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/LM/25/0328

Re: Land at Sheriff Bank, Leith, Edinburgh, EH6 6ES

The Parties:

Mr Alexander Webster, 6/3 Sheriff Bank, Edinburgh, EH6 6ES ("the Applicant")

James Gibb Residential Factors, 23 Alva Street, Edinburgh, EH2 4PS ("the Respondent")

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mr R. Buchan (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, 3, 6 and 11
Communications and Consultation: Sections 2.1; 2.3; 2.4 and 2.7
Carrying Out Repairs and Maintenance: Sections 6.1; 6.2; 6.4; 6.6; 6.7; 6.8 and 6.9
Complaints Resolution: 7.2

[3] The Applicant also alleges that the Respondent has not carried out their duties as Property Factors.

Overview of Claim

[3] The substance of the allegations relates to three issues.

1. *Bin stores have been in a very poor state of repair for several years.*
2. *A major repair to a boardwalk was unfit for purpose. The invoice (£35,000.00) was paid without ensuring the work was satisfactory. Problems with the boardwalk remain unresolved.*
3. *Communication has been extremely poor over the past two years.*

Inspection.

[3.2] The Application had called for a Case Management Discussions at which case management orders had been made in the form of Direction. The Tribunal had also decided to undertake an inspection of the land in question prior to conducting the Hearing which was ultimately fixed.

The Inspection and Hearing

[4] The Members of the Tribunal duly attended and conducted an inspection of the land at 10 am on 27 July 2026. The property is a residential development of 75 flats in Leith built in or around 1992. The Application then called for a Hearing by conference call at 1.30 pm on 27 July 2026. The Applicant was personally present. The Respondent was represented by their own Ms Ashley Wilson who joined the call late and after the Hearing had already commenced and being going for 45 minutes.

[4.1] The Tribunal had commenced in the absence of the Respondent as they had received notification of the details of the inspection and Hearing. They had not attended for the Inspection. The Applicant was in attendance. The Tribunal had telephoned the Respondent's office as an email had been sent from the Respondent's own Mark Smith saying that he would attend the Hearing. However, Mr Smith could not be reached and accordingly the Tribunal considered that it was in the interests of justice to proceed in the absence of the Respondent. When Ms Wilson joined the Hearing at 2.15 pm, she apologised and accepted that it would not be fair or reasonable to restart hearing the 45 minutes of evidence which had already taken place.

[5] The Tribunal began by hearing from the Applicant and then from Ms Wilson for the Respondent. The Tribunal asked questions throughout to ensure that it understood the evidence. The Applicant also had two witnesses- Ms Nikki Lunday and Ms Webster. 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.

The Applicant- Mr Alexander Webster

[7] The Applicant's evidence is relatively straightforward and the complaints advanced are not complicated. He spoke to the issues raised in the Application. He described how the Respondent had failed to maintain the bin stores. The Tribunal of course had seen these bin stores with their own eyes. They are wooden structures which house the external bins in the development. The Applicant described how his complaints about the condition of the bin stores were largely ignored. He described how there was a period of nine months during which absolutely no response was received to any of the Applicant's communications regarding the matter. This period was from between October 2022 and July 2023. The Applicant also descrbed how at one point he had been invited to the Respondent's offices to attend a meeting to discuss the matter. However, having travelled down from Nairn, no one turned up from the Respondent, notwithstanding that the meeting was in their own offices. The Applicant explained that he left that meeting and subsequently received no apology. The Applicant described how there were frequent changes in the point of contact for the development and that the new personnel would be entirely unfamiliar with the issues. He also described how, when he attended for meetings, there would be no agenda and the Respondent's staff were seemingly unprepared.

[7.2] The Applicant described how the Respondent's online portal was not kept up to date. The Tribunal informed the Applicant that the Tribunal's deliberations were restricted to those areas identified in the Application form and those were very clearly the issues idenfied above. The portal issue perhaps could come under the criticism of the Respondent's communications. The Applicant explained that one of the bin stores was considered dangerous by the residents who took matters into their own hands and conducted their own joinery work on the wooden structure to make it safe. There were emails and chains of correspondence in the papers that largely corroborated the Applicants's account about the communication issues and the frustrations expressed by the Residents Committee about the lack of engagement by the Respondent. The Respondent had acknowledged their lack of engagement to the Applicant and apologised.

[7.3] The Tribunal accepts that the Respondent's communication regarding the issue was poor and if the residents had to take steps to make a section of one of the bin stores safe then this certainly was a cause for concern.

[7.4] The Tribunal then heard about the issue with the boardwalk. The development is by the Water of Leith and features a private boardwalk area on a section of the water's edge. The boardwalk was in need of major repair and works were instructed by the

Respondent and carried out over a period from 2021. The Contractor appears to have been a sole trader trading as "*A. Ramsay*".The works carried out cost £35,000.00. However it appears that the work was unsatisfactory and left the boardwalk area with ongoing substantial problems that are still even now to be resolved. The Respondent however paid A Ramsay's invoice and appears not to have demonstrated any form of quality control before doing so. The Respondent is then said to have been particularly slow to chase the contractor to remedy the matter or to pursue legal action to seek redress. Time passed and then it seems that A. Ramsay retired. The Respondent latterly took legal advice which was to the effect of advising that due to the passage of time options were limited and legal action could not be recommended. The Applicant's grievance highlighted these issues and pointed out that the Respondent should have been more involved in the process and applied greater quality control and certainly not paid the invoice in full before being certain that the works had been completed satisfactorily. The Applicant also queried the wisdom of appointing a sole trader for a project of this size. It was pointed out that the contractor's invoice made no mention of VAT which suggested that they may be unaccustomed to projects of this size.

[7.5] The Tribunal then heard from Ms Nikki Lunday. She lives in block 8 of the Property and has lived there for more than ten years. She largely corroborated the Applicant's evidence and pointed out the Respondent's communication failings and highlighted her position on the residents committee.

[8] The Tribunal then heard from Ms Wilson on behalf of the Respondent.

Ms Ashley Wilson

[9] Ms Ashley Wilson is an Associate Director with the Respondent. She explained that it was difficut for her to establish exactly what had "*happened in years past*" . She explained that now the Respondent would not proceed to undertake such work on the boardwalk without specialist input. She explained that the Respondent had improved its processes by establishing cost thresholds above which the approval of senior staff members is now required. Ms Wilson maintained the position adopted in the Respondent's written representations that there was no breach of the Code, but it was clear from her evidence that she was not in a position to deny or contradict the Applicant's evidence.

[9.1] Ms Wilson's evidence was regretably of limited assistance. She accepted that she had never been at the development and so, for example, had never seen the bin stores or the boardwalk with her own eyes. The Tribunal was left with the impression somewhat that she had been parachuted into the Hearing at short notice when Mr Mark Smith did not attend (It was never explained why Mr Smith was not present).

The submissions

[10] Many pages of submissions were received from both parties and so it is not intended to go into these in detail. In summary, with regards to the boardwalk, the written submissions show that a detailed report on the boardwalk from BR & Co, Chartered Building Surveyors, had been obtained in 2018 and this had highlighted problems with the structure and describing options for extensive replacement. It appears that the Residents Committee decided to opt for a repair rather than a replacement due partly to planning issues, being in a Conservation area, and partly to cost considerations.

[10.1] The committee minutes of the 29th October 2019 state: *"Restated the position that had been reached at the last meeting: the boardwalk to be repaired, replacing only those timbers which had rotted, re-fixing the bollards and installing anti-slip strips along the length of the riverside edge. No-one on the committee has the expertise to draw up a specification of works……James Gibb to be authorised to employ a suitable person to draw up a specification for repair of the boardwalk timbers and to seek tenders for the work."*

[10.2] In a further meeting in December, attended by the development manager it was minuted that "*Further discussion at the committee had led members to agree to undertake repair of the boardwalk, replacing timbers where necessary and re-fixing the bollards firmly to the substrate*."

[10.3] With the benefit of the BR & Co report, the subsequent estimate received from A Ramsay in December 2020 is, to say the least, brief, on a sheet of A4, with little detail, particularly of the fixings to be used and no mention of any health and safety precautions bearing in mind that the work was to be carried out on the water's edge.

[10.4] Work commenced in 2021 and subsequently concerns were raised by residents about the quality of the work undertaken. Notes of a meeting with Nic Mayall and Marianne Peters of the Respondent on the 4 July 2024 show that the residents had been raising concerns with the Respondent and asking for the contractor to be pursued to resolve the complaints. Notwithstanding this, a formal letter was not sent by the Respondent to A Ramsay until March 2025. A subsequent email to solicitors tasked with pursuing the matter stated that the work had been carried out in 2017.

[10.5] After the works were completed, and in response to the concerns raised by the residents, a report from F3 Building Surveyors was obtained at the expense of the Respondent and many of the issues found were as a result of shortcomings in the construction which had been raised by BR & Co. It appears that A Ramsay had fixed some of the new boards and the bollards to rotten sub timbers.

[10.6] The issue of the bin stores can be summarised very briefly. In the meeting of the 4 July 2024 mentioned above, it was stated that there had been no communications from the Respondent at all since 2022. At the time of the inspection by the Tribunal in 2026, the bin stores have still not been repaired.

Findings in Fact

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

1) *The Applicant is the proprietor of the Property known as 6/3 Sheriff Bank, Edinburgh, EH6.*
2) *The Property is situated in a development which is factored by the Respondent.*
3) *The development includes communal bin stores which are to be maintained by the Respondent for the benefit of the residents.*
4) *The Respondent has been very poor in its communications with the Applicant regarding reasonable complaints and enquires made regarding the bin stores.*
5) *The residents have had to resort to taking matters into their own hands and carrying out joinery work themselves to address safety concerns in the structure of the wooden bin shelters. This has been necessary because of the Respondent failing to engage with the Applicant and other residents to address the concerns put to them.*
6) *The development is by the Water of Leith and features a private boardwalk area on a section of the water's edge. The boardwalk was in need of major repair and works were instructed by the Respondent and carried out over a period from 2021.*
7) *The Contractor appointed was a sole trader known as "A. Ramsay".The works carried out cost £35,000.00.*
8) *A. Ramsay's work was unsatisfactory and left the boardwalk area with ongoing problems that are still even now to be resolved. The Respondent however settled A Ramsay's invoice without taking any steps to confirm if the work had been completed satisfactorily.*
9) *When the issues with the contractor's work were brought to the Respondent's attention, they were slow to take action to try to resolve the problems, seek reimbursement of the funds paid or to take legal action against the contractor.*
10) *In the intervening months and years, A. Ramsay retired and no longer trades or answers correspondence.*
11) *The Respondent latterly took legal advice that options were limited due to the passage of time and legal action could not be recommended.*
12) *The Respondent's comunications with the Applicant were inadequate.*
13) *The Respondent mismanaged high value repair works carried out at the Property.*

Decision

[12] 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".*

[12.1] The Tribunal does not find this paragraph to have been breached. The issues raised are best expressed against other sections of the Code.

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

[12.2] The Tribunal does not find this paragraph to have been breached. The issues raised are best expressed against other sections of the Code.

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

[12.3] The Tribunal finds this paragraph to have been breached. The Respondent's service has not been delivered in a reasonable manner given the long periods when the Respondent just did not attend to matters raised by the residents.

"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".*

[12.4] The Tribunal finds this paragraph to have been breached. The Respondent's service has not been delivered with reasonable care and skill and in a timely way. Even to an untrained eye, it should have been obvious that the repair to the boardwalk was a specialist matter from both a health and safety perspective being next to the water and from a technical perspective in choosing the correct materials and fixings. Although the residents were looking for a cheaper option of repair rather than replacement it is not unreasonable for them to rely on the management experience of the Respondent to guide them on the correct course of action. Similarly, it is not unreasonable for the residents to expect the Respondent to pursue the contractor to resolve concerns raised in a timely manner.

"OSP11. *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure".*

[12.5] The Tribunal finds this paragraph to have been breached. The Respondent did not respond to enquiries and complaints within reasonable timescales and this was accepted by the Respondent in their stage 2 response to the Applicant.

*"**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."*

[12.6] The Tribunal finds this paragraph to have been breached. The Respondent did not communicate appropriately. The lengthy lack of any action at times regarding the bin stores is a clear breach of the code. This was acknowledged by the Respondent in their stage 2 response when they also said that it was their intention to replace the property manager and to ensure that the new manager is "both experienced and a proven communicator." Many months later, the existing manager was still in post.

*"**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."*

[12.7] The Tribunal does not find this paragraph to have been breached. The issues raised are best expressed against other sections of the Code

*"**Section 2.4** 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".*

[12.8] The Tribunal does not find this paragraph to have been breached. The issues raised are best expressed against other sections of the Code.

*"**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."*

[12.9] The Tribunal finds this paragraph to have been breached. The Respondent did not respond to enquiries and complaints within reasonable timescales as already accepted by the Respondent in their stage 2 response to the Applicant.

*"**Section 6.1** 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."*

[12.10] The Tribunal finds this to have been breached. The Respondent did not help prevent further damage or deterioration by making prompt repairs to the bin stores to a good standard.

*"**Section 6.2** 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."

[12.11] The Tribunal does not find this paragraph to have been breached. The issues raised are best expressed against other sections of the Code.

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

[12.12] The Tribunal can find no basis for concluding that this section has not been complied with. There is nothing to suggest that the Respondent does not have a *'procedure'*. Repairs can be reported by telephone, email or by the online portal operated by the Respondent and accessible to the residents. The problem is that the Respondent did not then take any action or respond.

*"**Section 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."*

[12.13] This has self-evidently been breached.

*"**Section 6.6** A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner."*

[12.14] This has self-evidently been breached as detailed above.

*"**Section 6.7** t is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.*

[12.15] This has self-evidently been breached as detailed above.

*"**Section 6.8** A property factor must take reasonable steps to appoint contractors who have public liability insurance. "*

[12.16] This has not been breached. There is nothing to suggest the contractor did not have insurance.

*"**Section 6.9** If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner."*

[12.17] Thus has not been breached. There is no evidence that the Applicant has requested the documentation

*"**Section 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."*

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

Duties

[13] It is clear that the Respondent has not carried out their duties in respect of arranging to carry out works, most notably the repair of the bin stores but these breaches are encompassed in the code failures above.

Property Factor Enforcement Order

[14] The papers submitted are a sorry tale of resident's frustration with the lack of engagement by the Respondent. The Respondent has apologised and pledged to improve but there is little sign of it. The bin stores remain unrepaired, years after first being raised and there is no resolution in sight to the problems concerning the boardwalk. The Tribunal has no difficulty in determining that the Respondent has failed to comply with the Code of Conduct and failed to carry out its Duties.

[14.1] Having made the above findings, the Tribunal therefore considered whether it should make a Property Factor Enforcement Order. The Tribunal considered that the level of the breaches was such that a Property Factor Enforcement Order was necessary.

[14.2] Section 20 of the Act is in the following terms:

20 Property factor enforcement orders

(1)A property factor enforcement order is an order requiring the property factor to—

(a)execute such action as the First-tier Tribunal considers necessary,

(b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.

(2)A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made.

(3)A property factor enforcement order may specify particular steps which the property factor must take.

[14.4] The Tribunal can therefore order that certain action is undertaken and order that a payment is paid to the Applicant that the Tribunal considers reasonable.

[14.5] The Tribunal considers that the Respondent ought to prepare and submit a reflective account of how they intend to improve their practices given the terms of this decision and the breaches found established.

[14.6] The Tribunal considers that the Respondent should make a formal proposal to the residents of the development as to how they intend to resolve the outstanding issues with the boardwalk and with a clear timescale of when this will be carried out.

[14.7] The Tribunal then considered whether an award of monetary compensation was appropriate and what the purpose and rational of any such order might be.

[14.8] The Tribunal noted that this Application is not an action for professional negligence in the Courts by which the Applicant seeks a payment of damages arising from the Respondent's breaches of their obligations to the Applicant. The Tribunal took the approach that the Courts are better suited to such actions.

[14.9] This Tribunal is tasked with identifying whether paragraphs of the Code have been breached and Duties failed to be carried out and if so, what the terms of any Property Factor Enforcement Order should be.

[14.10] The Tribunal therefore takes the approach that this Tribunal should consider that this payment should not be premised on any assessment of the damages that might be due under a professional negligence action, but instead on the inconvenience caused to the Applicant.

[14.11] It is clear that the Respondent has been receiving a management charge for work not undertaken although they have carried out some work. It seems appropriate therefore that the Respondent should credit back half of their management fee charged to the applicant over the last 4 years to the Applicant by way of an apology for their shortcomings.

[14.12] In addition, the Applicant has been put to significant inconvenience in pursuing this complaint and the incident where the Respondent did not even attend a planned meeting in their own office seems to sum up their attitude to the development. Similarly, the failure of the manager involved to attend the Hearing which had been planned months in advance seems in keeping with their conduct. Accordingly taking account of all matters, the Tribunal orders that the Respondent make a payment of £1,000.00 to the Applicant by way of a payment rather than a credit to his account in addition to the credit outlined above.

[15] In terms of section 19 (2) of the Act, where a Tribunal proposes to make a property factor enforcement order, (PFEO) they must before doing so-
(a) give notice of the proposal to the property factor, and
(b) allow the parties an opportunity to make representations to it.

[16] S19(3) states that: "*If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tie"r Tribunal must make a property factor enforcement order*."

[17] The Tribunal will accordingly make a Proposed Property Factor Enforcement Order in the above terms.

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**.**

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_____ 21 September 2026
Legal Member

Proposed Property Factor Enforcement Order ("PFEO"):

Property Factors (Scotland) Act 2011 Section 19(2)

Reference number: FTS/HPC/LM/25/0328

Re: Land at Sheriff Bank, Leith, Edinburgh, EH6 6ES
The Parties:
Mr Alexander Webster, 6/3 Sheriff Bank, Edinburgh, EH6 6ES ("the Applicant")
James Gibb Residential Factors, 23 Alva Street, Edinburgh, EH2 4PS ("the Respondent")

Tribunal Members:
Mr A. McLaughlin (Legal Member) and Mr R. Buchan (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order ("PFEO"):

1. The Respondent must submit to the Tribunal a reflective account of how they have improved their practices to avoid any reoccurrence of the breaches identified.
2. The Respondent must make a formal proposal to the residents of the development as to how they intend to resolve the outstanding issues with the boardwalk and with a clear timescale of when this will be carried out.
3. The Respondent should credit back half of their management fee charged to the applicant over the last 4 years to the Applicant by way of an apology for their shortcomings.
4. The Respondent should make a payment of £1,000.00 to the Applicant by way of a payment rather than a credit to his account in addition to the credit outlined above.

The actions to be taken within two months of the date of the Order.

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.