

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Reference FTS/HPC/PF/24/2845 & FTS/HPC/PF/24/3166

Re: 20 Kirklands Park Gardens, Kirkliston, EH29 9ET

(“the Property”)

The Parties:

Mr Henry Zukowski, 20 Kirklands Park Gardens, Kirkliston, EH29 9ET

(“the Applicant”)

Charles Whyte Limited, 14 New Mart Road, Edinburgh, EH14 1RL

(“the Respondent”)

Tribunal Members:

Iain MacRae (Legal Member)

Kingsley Bruce (Ordinary (Surveyor) Member)

Representation

Applicant: Self

Respondent: Robyn Rae, Director, Client Services

DECISION

1. In respect that parties have agreed that the Simple Procedure case by the respondent against the applicant under reference EDI/SG3084/24 is to be dismissed with no expenses due to or by either party and on the basis that both parties have undertaken to take steps to ensure that settlement of that action is effected forthwith; and in respect that the respondent has undertaken to discharge, at its own cost, the Notice of potential liability for costs registered by them against the property and that within 4 weeks of today's date; the

applicant is personally barred from proceeding with these applications which are therefor are refused.

2. The decision is unanimous

Introduction

3. These are applications for orders under Rule 43 of the Rules and section 17 “the 2011 Act”. The Forms C1 and C2 alleged a breach of the factors duties relation to insurance. They were initially made on 23 June 2024. Notice of a case management discussion (CMD) to take place on 11 March 2025 was given to parties on 21 January 2025. A Note and Direction were issued on 24 March 2025. A further CMD took place on 3 September 2025 although there is no Note or Direction available. A further CMD had taken place on 12 January 2026 before a differently constituted tribunal. A Note and Direction were issued on 14 January 2026.

Hearing

4. Following the CMD on 12 January 2026 (before a differently constituted tribunal) a hearing was then scheduled to take place on 20 April 2026 before this tribunal. By Direction dated 2 April 2026 the tribunal members of this tribunal discharged the hearing fixed for 20 April 2026 and assigned a preliminary hearing to consider whether the applicant was personally barred from continuing with the applications and the respondent’s email of 12 February 2026 seeking dismissal of the applications.

Summary of submissions

For the respondent

5. An agreement was reached at the CMD on 12 January 2026 and the respondent was still prepared to adhere to it. They had not discharged the Notice of potential liability for costs as the Applicant had appeared to want to

proceed and withdraw from the agreement. Solicitors had been instructed to have the simple procedure case dismissed and the balance of the applicants account had been written off.

6. The respondent sought dismissal as they were no longer the factors at the development. They had written off all balances due by the applicant who has not paid them any money since they took over at the development in 2003.

For the applicant

7. On the question of person bar the applicant thought that he had a cooling off period of 28 days to decide whether to agree to the settlement. The discussion at the CMD was an informal one. He was unsure if Ms Rae who appeared at the CMD had authority to enter into the agreement without the agreement of the majority of the other householders. Based on matters that arose after the CMD he decided he wished to proceed with the applications after all.
8. On the respondent's application to dismiss he would agree to that on the basis that, to all intents and purposes, the respondent was treating him as if they were never his factor
9. The applicant explained he had been unable to complete on a mortgage application due to the outstanding court case and Notice of potential liability for costs.

The Tribunal make the following findings in fact:

10. At the Case Management Discussion on 12 January 2026 parties reached agreement on the settlement of these applications.
11. In exchange for the respondent writing off all balances said to be due by the applicant to them, dismissing the Simple Procedure case (Ref EDI-SG3084-

23) and discharging the Notice of Notice of potential liability for costs the applicant would withdraw these applications.

12. The agreement was recorded in the CMD note dated 14 January 2026. The Direction dated 14 January 2025 continued the applications to allow the settlement terms to be effected.
13. By email dated 19 January 2026 the respondent confirmed to the applicant the agreed terms of settlement;
14. By email dated 4 February 2026 the applicant intimated to the tribunal that after due consideration he was unable to agree or accept the conditions set out in the respondent's email of 19 January 2026.
15. The parties having agreed settlement terms in relation to all matters outstanding between them on 12 January 2026 are bound by that agreement;
16. The respondent has given undertakings to ensure that the agreed settlement terms, so far as not yet implemented are implemented within a reasonable timescale.
17. The applicant is personally barred from insisting on these applications.

Reasons for Decision

18. Settlement terms had been agreed at the CMD on 12 January 2026. In short the Respondent had agreed to write off any outstanding historical factoring fees or legal fees that may be due to them by the Applicant; they would have the Notice of potential liability for costs discharged (at their expenses) and would have the payment action at Edinburgh Sheriff Court (currently paused) dismissed with no expenses due to or by either party. In exchange the applicant would withdraw these applications.

19. The respondent had written off the balances showing on their account as due by the claimant and had instructed their solicitors to have the Simple Procedure action disposed of as agreed. The applicant would need to confirm to the Sheriff Court that he did not oppose the simple procedure Additional Orders Application (seeking dismissal with no expense due to or by either party) when it was intimated on him. The respondent had not taken steps to have the Notice of potential liability for costs discharged as the claimant had appeared to wish to proceed with the applications. The applicant thought that he had a cooling off period of 28 days to decide whether to agree to the settlement. He was unsure if Ms Rae who appeared at the CMD had authority to enter into the agreement without the agreement of the majority of the other householders.

20. Whilst a discussion at a CMD can be an informal discussion parties can enter into a binding agreement at a CMD. The note of the CMD and the Direction were both clear. In the absence of agreement by both sides the applicant was personally barred from changing his mind and withdrawing from the agreement. Ms Rae confirmed that the respondent would now take steps to have the Notice of potential liability for costs discharged at the respondent's own cost. It did not matter if the respondent had agreed matters without consulting or seeking the agreement of other home owners. The agreement was binding between the parties hereto. If that caused any issues between the respondent and others that was a matter for them. It had no bearing on the settlement between the parties.

21. As the tribunal has determined that the applicant is personally barred from proceeding with these application we have not been required to go on to consider the respondent's application for dismissal.

Appeal

A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an

appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

_____ Legal Member and Chair

DATE 20 April 2026