached are:

Overarching Standards of Practice: 1, 2, 3, 4, 5, 6 and 7
Written Statement of Services: 1.1; 1.2; 1.5A and B
Communications and Consultation: Sections 2.1; 2.2; 2.3; 2.5; 2.6 and 2.7
Financial Obligations: Section: 3.1, 3.2 and 3.4
Debt Recovery: Section 4
Insurance: Sections 5.6 and 5.7

Carrying Out Repairs and Maintenance: Sections 6.3, 6.4 and 6.5.
Complaints Resolution: 7.2

Overview of Claim

[3] The substance of the allegations relates to an alleged failure on the part of the Respondent to act in keeping with their alleged obligations under a deed of conditions. This deed of conditions sets out title conditions which regulate the use of the development. The development is a sheltered housing development. The deed of conditions includes a provision to provide a full time non-resident warden. There are also complaints about the Respondent failing to take prompt action to have repairs effected and also manage the Applicant's complaints appropriately and other breaches of the Code relating to management of resident's funds.

The Hearing

[4] The Application called for a Hearing at George House, George Street, Edinburgh at 10 am on 5 December 2024. The Applicant was personally present. The Respondent was represented by their own Ms Robyn Rae. Neither party had any preliminary matters to raise. The Tribunal began by noting that a previous Hearing had been adjourned to see if parties could resolve their differences through discussion. Both parties confirmed that while those discussions had taken place with a spirit of goodwill, they had not resolved matters to the Applicant's satisfaction. The Tribunal accordingly began hearing evidence.

[5] The Tribunal began by hearing from the Applicant and then from Ms Rae for the Respondent. The Tribunal asked questions throughout to ensure that it understood the evidence. After each witness gave evidence, the other party had the right to cross-examine. During the evidence, the Tribunal referred to the documentation submitted throughout. After the conclusion of evidence, each party also had the opportunity to make closing submissions explicitly drawing the Tribunal's attention to the sections of the Code alleged to have been breached.

[6] The Tribunal comments on the evidence heard as follows.

Mr Lorence Fizia

[7] The Applicant explained that he and his wife purchased the Property in 2012. They bought the Property because it in a sheltered housing complex with a view to planning for their future care needs. At that point the Property was factored by Bield Housing Association ("Bield")who the Applicant understands specialise in factoring and managing sheltered housing complexes. Gillsland Grove is not a typical housing

development because it is sheltered housing and so in order to purchase a property in the development, prospective purchasers typically have to be over 60 years of age. There is also a requirement that owners are capable of living independently, as whilst the development is for sheltered living, care is taken to ensure that those who require greater levels of care are not inappropriately housed in the development in the expectation that the level of care provided would be sufficient.

(8) The development is made up of a stone built victorian property described as a "*villa"* that has 9 units or individual properties in it together with a larger tenement building which contains a further 47 units and which number 10--57.

[9] The monthly payment to Bield included provision for the presence of a warden who lived in one of the properties known as flat 7 . The warden was on hand each morning to assist any of the owners should they require emergency assistance. Each occupier has a pendant that, when pressed, would summon assistance from the warden. As the warden only worked in the mornings, the out of hours service for the afternoon, evenings and other times was provided by a private company called "*BR24*" who would arrange for help to attend if a pendant was activated.

[10] In 2017, the warden retired and instead of recruiting a replacement, Bield sold flat 7, meaning that from this point on there was no longer a designated place for any further warden to be accommodated. No issue appears to have been taken by the Applicant or any other occupiers at the time becauses as the Applicant explained, they were "*not losing any services*". All services were provided remotedly by BR24 and by non-resident wardens attending on site. This arrangement became established and there was no evidence of any objection or issue having been taken at the time.

[11] In July 2022, The Applicant explained that Bield then appeared to have taken the business decision to cease providing their services to developments which were owner occupied and instead they decided to focus on providing their factoring services for those developments which they owned themselves. Bield gave the occupiers 6 months notice of the cesation of their services and to find a new factor should they wish for their to remain a factor in place.

[12] The Applicant then addressed the Tribunal on how it came to be that the Respondent was appointed as the relevant Property Factor. Mr Fizia explained that a residents association had been formed. This group appointed the Respondent as the development's Property Factor. It was clear that the Applicant had issues with the members of the Residents Association and the existence and validity of that group itself. This appeared to be a source of great tension for the Applicant and appeared to be at the heart of the Applicant's frustrations about the Respondent. It appears that the Applicant actually lodged a complaint with the Respondent literally before they had even become the official property factor. This was on the basis that the Applicant disputed the way the Respondent had been appointed.

[13] The Applicant's complaints against the Respondent, whilst expressed in terms of numerous sections of the code, could been understood as relating to one principle issue. The principle allegation was that the Respondent was not now providing a non-resident warden service in the development, by which the Applicant meant having a warden attend on site at the development and offer their services full time on a non-residential basis. The Applicant considered this as a failure on the part of the Respondent to adhere to terms of the relevant deed of conditions which the Applicant contended obliged the Respondent to provide such a non- resident warden service.

[14] The Tribunal considered this evidence alongside the the detail of the allegation that was set out in the Application itself. In the Application, the Applicant stated that:

"*the Respondent has not followed the burdens on the Land Tribunal for Scotland Title Condition (Scotland) Act 2003 or The lands Tribunal for Scotland Extract Order (1) FIRST inso far as the dwelling house forms part of a Scheme of sheltered dwelling houses comprising and comprise 2012 (inclusive), 12a and 14-58 (inclusive) Gillsland Grove, 4 Gillsland Road, Edinburgh EH10 5BW (the Scheme) which require the provision of a non-resident warden and other ancillary services THEREFORE the said Bield Housing and Care and their successors as Manager of the said Scheme (the Manager) shall be responsible for the administration of and provision of management services to the scheme as a housing scheme providing sspecialist housing for persons of advanced age who because of age or infirmity have need of specialist housing for persons of advanced age who because of age or infirmity have need of specialist housing in a sheltered environment. The Manager shall have power at their sole discretion either: to undertake the manageement of the Scheme; or ii) to appoint a Housing Association or other suitable body to undertake the management of the Scheme on their behalf. Whomsoever undertakes from time to time the management of the Scheme is hereinafter referred to as "The Manager*"."

[15] The Applicant had produced an Extract Order from the Lands Tribunal for Scotland ("the Lands Tribunal") dated 29 August 2017. This confirmed that the Lands Tribunal had made an order in terms of Section 90 (1) (a) (i) of the Title Conditions (Scotland) Act 2003 varying the title conditions by allowing the dwelling house which was previously to be used and occupied solely as a warden's dwelling house to be used and sold just like the other properties in the development. The Lands Tribunal also varied the title conditions by removing reference to a requirement for a resident warden and instead amending this to refer to a non-resident warden service including that:"*The non resident warden shall be appointed by the manager.*" There was no dispute that for these purposes, the Respondent had been appointed and was acting as "*The Manager*".

[16] The Applicant goes on in the Applcation form section headed "*What would help to resolve the problem?*" to write "*CWL to change their WSS to conform with our deeds including the provision of a manager*".

[17] It was clear that what the Applicant wanted was the Respondent to scrap or reduce the use of BR24 and instead to employ a non-resident warden who would operate out of some spare office space which the Applicant had identified in the villa within the development. The Applicant was of the view that the Respondent was in breach of the Code because they were not doing this and was instead simply providing warden services through BR24 which the Applicant stated was in breach of the title conditions as amended and also in breach of the Code.

[18] However the Tribunal had difficuties accepting the Applicant's position in respect of the above for the following reason. The Respondent had written to the residents and had expressly highlighted that their deed of conditions provided for having a non-resident warden on site. The residents had expressly voted against the provision of such a warden in knowledge of what the deeds of conditions supposedly said about the matter. The Respondent had provided the proprietors with some information about potential costs involved in hiring the non-resident warden who would effectively have to be a full time employee. The Applicant suggested that the quoted costs were excessive and that this would have unfarily influenced the vote. However the Tribunal considered that the Respondent was somewhat unrealistic as to how much it actually costs to engage the services of an employee. The Applicant also suggested that it was the Respondent themselves who had obligations under the deed of conditions. But in fact it is the owners of the properties who have those obligations, the Respondent simply acts on the instructions of the owners to provide factoring services and associated advice. The main thrust of the Applicant's evidence therefore appeared flawed to the Tribunal.

[19] The Applicant also spoke about some repairing issues that featured in his complaint and other issues relating to apparent deficiencies in the Respondent's complaints handling process. In May 2023, the Applicant had reported a faulty automatic night light to the right of the main door that ceased to function properly. The Applicant explained that this was only fixed after it was mentioned again by the Applicant at an earlier Case Management Discussion in this Application. There was also an issue with a bollard that needed repaired. Having heard from the Applicant, it seemed that this was less a grievance against the Respondent and once again more a grievance against the residents association. That was because it appeared that a bollard had been damaged and then rather than have it directly replaced on a like for like basis, the committee of the residents association had relocated the bollard elsewhere and sought recompense for the £30.00 expense from the Respondent. The alleged failure of the handling of the complaints procedure did appear to be largely brought about by the Respondent not simply agreeing to the Applicant's demands rather than any particular failure to deal with complaints adequately.

[20] The Applicant also spoke to an alleged failure to comply with the Code in respect of the clarity of the invoices provided by the Respondent to the Applicant. The allegation was that the Applicant could not understand the invoices issued by the Respondent and that they were too complicated to make sense of what the Applicant was being asked to

pay for. From directly looking at these invoices and discussing them with the the Applicant, the Tribunal could not share these concerns. The invoices seemed self explantory and entirely unremarkable with the various entries listed self-explanatory. The Applicant was candid that he had included in his Application many sections of the Code which he did not now wish to focus on. He mentioned that his wife had listed numeous sections of the Code in the Application because they thought there seemed no reason not to list as many as possible. The Tribunal asked the Applicant about certain parts of the Code said to have been breached and the Applicant said that there were several where he couldn't remember that they were about and about which he had nothing to say.

[21] The Applicant had submitted a significant volume of material to the Tribunal in support of his Application. Within these documents was a vast array of issues raised with the Respondent and referred to. However the Applicant's evidence was purely focussed on the above matters. The Tribunal ensured that the Applicant had addressed the Tribunal on each and every complaint that he wished to bring. The Applciant confirmed that he had done so and so the Tribunal proceeded on the basis that the Tribunal were to assume that any issues not specifically referred to in the Applicant's evdience were to be considered as being no longer insisted upon by the Applicant.

[22] The Tribunal then heard from Ms Robyn Rae on behalf of the Respondent.

Ms Robyn Rae

[23] Ms Rae is a relationship manager for the Respondent. She has been hands on with the Respondent's management of the development since the Respondent became the relevant Property Factor. She spoke of how the Applicant submitted a complaint to the Respondent before they had even officially commenced their role as a factor. She spoke of how the Applicant was obviously dissatisfed with how it came to be that the Respondent had been appointed as the relevant property factor. Ms Rae spoke of how, when her organisation was asked to become property factor by the newly formed residents association, at no point did anyone instruct the Respondent to provide an on-site warden. In fact Ms Rae pointed out that they were expressly asked *not* to provide a warden.

[24]At the point of the Respondent's instruction, the development had been without a non-resident warden for six months and the residents association wanted to continue on that same path. Ms Rae spoke to how the Respondent came to be the relevant property factor for the development. The Respondent went on the instruction of a majority of the owners and issued their formal welcome letter to all residents on 19 January 2023.

[25] Ms Rae pointed out that "*Charles White don't have power over the owners, the owners have power over Charles White*". Ms Rae also spoke to a recent vote she had organised again about the provision of a non-resident warden in which there had been another

comprehensive vote against a non-resident warden. Ms Rae also defended her description of the likely expenses involved in hiring a non-resident warden. The Tribunal agreed with Ms Rae that informing residents that a cost of £40,000.00 per year was not unreasonable bearing in mind the costs of employing someone reliable which in addition to salary would also have to include provision for pension contrbutions, employer's national insurance and the costs of additional cover on all the ocassions when an employee is not at their duties by virtue of annual leave provision and sickness absence. Ms Rae also spoke about the formation of the residents association and the adoption of their constitution but the Tribunal considered that detailed consideration of such issues was largely irrelevant for the issues before the Tribunal. However Ms Rae did helpfully confirm that she regularly attended the AGMs of the residents association which were generally well attended by the residents.

[26] Ms Rae also spoke about her knowledge of the repairing issues mentioned by the Applicant. In February 2023, there was a bollard that was damaged and the committee of the residents association organised its repair but also relcoated it to a slightly different location. Ms Rae's evidence suggested that this might have been slightly irregular but as far as the Respondent was concerned this was not something the Respondent felt it had any authority to overrule or prevent. Instead the Respondent felt that it should take no action other than to reimburse repairs officially approved by the committee. It appeared again that this was more to do with the Applicant's grievances against the residents association rather any alleged failures of the Respondent. Ms Rae apologised for the light that took longer than the Applicant wanted to repair. It had been reported by the Applicant in May 2023. She explained that she didn't know much about that as most routine repairs go through the office. Ms Rae also addressed the Tribunal on the Respondent's complaints handling procedure and described how the Respondent had handled the Applicant's complaints. Ms Rae also addressed the Tribunal on the clarity of the Respondent's invoices to the Applicant. She explained that due to commencing services on 1 February 2023 the Respondent had to run a two month service charge, then invoice for a £200.00 float and thereafter invoice the residents from April to April. Her explanations seemed easy enough to follow. Ms Rae had also investigated whether the owners committee and the resident s association had appointed the Respondent correctly. She explained that she had identified Section 54 of the Title Conditions Act as applying and that to dismiss or appoint a factor in a sheltered housing development, a two thirds majority is required meaning that 38 out of 57 owners were required to appoint the Respondent. For the avoidance of doubt, Ms Rae asked owners to reappoint the Respondent effective from 1 February 2023 and this vote received 48 votes of approval and no votes of objection. Ms Rae explained that she is in no doubt that the Respondent is acting properly after having been competently appointed.

[27] Having considered the Application and having heard evidence, the Tribunal made the following findings in fact,

1) *The Applicant is a co-proprietor of 4 Gillsland Road, Edinburgh. The Property is a unit in a development of sheltered housing. The Applicant purchased the Property in 2012 and did so in part because it was sheltered housing with an in-house part time warden along with the provision for out of hours remote warden services. The Property was in a development factored by Bield Housing Association.*

2) *In 2017, the previous warden retired and was not replaced by Bield. The Property previously occupied by the warden was in fact sold. Warden services were thereafter offered remotely and by the provision of non-resident wardens. Bield successfully applied to the Lands Tribunal for Scotland to vary the title conditions set out in the relevant deed of conditions to vary the requirement for the provision of warden services from being that of the requirement for a resident warden to that of a non-resident warden. The Lands Tribunal for Scotland also varied the title conditions to allow the former warden's accommodation to be sold and used as any other property within the development. The Applicant did not object to this approach and no issue was generally taken with the removal of an in-house warden from this point onwards. Thereafter, Bield indicated that it no longer intended to operate as the relevant property factor for the development. They provided the proprietors with 6 months notice of the proposed cessation of their services.*

3) *A residents association was formed in the development which ultimately engaged the Respondent to commence the provision of factoring services within the meaning of the Property Factors (Scotland) Act 2011. The Respondent's appointment took effect from 1 February 2023.*

4) *The Applicant is in dispute with the residents association and there is bad blood and tension between them. The details of this are largely irrelevant for the purposes of this Application.*

5) *The Respondent is not itself bound by the deed of conditions which forms part of the title conditions of the development. It is the proprietors of the burdened properties themselves who ought to act in keeping with the deed of conditions. Accordingly, if the deed of conditions provides that a non-resident warden is to be accommodated in the development, it is not the job of the Respondent to ensure that happens even if explicitly contrary to the wishes of the residents who instruct the Respondent and pay for their services.*

6) *The residents of the development have voted expressly against the appointment of an non-resident warden.*

7) *The Respondent agreed to act as the relevant property factor on the express instructions that they were not to provide a non-resident warden. At no point have the residents instructed the Respondent to provide a non-resident warden.*

8) *In or around May 2023, The Applicant reported a faulty automatic night light to the right of the main door that ceased to function properly until mentioned in this Tribunal process and then fixed by the Respondent at a date not preciely identified. The Respondent had emailed the Applicant back about the light on 15 May 2023 and indicated that the Respondent would arrange for an electrician to attend. There appears to have been a delay before this was ever actioned. The Respondent has addressed the Applicant's concerns here and apologised for the delay.*

9) *In or around February 2023, there was a bollard in the development which was damaged by a car. The residents association took this as an opportunity to relocate the bollard to a slightly different location when it was replaced by a member of the committee who is in the building trade. The Respondent acted on the instructions of the residents association to reimburse the £30.00 costs incurred in relocating the bollard.*

10) *The Applicant has received transparent invoices from the Respondent which are largely self-explanatory.*

11) *The Respondent has dealt with the Applicant's complaints adequately and in line with their own complaint's procedures and their obligations under the Code.*

[28] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Code alleged to have been breached.

The Code

"OSP1. *You must conduct your business in a way that complies with all relevant legislation".*

[29] The Tribunal can find no basis for concluding that this has not been complied with by the Respondent. The Respondent acts on the instructions of the residents. There may be a case that the residents themselves are in breach of their obligations under the deed of conditions but the Tribunal cannot conclude that the Respondent is in breach of the Code by doing what the residents have expressly instructed them to do.

"OSP2. *You must be honest, open, transparent and fair in your dealings with homeowners*".

[30] The Tribunal can find no basis for concluding that this has not been complied with. The Respondent has been transparent and upfront with the residents about matters relating to the warden.

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

[31] The Tribunal can find no basis for concluding that this has not been complied with. The Respondent's invoices are not complicated and are straightforward to follow.

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

[32] The Tribunal can find no basis for concluding that this has not been complied with. The likely costs of employing a non-resident warden put forward by the Respondent were not unreasonable.

"OSP5. *You must apply your policies consistently and reasonably".*

[33] The Tribunal can find no basis for concluding that this has not been complied with.

"OSP6. *You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective".*

[34] The Tribunal can find no basis for concluding that this has not been complied with.

"OSP7. *You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation*."

[35] The Tribunal can find no basis for concluding that this has not been complied with. On enquiry with the Applicant at the submissions stage as to what this allegation referred to, the Applicant suggested that it was because the Respondent asked for medical information in assessing who could purchase a property in the development. Ms Rae explained that this was because the Respondent had to ensure that only those with the appropriate care needs could live in the development.

"*Section 1 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*".

[36] The Tribunal can find no basis for concluding that this has not been complied with. The Written Statement of Services provided seems perfectly sufficient to meet the Respondent's obligations under the Code.

"1.2 A property factor must take all reasonable steps to ensure that a copy of the WSS is provided to homeowners:

- *within 4 weeks of the property factor:-*
    - *agreeing in writing to provide services to them; or*
    - *the date of purchase of a property (the date of settlement) of which they maintain the common parts. If the property factor is not notified of the purchase in advance of the settlement date, the 4 week period is from the date that they receive notification of the purchase;*
    - *identifying that they have provided misleading or inaccurate information at the time of previous issue of the WSS.*
- *at the earliest opportunity(in a period not exceeding 3 months) where:*
    - *o substantial change is required to the terms of the WSS.*

Any changes must be clearly indicated on the revised WSS issued or separately noted in a 'summary of changes' document attached to the revised version.

1.5 The WSS must make specific reference to any relevant legislation and must set out the following:

A. Authority to Act

(1) a statement of the basis of the authority the property factor has to act on behalf of all the homeowners in the group.[3] *Property factors operating under a custom and practice arrangement with no formal appointment should clearly indicate this arrangement to homeowners in the WSS. Where this is the case, homeowners and property factors may wish to consider formalising their appointment;*

(2) where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factor has taken on the outstanding liabilities of the previous property factor, and any other implications of the takeover for homeowners;

(3) where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.

B. Services Provided

(4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);

(5) the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified to homeowners."

[37] Again at the submissions stage, the Applicant stated here that he only received the Respondent's Written Statement of Services on 15 March 2023 even though the Respondent began providing services on 1 February 2023. There was therefore a minor breach of this Section as the Written Statement of Services was provided around 6 weeks after the commencement of services rather than the required four weeks. The Tribunal also takes into account that the Respondent did also send out a welcome letter dated 19 January 2023 to all residents setting out her contact details and information about who would be managing the estate.

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

[38] The Tribunal can find no basis for concluding that these sections have not been complied with.

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

[39] The Tribunal can find no basis for concluding that these sections have not been complied with.

"Section 2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner."

[40] The Tribunal can find no basis for concluding that these sections have not been complied with.

"Section 2.5 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"

[41] The Tribunal can find no basis for concluding that these sections have not been complied with.

"Section 2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner".

[42] The Tribunal can find no basis for concluding that these sections have not been complied with.

"Section 2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale."

[43] The Tribunal can find no basis for concluding that these sections have not been complied with.

"Section 3.*1 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*".

[44] The Tribunal can find no basis for concluding that this section has not been complied with.

"*Section 3.2 The overriding objectives of this section are to ensure property factors:*

- *protect homeowners' funds;*
- *provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;*
- *make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income".*

[45] Again at Submissions stage, the Applicant now chose to address the Tribunal on certain accounting matters he wished to raise in respect of this Section. He made reference to allegations of mismanagement of the "*common repair fund*" and stated that expenses were being inappropriately allocated. He said that the common repair fund is for repairs, maintenance and cyclical maintenance only and that anything else such as

improvements should require a vote of all owners. Ms Rae was able to comprehensively address this issue and explain that when they assumed agency of the development, Bield transferred over the sum of £100,000 which Bield had ring-fenced. She explained that there was no strict obligation for that money to be ring-fenced and that it was now being quite properly used for repairs and maintenance. The Tribunal had no reason not to accept Ms Rae's explanation as it made sense and sounded reasonable. In any event the Applicant's allegations here were somewhat vague.

"*Section 3.4 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for*"

"*Section 4-Debt recovery*".

[46] The Application refers to the whole of Section 4 as opposed to any identifiable subsection but having considered all the sections, the Tribunal can find no basis for concluding that these sections have not been complied with.

"Section5.6 If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information must be made available if requested by a homeowner. If homeowners are responsible for submitting claims on their own behalf (for example, for work that is not on common parts), a property factor must take reasonable steps to supply to homeowners all information that they reasonably require in order for homeowners to be able to do so."

[47] The Tribunal can find no basis for concluding that this section has not been complied with.

"Section5.7 A property factor must take reasonable steps to keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves if required."

[48] The Tribunal can find no basis for concluding that this section has not been complied with.

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

[49] The Tribunal can find no basis for concluding that this section has not been complied with. There is nothing to suggest that the Respondent doesn't have a

'procedure'. Repairs can be reported by telephone, email or by the online portal operated by the Respondent and accessible to the residents.

"6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they 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."

[50] There may have been a minor breach of this section as the Applicant did appear to report a faulty light which was not repaired in an appropriate timescale. The Respondent has apologised and the issue has now long since been resolved.

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

[51] The Tribunal can find no basis for concluding that this section has not been complied with.

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

[52] The Tribunal can find no basis for concluding that this section has not been complied with.

Property Factor Enforcement Order

[53] Having made the above findings, and notwithstanding that there had been a minor breach of paragraphs 1.B and 6.4, the Tribunal found no basis for making a Property Factor Enforcement Order in terms of Section 19 (2) of the Act. The Tribunal considered that the breaches was relatively trivial and had long since been addressed by the Respondent.

[54] The Tribunal therefore made no such order.

APPEAL PROVISIONS

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin

_____ **29 January 2025**

Legal Member