



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**

Stephen John Day (“the Applicant”), |Corrie Lodge, Corrie, Lockerbie DG11 2NG

Charles White Ltd, 14 New Mart Road, Edinburgh EH14 1RL (“the Respondent”)

Re: Property at Flat 2, 1 Hillpark Rise, Edinburgh (“the Property”)

Tribunal Ref: FTS/HPC/PF/23/1936 &1937

Tribunal Members:

John McHugh (Chairman) and John Blackwood (Ordinary (Housing) Member).

DECISION

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 Flat 2, 1 Hillpark Rise, Edinburgh EH4 7BB (hereinafter "the Property").
- 2 The Property is located within a development of flatted blocks and associated common areas known as Hillpark Brae (hereinafter "the Development").
- 3 The Respondent was the property factor responsible for the management of common areas within the Development.
- 4 The Respondent's activities were carried out under Contract Number 01372001 (Grounds maintenance) and Contract No. 01371214 (Flats) until 11 March 2024 when the grounds maintenance responsibility transferred to a different property factor. The Respondent continues to deal with the flats.
- 5 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. From 16 August 2021 it was under a duty to comply with the updated 2021 Code.
- 6 In 2021, the Applicant was in arrears in relation to payment of his factoring charges.
- 7 In April 2021, the Applicant was imprisoned. His assets were made subject to a freezing order under Proceeds of Crime legislation.
- 8 On 21 May 2021, the Applicant wrote to the Respondent to explain his situation and that he was unable to pay factoring dues because of the order.
- 9 He wrote again in similar terms on 7 March, 8 May and 24 July 2022.
- 10 Despite the letters from the Applicant, the Respondent continued to pursue its standard debt recovery procedures.
- 11 The Respondent wrote demand letters and demanded late payment fees.
- 12 The Respondent instructed debt recovery agents to pursue the Applicant's debt.
- 13 The Respondent commenced court action for payment.
- 14 The Applicant defended the court action on the basis of his legal inability to pay.
- 15 The Applicant accepts that the principal charges are due and payable but does not accept that he should have to pay charges related to the debt recovery procedure.
- 16 The Respondent did not advise the Applicant of the availability of debt advice.
- 17 The Applicant has, by his correspondence, including by his two letters of 15 April 2024, informed the Respondent of the reasons why he considers the Respondent has failed to carry out its obligations to comply with its duties under section 14 of the 2011 Act.
- 18 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A Hearing took place at the Edinburgh Training & Conference Centre on 10 June 2025.

The Applicant was present. The respondent was represented by its Robyn Rae, Associate Director who has responsibility for the Development.

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 the Respondent’s Written Statement of Services marked as Effective from June 2014 (updated 2024) which we refer to as “the Written Statement of Services”.

There are two Applications which deal with the same factual subject matter but which have been presented separately to reflect the fact that the terms of the Code changed over the period of time to which the matters complained of relate. For convenience, we refer to both applications together as “the Application”.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant does not complain of failure to carry out the property factor's duties.

The Code

The Applicant complains of failure to comply with the Code.

The Applicant complains of breaches of Sections: 4.3; 4.6; 4.8 and 4.9 of the original (2012) Code and 4.3; 4.5 and 4.11 of the revised (2021) Code.

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

2012 Code

“...4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive...”

...4.6 You must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of data protection legislation)...”

...4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.”

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.”

2021 Code

“...4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner...”

...4.5 When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies...”

...4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).”

The Matters in Dispute

The Applicant complains in relation to the Respondent's response to debts owed by him.

Although the papers make some reference regarding a complaint about data protection, the Applicant confirmed at the Hearing that he was satisfied in this respect and that this aspect was not being pursued.

Background

The Applicant is the owner of the Property. The Respondent was initially the property factor for the Development in terms of two contracts. The first was for flats alone and was numbered Contract 0371214. The second was for grounds maintenance and had Contract no. 0372001.

From around 11 March 2024, the factoring of the grounds transferred to a different property factor.

On 14 April 2021, the Applicant was sentenced to a term of imprisonment. On 21 May 2021, he wrote from prison to the Respondent. He informed the Respondent that he had been imprisoned and that his ability to deal with his assets was affected by an order under the Proceeds of Crime Act. He advised that his assets were frozen and that he would be unable to pay debts relating to the factoring of the Property. He requested that his account be placed on hold.

The account was not placed on hold. Instead, the Respondent followed its normal debt recovery process. This consisted initially of the sending of standard debt recovery letters and the imposition of late payment administration charges to the Applicant's account. The Respondent then instructed Alex M Adamson, an external debt recovery agent, to pursue the matter.

During this time, the Applicant had been writing further letters to the Respondent explaining that he was unable to make payment. These included letters dated 7 March, 8 May and 24 July 2022. From May 2023, the Applicant arranged that a friend would make contributions of £150/month for building related factoring fees and £14/month for grounds related factoring.

In early 2023, the Respondent raised court proceedings for payment of arrears of factoring fees including late payment charges. The Applicant defended the action on the basis that he was unable to pay. The court case was eventually listed (temporarily suspended).

At the hearing, the Applicant explained that he fully accepts that the principal sums he has been asked to pay are properly due. The reason for non-payment has been his inability to deal with his property arising out of the Proceeds of Crime orders made against him.

He advised that the Proceeds of Crime procedure has recently been completed with the making of an order by the court. He will therefore, having complied with that final order, be in a position to address his debts.

The Applicant's complaint is that charges have been added to his account for his non-payment by the Respondent slavishly following its debt recovery process and failing to respond to his correspondence and to appreciate the restrictions which prevented him from paying.

The particular charges to which the Applicant objects are:

In the period pre-16 August 2021

For account number ending 214, £32.78 of legal charges and £3.60 of Paper Fees.

For account number ending 001, £1749.88 of legal charges and £10.80 of Paper Fees

In the period post-16 August 2021

For account number ending 214, £1244.83 of legal charges and £36 of Paper Fees.

For account number ending 001, £285.77 of legal charges and £32.40 of Paper Fees.

He further complains that the Respondent failed to display any sympathy in relation to his circumstances and failed to direct him to appropriate providers of debt advice.

He found dealing with this matter to have caused him additional stress to that which was caused to him by his imprisonment.

On discussion at the Hearing, Ms Rae explained that the charge of £3.60 labelled "Paper Fees" related to the Applicant's preference to receive paper (as opposed to electronic) communications. The Applicant indicated that now he had been made aware of this, he took no exception to that aspect of the charges.

The Applicant also accepted that his complaint could only apply to any charges applied after the time that the Respondent had been made aware of the restrictions placed upon him by the Proceeds of Crime order. There appear to be £279.48 of legal charges which pre-date 21 May 2021 and which therefore fall into that category.

There was little disagreement between the parties on the facts.

Ms Rae highlighted that everything which had been done by the Respondent was done in good faith in accordance with the Respondent's policy and on the specific instructions of the other owners of properties in the Development.

The Respondent had gone to considerable effort to pursue the Applicant's debt. This included having regular meetings with the other owners. Those other owners were particularly upset that the Applicant had been in arrears before his conviction and had been sequestered previously, leaving them to meet his share of factoring costs. The Applicant was the only defaulter in the Development. The late payment charges reflected the extra work to which the Respondent had been put.

Ms Rae did, fairly, accept that the Respondent might have handled the situation differently by providing a tailor-made response to the Applicant's correspondence from prison rather than following standard procedures. She had not been directly involved at the time but indicated that the Respondent had never previously been involved with a Proceeds of Crime order and so had not fully appreciated its effect.

Ms Rae accepted that the Respondent had not directed the Applicant to debt advice but she observed that he appeared to have an adviser who assisted with his correspondence and that, on one occasion, the Respondent had been directed to the Applicant's accountant/financial adviser who had declined to become involved. The Applicant confirmed that the person who assisted him was someone appointed to assist prisoners and was not a debt adviser. The Tribunal observes that given the Applicant's inability to pay because of the court order, debt advice would have made little practical difference.

The Tribunal has considerable sympathy for the Respondent which was no doubt faced with pressure from owners to robustly pursue the Applicant's debt. The Respondent did as instructed by owners and did expend significant effort.

Nonetheless, the Respondent required to comply with the provisions of the Code as it applied at the relevant times

We find that the Respondent's failure to respond to the Applicant's correspondence in a way which reflected the unusual circumstances which applied to him, and instead to impose charges, to constitute a breach of (2012) Code Sections 4.3 and 4.8. We identify no breach of Code Sections 4.6 or 4.9.

We find that the Respondent's failure to respond to the Applicant's correspondence in a way which reflected the unusual circumstances which applied to him, and instead to impose charges and to pursue court action, to constitute a breach of (2021) Code Sections 4.3; 4.5 and 4.11. We find the failure to make the Applicant aware of independent debt advice to constitute a breach of Code Section 4.5.

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. The proposed PFEO requires crediting of the charges which we find to be inappropriate. We have not identified circumstances which we consider would justify making any further award of compensation to the Applicant.

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: 17 June 2025

