



## **First-tier Tribunal for Scotland (Housing and Property Chamber)**

### **Decision with Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011**

**Reference number: FTS/HPC/PF/24/5520**

**Re: Property at Royal Marine Apartments, Apt 22, Nairn, IV12 4EN (“the Property”)**

**The Parties:**

**Mr John Jeffrey, 57/2 Great King Street, Edinburgh, EH3 6RP (“the Applicant”)**

**Trinity Factoring Services Ltd, 1 South Mount Street, Aberdeen, AB25 2TN (“the Respondent”)**

**Tribunal Members: Ruth O’Hare, Legal Member, and Mary Lyden, Ordinary Member**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has complied with the duty under section 14 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”), and in particular has complied with sections 7.1 and 7.5 of the Code of Conduct for Property Factors 2021.

### **Background**

- 1 This is an application under rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) for a determination that the Respondent has failed to comply with the duty under section 14 of the 2011 Act. In particular, the Applicant stated that the Respondent had failed to comply with sections 7.1 and 7.5 of the Code of Conduct for Property Factors 2021.
- 2 The Applicant’s complaint can be summarised as follows:-
  - (i) The Applicant incurred costs in 2015 and 2023 in relation to plumbing repairs, which he believes should have been met by the Common Fund. The Respondent has refused to reimburse him and has directed him to the previous factor for the development.

- (ii) The Applicant incurred costs in relation to repairs to his windows, which he believes should be met by the Common Fund. The Respondent has refused to reimburse him and has advised that the Applicant's windows are not common property.
  - (iii) The Respondent has charged the Applicant £150 for work which the Applicant disputes liability for, as he was in the process of moving out of the property.
  - (iv) The Respondent has charged the Applicant £114 as an administration fee for liaising with his solicitor on the sale of the property. The Respondent does not have any legal right to charge such a fee.
- 3 The application was referred to a case management discussion ("CMD") to take place by teleconference on 27 June 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.
- 4 On 5 June 2025 the Tribunal received written representations from the Respondent in response to the application. The Tribunal also received written confirmation from both parties that neither wished to attend the CMD.
- 5 The CMD took place on 27 June 2025. Neither party joined the call. The Tribunal proceeded to consider the written submissions from the parties in order to determine whether it had sufficient information to reach a decision on the application. The Tribunal concluded that it required to make further inquiries before it could properly determine the application.
- 6 Following the CMD the Tribunal issued a Direction to the parties requiring the Applicant to provide further written submissions on the following points:-
  - (i) Why does the Applicant believe the Respondent has breached sections 7.1 and 7.5 of the Code? What are his reasons for this? The Applicant was advised to consider the wording of the sections carefully and ensure his response addressed the specific duties the Respondent has under these sections.
  - (ii) Did the Applicant make a complaint to the previous factor back in 2015 with regard to the plumbing repairs? If so, the Applicant was asked to provide evidence of this. If not, the Applicant was asked to explain why not.
- 7 The Respondent was also directed to make any further written representations in response to the Applicant's submissions and to address the following points:-
  - (i) Was the Respondent aware of any outstanding complaints by the Applicant when they were appointed factor for the development in 2016?

- 8 On 15 July 2025 the Tribunal received a response to the Direction from the Applicant. On 6 August 2025 the Tribunal received a response to the Direction from the Respondent.

### **Findings in fact**

- 9 The Applicant was the owner of the property at Royal Marine Apartments, Apt 22, Nairn, IV12 4EN. The Respondent became the property factor for the development pertaining to the property on 31 August 2016.
- 10 The Respondent has a complaints handling procedure within its written statement of services.
- 11 The Applicant made a complaint to the Respondent on 3 June 2024.
- 12 The complaint was acknowledged by the Respondent on 4 June 2024.
- 13 The Respondent provided a written response to the Applicant's complaint on 20 June 2024. The Respondent's response was in line with the terms of the complaints handling process which requires a response within 20 working days.
- 14 The Respondent applied its complaint handling procedure consistently and reasonably with regard to the Applicant's complaint.
- 15 In 2015 the Applicant raised an issue with the previous factor for the development, regarding window repairs.
- 16 The Applicant did not make a formal complaint to the previous factor regarding the issue.

### **Reasons for decision**

- 17 The Tribunal was satisfied that it could proceed to a decision on the basis of the documentary evidence, in the absence of a hearing under Rule 18 of the Rules. Both parties had confirmed they were content for the Tribunal to do so.
- 18 It should be noted that the Applicant has raised various concerns in the application which may give rise to consideration of sections of the Code which have not been included in the notification. For the avoidance of doubt, the Tribunal is restricted to consideration of those sections of the Code included in both the notification to the property factor and the application.
- 19 The Tribunal therefore carefully considered the wording of the sections of the Code that the Applicant states have been breached by the Respondent in this case.
- 20 Section 7.1 of the Code states:-

*“A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request. The procedure must include:*

- The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*
- The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*
- Where the property factor provides access to alternative dispute resolution services, information on this.”*

- 21 The Tribunal was satisfied that the Respondent has a written complaints procedure, as evidenced by the Factoring Service Level Agreement produced by the Applicant, that meets the requirements of section 7.1. There was no evidence to suggest that the Respondent had applied the procedure inconsistently to the Applicant’s complaint. The Applicant submitted a complaint to the Respondent on 3 June 2024 and received an acknowledgement on 4 June 2024, followed by a full response on 20 June 2024, which is in line with the timescales contained within the complaints handling procedure.
- 22 The Applicant’s complaint related, in part, to a grievance arising from an issue that dated back to 2015. It was not unreasonable to conclude that the Respondent would have had limited information on the matter, on the basis that it had been initially dealt with by the previous factor. The Applicant had chosen not to make a formal complaint to the factor at that time, conceding that he had only done so when he came to sell the property in 2024. The Tribunal considered that the Respondent’s response to this element of the complaint was reasonable and proportionate in terms of the extent to which the factor is obliged to investigate complaints. Whilst the Applicant had provided the Respondent with some information regarding the repairs and the previous factor’s response, the Tribunal accepted that the Respondent would likely have required access to records held by the previous factor, and it would have been disproportionate to expect them to pursue the previous factor for this, given the length of time that had now passed.
- 23 With regard to the Respondent’s overall response to the Applicant’s complaint, the Tribunal accepted that the Applicant may have disagreed with the outcome of his complaint, but that in itself does not amount to a breach of the Code. The Tribunal is unable to consider whether the fees and charges imposed on the Applicant were justified, as he has not sought to rely on any sections of the Code that pertain to these matters. The only issue before the Tribunal is whether the Respondent has correctly applied the complaints procedure in their

written statement of services. The Tribunal was satisfied that the Respondent had addressed the Applicant's complaint appropriately. The response clearly outlined the Respondent's position regarding the various issues raised by the Applicant.

24 Section 7.5 of the Code states:-

*“Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must co-operate with the current property factor (and vice versa) to ensure the exchange of all necessary or relevant information. This can include, information about outstanding complaints. Where information about an unresolved issue that was the subject of a complaint has been shared with the new, formally appointed factor, they have the option, if they so choose, to progress this complaint rather than starting a new one.”*

25 The Applicant confirmed that he did not make a complaint to the previous factor prior to the management of the development transferring to the Respondent in 2016. Instead, he sought to revive the complaint some eight years later when he came to sell the property. The Applicant has stated that he was awaiting the outcome of completion of the repairs and the final invoices for the works before making his complaint. The Tribunal however found it difficult to understand why, if the issue was one of serious concern, it took him until 2024 to submit the complaint to the Respondent.

26 The Tribunal further considered that it would have been the responsibility of the previous factor to alert the Respondent to any necessary or relevant information at the time of the management transfer. Given that the Applicant had chosen not to make a complaint to the previous factor, it is perhaps understandable as to why they would have not raised the issue with the Respondent. They may have taken the view that the matter had been resolved on that basis. In any event, the Tribunal could find no fault on the part of the Respondent. They could not seek information that they were not aware of at the time of transfer. It would be unreasonable to expect them to now do so, some 9 years after the initial issue had occurred. The Tribunal therefore found no breach of section 7.5 of the Code.

27 Having concluded that the Respondent has complied with the duty under section 14 of the 2011 Act, the Tribunal determined to make no order.

28 The decision of the Tribunal was unanimous.

