

**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)**

**In an Application under section 17 of the Property Factors (Scotland) Act 2011  
by**

**Douglas Forbes, 16 Oswald Court, Edinburgh EH9 2HY (“the Applicant”)**

**Trinity Factoring Services Limited, 209-211 Bruntsfield Place, Edinburgh EH10  
4DH (“the Respondent”)**

**Reference No: FTS/HPC/PF/21/1275**

**Re: Property at 16 Oswald Court, Edinburgh  
 (“the Property”)**

**Tribunal Members:**

John McHugh (Chairman) and Colin Campbell (Ordinary (Housing) Member).

**DECISION**

**The Respondent has failed to carry out its property factor’s duties.**

**The Respondent has failed to comply with its duties under section 14 of the  
2011 Act.**

The decision is unanimous.

**We make the following findings in fact:**

- 1 The Applicant is the owner of 16 Oswald Court, Edinburgh EH9 2HY (hereinafter “the Property”).
- 2 The Property is located within a development of terraced houses and associated common areas known as Oswald Court (hereinafter “the Development”)
- 3 A Deed of Conditions governs the arrangements for the sharing of costs relating to common property within the Development among the proprietors of the properties within the Development.
- 4 The Respondent is the property factor responsible for the management of common areas within the Development.
- 5 The property factor’s duties which apply to the Respondent arise from the Written Statement of Services and the Deed of Conditions. The duties arose with effect from 1 October 2012.
- 6 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from 7 December 2012.
- 7 A meeting of owners of properties within the Development was held on 10 December 2019.
- 8 At the meeting it was agreed that the owners should terminate the appointment of the existing factor, Charles White and appoint the Respondent as the new factor with effect from 1 April 2020.
- 9 A group of homeowners were delegated to conclude a factoring contract with the Respondent.
- 10 That group signed a letter dated 20 December 2020 offering the Respondent appointment as factor.
- 11 On 23 January 2020 the Respondent wrote to all owners including the Applicant to advise of its appointment as factor of the Development.
- 12 The letter of 23 January 2020 referred to the appointment being at the instance of the Oswald Court Proprietors Liaison Committee.
- 13 On 1 March 2020 the Applicant wrote to the Respondent taking issue with its appointment.
- 14 On 12 March 2020 the Respondent wrote to the Applicant to confirm that its appointment was at the instance of the Oswald Court proprietors and that the reference to the Liaison Committee in their letter of 23 January 2020 had been incorrect.
- 15 The Applicant wrote to the Respondent again on 20 March 2020.
- 16 On 12 May 2020 the Respondent emailed the Applicant explaining the basis of its appointment.
- 17 The Applicant wrote to the Respondent on 7 July 2020 (two letters); 1 October 2020; 16 November 2020 (two letters); 10 February 2021; 18 February 2021; 22 February 2021; 28 February 2021; 8 April 2021 (two letters); 30 April 2021 (two letters). These letters raised a number of complaints mainly focused upon the legitimacy of the Respondent’s appointment as factor.

- 18 On 11 June 2021 the Respondent wrote to the Applicant referring him to its letter of 12 March 2020 and indicating that if he remained dissatisfied, he should apply to the Tribunal.
- 19 The Applicant has, by his correspondence, including by his email of 19 June 2021, notified the Respondent of the reasons why he considers the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.
- 20 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

### **Hearing**

A hearing took place at by telephone conference on 4 October 2021. The hearing had been scheduled to proceed as a Case Management Discussion. The parties indicated that they were prepared to have the application dealt with and so the Tribunal elected to hear parties and proceed to make a Decision without the need to fix any further hearing.

The Applicant was present at the hearing.

The Respondent was represented at the hearing by Nikkie Dunlop, Property Manager and George McGuire, Director of Operations.

No other witnesses were called by either party.

## **Introduction**

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Respondent became a Registered Property Factor on 7 December 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent.

The documents before us included a Deed of Conditions by Malcolm Sanderson Scotland Limited recorded 26 March 1971, which we refer to as “the Deed of Conditions” and the Respondent’s Service Level Agreement version 5 dated March 2018, the welcome letter of 23 January 2020 and its annual budget which together we refer to as “the Written Statement of Services”.

## **REASONS FOR DECISION**

### **The Legal Basis of the Complaints**

#### **Property Factor's Duties**

The Applicant complains of failure to carry out the property factor's duties.

The Written Statement of Services and the Deed of Conditions are relied upon in the Application as a source of the property factor's duties.

#### **The Code**

The Applicant complains of failure to comply with the Code.

The Applicant complains of breaches of Sections: 1; 2.1; 2.2; 2.4; 2.5; 3.2; 3.3; 4.4; 4.9; 6.1; 6.2; 6.4; 6.9 and 7.1 of the Code.

The elements of the Code relied upon in the application provide:

#### ***“SECTION 1: WRITTEN STATEMENT OF SERVICES***

*You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code.*

*You must provide the written statement:*

- *to any new homeowners within four weeks of agreeing to provide services to them;*
- *to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage;*
- *to existing homeowners within one year of initial registration as a property factor. However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within four weeks of the request) or by the homeowner housing panel (within the timescale the homeowner housing panel specifies);*

- *to any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.*

### **1.1a For situations where the land is owned by the group of homeowners**

*The written statement should set out:*

#### **A. Authority to Act**

- a. a statement of the basis of any authority you have to act on behalf of all the homeowners in the group;*
- b. where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation;*

#### **B. Services Provided**

- c. the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service);*
- d. 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;*

#### **C. Financial and Charging Arrangements**

- e. the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee;*
- f. what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion, this should be stated;*
- g. confirmation that you have a debt recovery procedure which is available on request, and may also be available online (see [Section 4: Debt recovery](#));*
- h. any arrangements relating to payment towards a floating fund, confirming the amount, payment and repayment (at change of ownership or termination of service);*
- i. any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);*
- j. how often you will bill homeowners and by what method they will receive their bills;*

k. how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable (see Section 4: Debt recovery);

#### **D. Communication Arrangements**

l. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure (see Section 7: Complaints resolution);

m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail;

n. your procedures and timescales for response when dealing with telephone enquiries;

#### **E. Declaration of Interest**

o. a declaration of any financial or other interests (for example, as a homeowner or lettings agent) in the land to be managed or maintained;

#### **F. How to End the Arrangement**

p. clear information on how to change or terminate the service arrangement including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination...

## **SECTION 2: COMMUNICATION AND CONSULTATION**

2.1 You must not provide information which is misleading or false....

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)...

...2.4 You must have a procedure to consult with the group of homeowners and seek their written approval 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 you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

*2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).*

### **SECTION 3: FINANCIAL OBLIGATIONS...**

*...3.2 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.*

*3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance...*

### **...SECTION 4: DEBT RECOVERY...**

*...4.4 You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations...*

*...4.9 When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position...*

### **...SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE...**

*...6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.*

*6.2 If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-hours*



*procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible...*

*...6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works...*

*...6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor....*

### **...SECTION 7: COMPLAINTS RESOLUTION**

*7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.”*

## **The Matters in Dispute**

The Applicant complains in relation to the following issues:

- (1) The validity of the appointment of the Respondent as factor.
- (2) Deficiencies in the contents of the Written Statement of Services.
- (3) The provision of false information.
- (4) The issuing of threatening communications concerning payments.
- (5) The absence of a delegated level of authority
- (6) Failure to respond to communications.
- (7) Financial failures.
- (8) Deficiencies in dealing with repairs and maintenance
- (9) Complaint Handling failures
- (10) Charging legal fees

We deal with these issues below.

### **1 The validity of the appointment of the Respondent as factor**

This is the central issue about which the Applicant complains. The Deed of Conditions provides as follows:

#### ***EIGHTH***

*There shall be appointed a Factor who will be responsible for instructing and supervising the common repairs and maintenance of the whole common parts of the said subjects and for apportioning the cost thereof among the several proprietors in according with the provisions of these presents. The said Factor shall be appointed by us so long as we remain the owners of any of the said dwelling houses and thereafter by a majority of the proprietors (counting one vote for each dwelling house and said meeting convened as aftermentioned).*

#### ***NINTH***

*After we have ceased to be a proprietor of any of the said dwelling houses the proprietors of any two of the said dwelling houses shall have power to call a meeting of the whole proprietors of said dwelling houses to be held at such reasonably convenient time (excepting Saturdays and Sundays and Public Holidays) and place as the convenors of said meeting may determine and of which time and place of meeting at least seven days notice in writing shall be given by or on behalf of the convenors of said meeting to the other proprietors and at any meeting so convened*

*any of the proprietors may be represented by a mandatory. The proprietor or proprietors of any five or more of said dwelling houses or the mandatory or mandatories of such proprietor or proprietors shall be a quorum and the proprietors present or their mandatories shall be entitled to one vote for each dwelling house owned by him or his principal; DECLARING that in the event of any of the said dwelling houses being owned by two or more persons only one of such owners shall be entitled to vote, and in no case may more than one vote be allowed in respect of a single dwelling house; And it shall be competent at any such meeting of a majority of the votes of those present (said votes to be computed as aforesaid);*

*(Primo) to order to be executed any common or mutual operations, maintenance and repairs, decoration et cetera to the said common property;*

*(Secundo) to make any regulations in conformity with these presents which may be considered necessary with regard to the preservation, cleaning, use or enjoyment of the said common property;*

*(Tertio) to delegate to the factor appointed as aforesaid full right power and authority to take charge of all matters pertaining to the maintenance the preservation of the common property and the employment of labour thereanent, as if said right power and authority could be exercised by a majority vote at such a meeting;*

*(Quarto) to instruct the collection by the Factor of the annual maintenance charge aftermentioned from each proprietor and the accounting by the Factor for his intromission therewith;*

*(Quinto) to instruct employment by the factor of a gardener or gardeners and other staff as required for the maintenance and preservation of the common property;*

*(Sexto) to determine the amount of the annual maintenance charge from time to time; DECLARING that the said Factor shall unless otherwise determined by a meeting of proprietors, be entitled during the continuance of his appointment to exercise the whole rights and powers which may competently be exercised at or by a meeting of proprietors and others convened as aforesaid; DECLARING that all expenses and charges incurred for any work undertaken or service performed in terms or in furtherance of the provisions herein contained and the remuneration of the Factor shall be payable by the proprietors of the said dwelling houses whether consenters thereto or not in the proportions as hereinbefore detailed in the same way as if their consent had been obtained, and in the event of non-payment within one calendar month the Factor shall be entitled to sue for recovery of the same in his own name, together with all expenses incurred by him."*

The Applicant accepts that a meeting of proprietors was called by a notice dated 26 November 2019 in accordance with the above terms of the Deed of Conditions. He accepts that the meeting took place on 10 December 2019. He accepts the Minute of that meeting as accurate. He did not attend.

The Minute of the meeting notes that a quotation had been obtained from the existing factor, Charles White Ltd and from the Respondent. The Respondent's quotation was £114 per annum per house. The quotation from Charles White was higher.

The Minute records:

*“Following discussion, Mr Buchanan (7) proposed that CWL’s appointment as factor should be terminated on 31<sup>st</sup> March 2020 and that TFL be appointed from 1<sup>st</sup> April 2020, subject to agreement by both parties. The proposal was seconded by Dr Gibson (19). A vote was taken by show of hands with 22 votes in favour of the appointment of TFL and 1 proxy vote for TFL.*

*The meeting delegated to Mr Bennett (5) and Mrs Hoehnke (1) the negotiation of a termination date with CWL.*

*Similarly, authority was given to Mr Bennett and four members of the Liaison Committee to sign the Offer of Appointment Letter to TFL.”*

On 20 December, five owners signed a letter appointing the Respondent as factor of the Development in terms of Clause EIGHTH of the Deed of Conditions. That letter enclosed a list of proposed amendments to the Respondent's Service Level agreement. That list had been provided to owners along with the notice calling the meeting.

The Applicant's view is that the above chain of events demonstrates that the Respondent was appointed by the Liaison Committee to provide services to it. He regards that as a private contractual arrangement between the Liaison Committee and the Respondent to which he is not a party.

For that reason, he does not recognise the Respondent as the appointed factor.

The basis of the Applicant's interpretation of the above events is that there had, he maintains, originally been an arrangement concluded between a group of owners known as the Owners Committee and Charles White Ltd in relation to carrying out works to the common areas. The notice of 26 November 2019 calling the meeting contained an explanatory note outlining the history and making reference to an “alternative service with Trinity Factors” which was to be put to owners at the meeting.

The Applicant takes from this wording that the service to be offered by the Respondent was to be an alternative to that which he says had been provided by Charles White to the Owners Committee. Therefore, he did not regard the service to be performed by the Respondent as a factoring service to the owners as a whole in terms of the Deed of Conditions.

In addition, the Applicant highlights that the Respondents “welcome letter” of 23 January 2020 intimating their appointment indicates that they “*were appointed by Oswald Court Proprietors Liaison Committee to maintain the common grounds of the development as per the Deed of Conditions.*” He takes this as further evidence that

the Respondent was appointed by the Liaison Committee only and not by the owners as a whole.

On 12 March 2020, the Respondent wrote to the Applicant clarifying that it had been appointed at the meeting of December 2019 by all of the owners.

The Tribunal considers that the Applicant is wrong in his view that the Respondent is not the properly appointed factor of the Development in terms of the Deed of Conditions.

The appointment process in terms of the Deed of Conditions was followed appropriately and the owners have voted to appoint the Respondent as Factor.

The Tribunal attaches no weight to the explanatory wording highlighted by the Applicant in the notice of 26 November 2019 calling the meeting. It is abundantly clear that the notice is calling a meeting of all owners. It reads "We, the undersigned hereby call a GENERAL MEETING of the Proprietors of Oswald Court under Clause NINTH of the Deed of Conditions."

It is clear that the owners voted to appoint the Respondent as Factor at the meeting on 10 December 2019. The fact that the owners at the same meeting delegated authority to sign an offer letter appointing the Respondent as Factor subject to certain specified conditions is not evidence that those delegated owners were acting on their own behalf only; they were clearly acting on behalf of all, and as instructed by the meeting of all, of the owners.

The Respondent's welcome letter was somewhat unclear in its language in that it referred to appointment by the Liaison Committee rather than by the owners. However, simply because that inaccurate wording appears in the letter, that does not, of itself, alter the reality of the position that the Respondent had, in fact, been appointed as Factor in terms of the Deed of Conditions.

We find there to have been no breach of the Code or of property factor's duties in this regard.

The Applicant has raised a significant number of issues in his Application many of which depend upon the success of his principal argument that the Respondent is not the duly appointed Factor of the Development. As he has been unsuccessful in this regard, this impacts upon our decision in relation to those matters.

## **2 Deficiencies in the contents of the Written Statement of Services**

As well as a general complaint that the Written Statement of Services is deficient because of the perceived issue with the appointment of the Respondent (which the Tribunal rejects), the Applicant raises a number of specific complaints.

It should be noted that the Service Level Agreement specifies that the written statement of services is to consist of the Service Level Agreement itself as well as the welcome letter and annual budget.

He complains that it is opaque and makes general reference to the Deed of Conditions/ Tenements (Scotland) Act. However, we do not find those general

criticisms justified in that it is a general standard form document evidently intended to be employed on different occasions when the Respondent acts as a factor.

The Applicant complains of the following specific failings regarding the content of the Written Statement:

- A) It contains no map or detailed description of the common areas. The Code does not require these.
- B) It does not include a detailed gardening specification or precise extent of the maintenance required. This is correct although the Code does not require these. We consider that the annual budget and the welcome letter of 23 January 2020 contain sufficient specification of the works to be carried out.
- C) It does not include the date of appointment of the Respondent. This is accurate. The Applicant was informed of the Respondent's appointment by the Respondent's welcome letter of 23 January 2020. However, there is no requirement for inclusion of the date in the Written Statement of Services. The Applicant was, in any event, aware of the position from the Minutes of the Meeting of 10 December 2019.
- D) It does not include the extent of the Respondent's authority for emergency and non-emergency works. The works to be carried out are set out in the welcome letter and budget. We can identify no specific breach of the Code in this regard.
- E) It does not include details of enhancements to core services such as tree removal. There is a sentence in the welcome letter which indicates that the Respondent will "*organise and manage any other maintenance work as and when needed*". The Code Section 1 B d. requires specification of "*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*". While the content of the welcome letter falls somewhat short of that, the overall background is that the Respondent is authorised under the Deed of Conditions to attend to all maintenance and the Service Level Agreement contains wording that high cost repairs will be notified separately. There would seem to be little practical advantage to anyone for the Respondent to attempt to indicate in its Written Statement a list of potential extra gardening services such as tree removal. The Tribunal is not in possession of the gardening specification which is said to pre-date the appointment of the Respondent and which sets out the gardening services carried out and, therefore, does not know whether the service of tree removal (being the example given by the Applicant) is included. Having regard to the circumstances of this case, we do not consider that there has been a breach of the Code in this regard.
- F) It does not include details of winter maintenance. There is no specific requirement in the Code for inclusion of this.
- G) It does not provide dates of inspections and how they are to be recorded. We consider the section of the Service Level Agreement entitled "Site Visits" to contain sufficient information to meet the requirements of the Code.

- H) It does not detail how management charges are to be charged or altered. This information is contained in the section of the Service Level Agreement entitled “Management Fees”
- I) It does not contain details of floating funds. The section of the Service Level Agreement entitled “Client Funds” deals with these. Although there is no specific detail here, we consider what is provided to be sufficient against the background that annual accounts are available to owners.
- J) It does not contain details of how owners can dispute invoices. There is no requirement in the Code for this to be included.
- K) It does not include response timescales. The Communications and Repairs sections of the Service Level Agreement contain these.
- L) It does not contain details of any cooling off period, notice period or penalty charges for early termination. The section of the Service Level Agreement headed “Changing Property Manager” provides a notice period. It does not contain details of a cooling off period or any penalty. Such items only require to be included when they exist. There has been no suggestion that they do exist in this case.
- M) It does not contain details of the Respondent’s financial interest. The Code requirement is only to report an interest where one exists. There is no suggestion of any interest on the part of the Respondent in this case.
- N) Does not include that the Respondent provides legal advice. There is no requirement in the Code for this to be included and we have no information to suggest that the provision of legal advice is part of the Respondent’s service.

### **3 The provision of false information**

The Applicant complains that the Respondent has provided false information to the Scottish Government and Police Scotland (to whom the Applicant had reported the Respondent for alleged illegal behaviour in acting or claiming to act as the Factor of the Development). He complains that the Respondent has provided false information to him by claiming to be the Factor and by making payment demands as well as by disagreeing with the legal advice which the Applicant reported as having received from his own solicitors.

This complaint is based upon the success of the Applicant’s principal argument that the Respondent is not the duly appointed Factor of the Development. As the Tribunal has concluded that the Respondent is the Factor, the Tribunal finds that none of the above matters complained of amount to a breach of Code Section 2.1.

#### **4 The issuing of threatening communications concerning payments**

The Tribunal has reviewed the correspondence issued by the Respondent and on its behalf. The Applicant does not claim that the language of any specific letter is itself abusive or threatening. Rather, his complaint is that demands for payment have been made and threats of legal action including the placement of a Notice of Potential Liability upon his property. He regards such communications as threatening because he considers that he has no liability to the Respondent since he does not consider it to be the factor.

This complaint is based upon the success of the Applicant's principal argument that the Respondent is not the duly appointed Factor of the Development. As the Tribunal has concluded that the Respondent is the factor, the Tribunal finds that none of the above matters complained of amount to a breach of Code Sections 2.2 or 4.

#### **5 The absence of a delegated level of authority**

The Applicant complains that the Respondent had no delegated level of authority to carry out works. We consider this to be incorrect because the Respondent had been appointed in terms of Clause NINTH of the Deed of Conditions which allowed it to exercise the same functions as the Owners themselves. We identify no breach of the Code or of property factor's duties.

#### **6 Failure to respond to communications**

We have noted in our findings in fact section above the history of communication between the parties. The Applicant complains that he received no response to a substantial volume of letters which he had sent to the Respondent between 7 July 2020 and 30 April 2021.

The Respondent's response was that it had responded in its letter dated 11 June 2021 indicating that it would not reply further and that the Applicant should direct any future complaint to the Tribunal.

Writing in those terms on 11 June cannot excuse the failure to reply within a reasonable time to the earlier letters.

We find that the Respondent has failed to comply with its duty under Code Section 2.5 to respond within prompt timescales. Further, we find there to have been a breach of property factor's duties in that it has failed to reply to correspondence within five working days as per its Written Statement of Services.

#### **7 Financial Failures**

The Applicant complains of various breaches of Code Section 3. Again, these are mostly predicated upon there being a deficiency in the Respondent's appointment and, as there was no such deficiency, the complaints are not upheld.



The Applicant complains of a breach of Code Section 3.2 in that the Respondent failed to return monies received from Charles White to owners. We disagree. Section 3.2 creates an obligation upon the retiring factor, not upon the new factor taking up appointment.

The Applicant complains of a breach of Code Section 3.3 by the failure to provide a detailed financial breakdown. We note that the Respondent does however provide an annual budget and invoices and so we do not consider there to be a breach.

We identify no breach of the Code or of property factor's duties.

## **8 Deficiencies in dealing with repairs and maintenance**

The Applicant has raised no specific concerns as regards failure of the carrying out of any repairs or maintenance. The actual service provided is, in any event, relatively limited since most works are confined to gardening related matters.

The Applicant complains that reports relating to maintenance can only be made to the Liaison Committee. The Respondent's representatives deny this and outlined that they will accept communications on maintenance issues from all owners. Similarly, the Applicant maintains that the Respondent has no emergency procedure. The Respondent's representatives explained that they have an emergency contact telephone number and procedure. In the absence of any evidence to support the Applicant's assertions, we prefer the evidence of the Respondent on these matters.

As regards Code Section 6.4, the programme of works is said by the Respondent to be the gardening specification. While we do not have this, there appears to be no dispute that it exists and, accordingly, there appears to be no breach of Code Section 6.4.

We have identified no evidence to support the claim of a breach of Code Section 6.9.

We have identified no breach of the Code or of property factor's duties.

## **9 Complaints handling**

The Applicant complains that the Respondent has failed to follow its own complaints procedure in its handling of his complaint.

The Respondent's Written Statement of Services sets out a three stage complaint process. While it appears to be true that the Applicant never specifically requested to use that complaints process, we consider that the Respondent should have employed the process since there was obviously a complaint.

The Tribunal accepts that some features of the complaints procedure appear in the Respondent's response to the Applicant's complaint but the Respondent clearly failed to refer to or follow its own procedure. We consider there to have been a breach of Code section 7.1. We identify no breach of property factor's duties.

## **10 Charging Legal Fees**

The Applicant complains that the Respondent has charged to owners legal fees which were the personal responsibility of the Chairman of the Liaison Committee. He advised that he had seen invoices addressed to the Chairman in the context of a previous application to the Tribunal. This Tribunal has not seen those invoices. We did however note a suggestion in the papers that the legal expenditure had been authorised by the owners at a meeting. The Applicant was not able to say otherwise.

It may be that the invoices being addressed to the Chairman personally does not indicate that they were his personal responsibility so much as that he was the person designated to receive the invoice which was due for payment by the owners.

The Respondent advises that it inherited the situation from Charles White Ltd in that the legal work had been carried out and it received an invoice when it received the owners' funds along with confirmation by Charles White that the invoice was due for payment. We can identify no breach of the Code or of property factor's duties.

## **Breaches of the Code and of Property Factor's Duties**

We have sought to state in detail above where we identified breaches of specific sections of the Code.

For the sake of completeness, given that the Application contains references to alleged breaches of many sections of the Code, it should be noted that we have not identified any other breaches of the Code other than those specified above.

We have not identified any breach of property factor's duties beyond those specified

## **PROPERTY FACTOR ENFORCEMENT ORDER**

We propose to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached document.

### **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.



**JOHN M MCHUGH**

**CHAIRMAN**

**DATE: 14 October 2021**