

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/25/3110

Re: Property at Apartment 32 Fraser House, 9 Market Street, Aberdeen, AB11 5PD (“the Property”)

The Parties:

Mr Theodore Dovinos, 11 Kingswood Road, Kingswells, Aberdeen, AB15 8TD (“the Applicant”)

James Gibb Property Management Ltd, Red Tree Magenta, 3rd Floor, 270 Glasgow Road, Glasgow, G73 1UZ (“the Respondent”)

Tribunal Members:

Legal Member: Mr Andrew McLaughlin

Ordinary Member: Mr Donald Wooley

Background

[1] By Application in Form C2, the Applicant seeks a determination that the Respondent has failed to comply with The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors 2021 (*“The Code”*).

[2] The Respondent has submitted representations denying any breach and comprehensively addressing the allegations in turn.

The Hearing

[3] The Application then called for a Hearing by conference call at 10 am on 18 June 2026. The Applicant was personally present. The Respondent was represented by their own Ms Cooper. The Tribunal heard evidence and submissions regarding the issues raised in the Application. Each party had the right to cross-examine the evidence given and make closing submissions at the conclusion of the evidence.

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

The Applicant

[5] The Applicant's position is that he objects to the Respondent's claim to be the relevant property factor and to charge fees for their provision of services to the Applicant. His Application states that *"I have paid factoring fees to a company that had no legal authority to act as factor under the Deed"*. The Applicant goes on to write that he is seeking to be refunded all factoring fees paid to the Respondent from 1 November 2021 to 30 June 2025.

[6] The Applicant began his evidence by readily accepting that he did not know what sections of the Code he had referred to in his Application and freely accepted that he might have put in paragraphs that were not relevant. The Applicant was somewhat emotional in his tone and clearly lacked no small amount of passion for his contention that the Respondent was effectively *"illegitimately"* acting as the factor.

[7] The Tribunal explored what the Applicant's reasons were. This position was set out in the Application and the Applicant maintained this position in the Hearing.

"My complaint concerns a breach of the Deed of Conditions for Fraser House, 9 Market Street, Aberdeen, where I own Flat 32. The Deed, registered on 27 November 2017, clearly states that the initial managing agents, FG Burnett, must remain in place for three years after the last unit is sold. As of 1 November 2021, James Gibb Residential Factors took over the factoring duties without the consent of the proprietors and before the developer had sold all units—a clear breach of Section 8.1 of the Deed.

This change occurred without any formal consultation, vote, or agreement from the homeowners, and without any transparent communication about our rights under the Deed. I only became aware of this breach in 2024 when James Gibb announced they would cease services in June 2025, prompting a review of the Deed"

[8] The Tribunal asked the Applicant if this meant that logically his criticism would be better against *"FG Burnett"* as they were the entity who, by the Applicant's logic, were supposed to remain in position for *"three years after the last unit was sold"*. It seemed difficult to see how the Respondent could be said to have acted inappropriately if FG Burnett ceased acting and they were duly then appointed by the residents to act as the relevant Property Factor.

[9] The Applicant's response was to agree that perhaps his grievance should have been raised against FG Burnett and he appeared to ask the Tribunal for its thoughts about who best to complain about.

[10] In any event the Respondent had issued a response setting out their position which the Tribunal discussed with the Applicant. The Respondent's position was spoken to by Ms Cooper. She similarly adopted her position as had been set out in her written representations. Ms Cooper displayed some exasperation with the process and was clearly frustrated with the procedural steps involved in the Hearing. Regrettably she did not further assist the Tribunal and appeared to leave the call after making some clearly valedictory and rather curt remarks. In any event the Respondent's position is set out in their representations:

[11] *"We refer to the complaint concerning the appointment of James Gibb as managing agents and the interpretation of Section 8.1 of the Deed of Conditions in conjunction with Section 17(5) of the Property Factors (Scotland) Act 2011. Section 17(5) of the Act provides that a property factor's duties arise from (a) any contract or agreement with the homeowner and (b) duties imposed by the title deeds relating to the land managed or maintained by the property factor. We acknowledge that the Deed of Conditions forms part of the title deeds and that Section 8.1 states that the Developer shall appoint the first managing agents, FG Burnett, who shall remain in place for a period of three years after the Developer has sold the last of the Units. However, it is important to clarify the status of the units retained by the developer at the time of the change in managing agent. Drum Riverview retained ownership of a small number of units expressly for long-term rental and investment purposes. These units were not held as part of the original development stock awaiting sale on the open market, but rather were transferred into the developer's retained rental portfolio.*

In this context, the retained units are properly regarded as "sold" for the purposes of the Deed of Conditions. The developer had completed the development, disposed of all units intended for sale, and had transitioned fully from a development role to that of an owner-landlord in respect of the retained properties. The intention and practical effect of Section 8.1 is to prevent premature loss of developer control while units remain unsold as part of the active sales phase of the development. That situation no longer applied at the relevant time. In addition, there was no unauthorised or premature replacement of FG Burnett as managing agents. On 1 November 2021, FG Burnett was acquired by James Gibb, and as part of that acquisition, FG Burnett's property management portfolio transferred into the James Gibb organisation. The management of the development therefore continued without interruption, with James Gibb stepping into the role previously fulfilled by FG Burnett as a result of a corporate acquisition rather than a discretionary termination or replacement of the managing agent. Accordingly, the transition to James Gibb did not constitute a breach of the Deed of Conditions. The appointment arose from a lawful corporate transaction, and in any event, the condition relating to the sale of the last unit had been met in substance and intent by the conclusion of the development's sales phase.

We refer to the second element of the complaint concerning the alleged absence of formal consultation, homeowner approval, or transparent communication in relation to the transition from FG Burnett to James Gibb, and the assertion that this constituted a breach of the Deed of Conditions. As set out previously, the change that took effect on 1 November 2021 did not arise from a discretionary decision by the developer or a termination of FG Burnett's appointment. FG Burnett was acquired by James Gibb on that date, and as part of that corporate transaction, FG Burnett's managed portfolio transferred into the James Gibb organisation. The management of the development therefore continued without interruption and without a change in the underlying service function. "

[12] The Tribunal noted that the Applicant had nothing of substance to say to this response and could certainly provide no coherent reason to reject it.

[13] Having heard from parties and having considered the documentation, the Tribunal makes the following findings in fact.

1. *The Applicant is the owner of Apartment 32 Fraser House, 9 Market Street, Aberdeen, AB11 5PD ("the Property")*
2. *The Property is factored by the Respondent who are competently and lawfully appointed as factors.*
3. *The Respondents are entitled to charge for their services.*
4. *The Applicant is liable to the Respondent for his fair share of the Respondent's management fees and outlays.*

Decision

[14] Having made the above findings in fact and having considered the Application and response, the Tribunal could find no basis to conclude that the Respondent has breached any aspect of the Code of their Property Factor's Duties.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Andrew McLaughlin Legal Member

10 August 2026