

## **Written Decision**

**Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.**

**Reference number: FTS/HPC/PF/23/2446**

**Re: 96-104 Alexander Street, 2-10 Ralston Street, Airdrie, ML6 0BD**

**(“the Property”)**

**The Parties: Mr David McCormack 96e Alexander Street Airdrie ML6 0BD (“the Applicant”)**

**James Gibb Property Management Ltd, 65 Greendyke Street, Glasgow, G1 5PX (“the Respondent”)**

**Tribunal Members: B Black (Legal Member) E Williams (Ordinary Member) (the “tribunal”)**

## **Unanimous Decision**

### **Background**

1. This is an application by Mr McCormack<sup>0</sup> in respect of the Property in relation to the Respondent’s actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 1 October 2012 (“the Code”) and the Code of Conduct for Property Factors effective from 16 August 2021 (“the 2021 Code”) and had failed to comply with the Property Factor’s duties. The application was dated 21<sup>st</sup> July 2023 and was accepted by the Tribunal for determination on 24<sup>th</sup> October 2023. The original application alleges breaches under Sections 4 and 7 of the Code.

2. A Case Management Discussion (CMD) was held on 23<sup>rd</sup> January 2024. The members of the Appeal Tribunal did not conduct the CMD hearing. The Parties were in attendance. At the CMD the Applicant confirmed that he would lodge a list of “his specific, outstanding complaints, with reference to the relevant section of the Code.” Based on Mr McCormack’s submission he is relying on the breaches of the OSP 1,

OSP2, OSP3, OSP4, OSP5, OSP 6, OSP 7, OSP9 and OSP10, OSP11. The Applicant was also relying on breaches of the following sections of the Code: Section 2.6 , 2.7, 3.1, 3.2, 3.5, 3.7, 4.1, 4.4, 4.9, 4.10,

4. Following the CMD and Directions by the Tribunal, the parties lodged further documentation with the tribunal.

5. The Parties had previously agreed to explore Mediation to try and resolve this matter, Mr McCormack decided not to proceed with this. The Respondents, in advance of the Hearing offered to reimburse the sum of £239.00 to Mr McCormack's account. Mr McCormack declined said offer and wished to proceed with a Hearing.

6. The Tribunal heard first from Mr McCormack on each part of the Code that he believed had been breached. His evidence overlapped and related to various different parts of the Code. The Tribunal then heard from the Respondent's Ms Holt and Mr S Smith who had taken over the conduct of the matter and had made enquiries of the Respondent in preparation for the hearing. The Tribunal noted that both Ms Holt and Mr Smith had not been involved in matters since the outset and so could only refer the Tribunal to documents and relay what they understood to be the position.

7. The Tribunal had the benefit of a case file of consisting of 704 pages, within this were lengthy and detailed submissions by the appellant. Throughout the submission from Mr McCormack, he provided copies of letters, emails and other documents sent by to him to the Respondents.

8. The Tribunal was grateful to both Mr McCormack and Ms Holt and Mr Smith for their oral and written submissions.

### **Summary of Applicant's Position**

9. The Applicant, along with other homeowners gave notice to the Respondents to cease factoring in July 2022. Upon doing so they were advised there were outstanding sums due to be paid. The total was £3824.00 and the applicant's share of these is £239.00. The debt accumulated following several specific events: the sums due for common electricity charges (at the time of the hearing this had been resolved), the second was for repair work to a balcony at on one of the properties during a period of ownership by a former owner, referred to as "G" , the third was a former owner debt

referred to as “J” and the last was as a result of legal action to pursue the debt and those charges being applied.

10. The applicant's position summarised was that he had been asking for a prolonged period of time for details as to how these debts had accumulated, including invoices for the work and queried why funds for larger repair work had not been gathered in advance and he considered he had not been given satisfactory responses by the respondents. He also wanted details as to what steps had been taken to try and recover these former owner debts and questioned whether those were the correct and proportionate steps. He therefore advanced the position to the Tribunal that because of these failures the respondents were in various breaches of the Codes and their own Written Statement of Services.

### **Summary of Respondents Position**

11. The respondent agreed with the applicant that the sums outstanding had arisen due to two former homeowner debts and legal costs applied to the Applicant's account. They acknowledged that there had been failings in their communications when dealing with the Applicant and that there had been errors in their initial invoicing which dated back to 2019. They commenced their usual debt recovery process in 2020 when the invoicing error was corrected. They advised the Tribunal that they followed the correct procedures when obtaining consent to the common repairs and the balcony required to be repaired due to potential water ingress, so prevent further damage the work was instructed without all the funds being ingathered in advance.

### **Findings of Fact**

12. The homeowner is the proprietor of the Property, which is a development of 16 tenement flats.

13. The property factors, in the course of their business, have managed the common parts of the Development of which the Property form's part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).

14. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor. The property factors registration number is PF000103.

15. The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.

16. Intimation by the homeowners that they wished to terminate the contract between the property factors and them was given on 31st July 2022.

17. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 21<sup>st</sup> July 2023, under Section 17(1) of the Act.

18. The Written Statement of Services (WSS) from the Respondents is dated September 2022, Issue 14.

19. The WSS Section 4.4 deals with "Major Projects". Section 4.4.1 states "Major projects (also known as Proposed Works) are defined as significant works whose costs exceed our normal limit of delegated authority as defined in Section 2.4".

4.4.5 Once a project has been approved, by the homeowners or as a requirement of the Deed of Conditions, and a contractor/ quotation selected, sufficient funding must be in place prior to the commencement of the project. This ensures the ability to settle the contractor's invoice.

4.4.6 Ingathering of funds - James Gibb will calculate the individual project cost per homeowner and issue a proposed works invoice to each homeowner. Only when sufficient funds have been ingathered will the contractor be given the go-ahead to commence works. James Gibb will determine what percentage of funds will be required to start the process. This will depend on the overall cost of the works, the financial health of the development, problems with income recovery etc. It should be noted; it is possible that agreed works may not go ahead if insufficient funds are ingathered. In such cases, funds received will be returned to the homeowners. In some cases, we may be able to commence works and pursue any outstanding funds through our debt recovery process (Section 5.11)".

22. Section 5.5 of the WSS states: "Invoicing 5.5.1 The type, frequency and timing of your invoices are detailed in Section 10 of your Development Schedule. This will illustrate, for example, whether your invoices are charged in arrears or advance and the frequency of issue. 5.5.2 Invoices will be sent to the homeowner either by standard postage, where a charge of £1.50 + vat will be applied to each service charge invoice to non-retirement developments, or free of charge by secure email depending on individual preferences. Our preferred method of delivery is secure email. Please logon to your JG+ account to update your preferences or email your email invoices.

States 5.11 Income Recovery 5.11.1 An income recovery process and related procedure are stringently applied to ensure that all means possible are employed to recover debt from late and defaulting payers. The procedure, in turn, includes letters from James Gibb, then notification from an external debt management agent and, ultimately, legal action. [www.jamesgibb.co.uk](http://www.jamesgibb.co.uk) 13 5.11.2 Any legal costs incurred in the recovery of debt will, ultimately, be distributed amongst all homeowners in the relevant

development. If / when costs are re-couped from the debtor, these will be repaid to all homeowners. 5.11.3 If all available means to recover the debt have been exhausted without success, the outstanding amount may be distributed, as a cost, between the remaining homeowners in the development. This is in line with the majority of Deeds of Condition. As above, if / when costs are re-couped from the debtor, these will be repaid to all homeowners”.

23. Section 6.0 of the WSS states: “6.1 General Communications 6.1.1 Good communications between the factor and homeowner are the key to a successful relationship. For general enquiries, email is the best form of communication. Most emails should be sent to your regional office. These should include all operational matters, invoice queries, contractor queries, etc. It is preferable that communications regarding a particular issue are channelled through a block representative or Homeowners’ Committee member to avoid multiplication of information. James Gibb staff endeavour to acknowledge receipt of a communication as follows: Emails within 5 working days Letters within 10 working days Enquires made by telephone will be returned / acknowledged within 5 working days Timescales for resolution of queries, relevant to the prevailing issues, will be advised to the homeowner, where possible, on acknowledgement.”

24. Section 7 of the WSS states: “7.1 In most cases, a quick call to your regional office will usually be all that is required to resolve any issues. If, after this, your issue remains unresolved, James Gibb operates a complaint handling procedure. 7.2 Should a homeowner wish to make a complaint, our “Customer Complaints Guide” is available on our website at [www.jamesgibb.co.uk](http://www.jamesgibb.co.uk) or hard copy can be obtained by calling your regional office. 7.3 Our complaints process has two stages as identified below. 7.4 Stage 1 Your complaint will be logged and acknowledged within 10 working days of receipt. It will then be fully investigated by a complaint handler. During the investigation, you may be contacted by the complaint aspects of your complaint. All investigations will be fair, unbiased and professionally conducted. The investigation process should be completed within 25 working days from the date of the complaint acknowledgement. If, for any reason, it is likely to take longer than this, you will be notified in writing. Once our internal investigation is complete, you will receive a response from the investigating complaint handler. This will detail our findings and planned action to address the issues raised. As our complaint process is thorough, fair and the findings are signed off by a senior manager, we would hope that this would conclude our investigation and the complaint will be closed within 10 working days of writing to you. If you are dissatisfied with our Stage 1 response, please move to Stage 2 of our complaints process. 7.5 Stage 2 On receipt of your Stage 2 complaint, we will send an acknowledgement to you within 10 working days. Your Stage 2 complaint will be allocated to a senior manager who will re-open the investigation and review the documentation relating to your complaint. On completion of our Stage 2 investigation,

you will receive a final response from the senior manager which will detail their findings. You should receive this within 25 working days from the date of the acknowledgement letter. If, for any reason, it is likely to take longer than this, you will be notified in writing. At this point our complaint process will have been exhausted. 7.6 If the homeowner remains dis-satisfied after the Stage 2 response, the Property Factors (Scotland) Act 2011 allows homeowners to make an application to the Scottish Government's First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether their factor has failed to carry out their factoring duties, and/or failed to comply with the Code of Conduct. 7.7 To take a complaint to the First-tier Tribunal for Scotland (Housing and Property Chamber) homeowners must first notify their property factor in writing of the reasons why they consider that the factor has failed to carry out their duties or failed to comply with the Code of Conduct. The homeowner must have exhausted the property factor's complaints procedure or the property factor must have refused to resolve the homeowner's concerns or have unreasonably delayed attempting to resolve them. 7.8 Contact details for First-tier tribunal can be found in the Customer Complaints Guide.

### **Reasons for Decision**

25. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application.

26. The Tribunal considered carefully all the evidence and documentation before it. The written representations run to many hundreds of pages, and the applications are made under a large number of Sections of the 2012 and 2021 Codes of Conduct. The Tribunal has considered everything presented to it, even if not every adminicle of evidence is set out in this Decision.

26. The sums owed by Mr McCormack arise from two previous owner debts and the legal costs incurred in trying to pursue those debts. The Respondents, in terms of the WSS are entitled to charge for work done, they are entitled to carry out work if they have the majority consent. Without majority consent, then they may carry out work without consent or funding, if there is a risk further damage would be caused to the development and the properties, in relation to the balcony work, this is what the Respondents did, in order to avoid the risk of further water ingress. There was no evidence to dispute that such works were carried out. These two former owner debts occurred prior to the applicant's time as a property owner in the development and there is no evidence to suggest the Respondent's did not follow correct process when instructing these works. The former owners did not pay and therefore the Respondents attributed these debts to the remaining owners. Mr McCormack

accepted they were entitled to do this. The Respondents then pursued the former owner debts through their usual debt recovery process. The respondents have a duty to do this to try and minimise sums owed by remaining owners. When no funds were forthcoming, they took legal advice, progressed with Court action for recovery of sums due and then following legal advice tendered, they determined this was not commercially viable. They are entitled to recover legal costs. There is nothing to suggest the invoices provided by the Solicitors or the respondents are false, they could perhaps be identified better. Subsequently when the Respondents received notice to terminate factoring services, they ceased all action to pursue former debts, as they were no longer authorised to act.

27. However where this situation becomes problematic and open to complaint, is that the Respondents failed to correctly attribute debts, within a reasonable time frame, to the correct homeowners accounts and recredit any sums paid, therefore invoicing was incorrect and it was unclear how sums due had been calculated. This means the Respondents have breached Section 3.1, 3.3 and 3.4 "Financial Obligations" of the "Code". It was not immediately obvious to Mr McCormack what he was being charged for and why. This means the Respondents have breached Section 4.4, 4.5 and 4.6 "Debt Recovery" of the "Code". He queried the charges and actions taken and as conceded by the Respondents, they then fell short on their own communication and complaints procedure and timescales identified therein. This therefore means that the Respondents have breached Section 2.5 "Communication and Consultation" of the "Code".

28. Turning to the "2021 Code", the Respondents accept that the invoicing was incorrect, they say this was an administrative error, however this was not immediately obvious to Mr McCormack until he pursued this action. The Respondents have a duty to ensure they are open, transparent and fair in dealing with homeowners and to ensure their staff can effectively deal with matters such as arise in this dispute. Based on all the information available the Tribunal finds the Respondents to be in breach of OSP 2 and 6. When information was provided, it was incomplete, required additional detail which was not particularly forthcoming and it did not make it easy to follow the history as to the sums outstanding had been calculated. Based on all the information available the Tribunal finds the Respondents to be in breach of OSP 3. Finally despite Mr McCormack communicating extensively with the Respondents, over a prolonged period of time, timescales for complaints were not met, the complaint process itself was not satisfactory, all of which cumulated in this Appeal being raised to seek further answers and a breakdown of how sums had been calculated. Based on all the information available the Tribunal finds the Respondents to be in breach of OSP 11.

29. Following the Appeal hearing the Respondents sent an email dated 25<sup>th</sup> February 2026, the Applicant responded to this by email dated 27<sup>th</sup> February 2026. These

emails relate to a suggested "credit" on a former owners account being wrongly credited to the Applicant's factoring account. The Tribunal has not considered these documents when reaching this decision, no evidence was heard in relation to this and the documents were submitted after the conclusion of the Appeal hearing. It is for the Respondents, if they consider this to be accurate, to decide if they wish to pursue this matter separately.

### **Property Factor Enforcement Order**

29. Having decided that the property factors had failed to comply with of the 21012 and 2021 Code of Conduct and failed to comply with the property factor's duties, the Tribunal then considered whether or not to make a Property Factor Enforcement Order. The Tribunal noted that the homeowner had been engaged in correspondence with the property factors over a prolonged period and they should have understood that this situation would be exacerbated by any delay in responding to his complaints. There failure to correctly reconcile individual homeowners accounts correctly and attribute and explain former owner debts to Mr McCormack mean they have breached the Code and the 2021 Code. Accordingly, the Tribunal proposes to make a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision.

The view of the Tribunal was that the level of compensation set out in the Notice is fair, reasonable and proportionate. The Tribunal is satisfied that the Applicant has been put to considerable inconvenience through the Respondent's failure to comply with the Code and carry out their property factor duties.

### **Right of Appeal**

30. 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.

**Barbara Black**

**Legal Convenor**

**17 March 2026**