



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section under Section 17 of the  
Property Factors (Scotland) Act 2017**

**Reference number: FTS/HPC/PF/25/2706**

**Re: Property at 186 Waverley Crescent, Eliburn North, Livingston, EH54 8JT  
("the Property")**

**The Parties:**

**Mr Scott Skinner, 186 Waverley Crescent, Eliburn North, Livingston, EH54 8JT  
("the Applicant")**

**Charles White Limited, 14 New Mart Rd, Edinburgh, EH14 1RL ("the  
Respondent")**

**Alison Kelly (Legal Member) and Robert Buchan (Ordinary Member)**

**Background**

1. The Applicant lodged an application on 21st June 2025 seeking a determination that the Respondent had breached the Code of Conduct for Property Factors.
2. On 15th January 2026 the Respondent lodged Written Representations. It lodged a summary answering the points raised by the Applicant, and also a large number of documents to support its position, said documents being inventoried and numbered.
3. On 16th January 2026 the Applicant lodged a further statement of his position.

**Case Management Discussion**

4. The Case Management Discussion ("CMD") took place by teleconference on 23rd January 2026. The Applicant represented himself. The Respondent was represented by Miss Rae, Director.
5. The Tribunal noted that the Applicant's complaints were under the 2021 Code of Conduct for Property factors and were directed to breaches of the

Overarching Standards of Practice paragraph 2 (OSP2) and paragraphs 4.3, 4.5 and 4.11 of the Code. The Tribunal noted that the Applicant's complaints in relation to these paragraphs were clear and well set out in his application.

6. The Tribunal also noted that the Respondent's Written Submission addressed the complaints and that its position was also clear and well set out, and that the documents were arranged and inventoried.
7. The Tribunal decided that the best way to resolve the dispute was to put the case to a Hearing where evidence could be led and the documents examined in detail.
8. The issues in dispute, as agreed by the Parties, are in relation to:
  - a. Commission received by the Respondent on the common insurance policy
  - b. Whether selecting a broker should be part of a tendering process
  - c. Whether court action should have been raised against the Applicant by the Respondent
  - d. Whether legal fees should have been applied to the Applicant's account.
9. The Tribunal decided that it needed more information regarding the breakdown of the legal fees and the timing of the court action being raised.

### **Subsequent to CMD**

10. The Tribunal issued a Direction directing the Respondent to lodge details in relation to the court action and legal costs incurred.
11. On 25<sup>th</sup> February 2026 and 13<sup>th</sup> March 2026 the Respondent lodged documentation in response to the Direction.
12. On 2<sup>nd</sup> September 2026 the Respondent submitted more documentation, being a series of emails between the parties.
13. On 4<sup>th</sup> and 14<sup>th</sup> September 2026, the Applicant lodged further Written Submissions.

### **Hearing**

14. The Hearing took place by teleconference on 22<sup>nd</sup> September 2026. The Applicant represented himself. The Respondent was represented by Miss Rae, Director.
15. The Chairperson introduced everyone and read through the CMD Note with the parties to ensure both knew and understood what was being examined and decided upon by the Tribunal and noted the documents which had been lodged. She said that the Tribunal would consider each alleged breach in turn.

*OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.*

16. The Applicant said that he considered that the Respondent had not been honest, open, transparent and fair in its dealings with homeowners, and that failure led to breaches of the relevant paragraphs of section 4 of the Code of Conduct for Property Factors ("the Code"). He said that the root cause of the difficulty was a genuine dispute regarding the cost of the block buildings insurance. He stressed that he was not trying to get out of paying, and he was not refusing to pay. He said that he had paid the charges on his invoices which he did not dispute but withheld payment for charges which he did dispute.
17. The Applicant said that his concerns were specific. The insurance premium had, as far as he could see, risen by 41% over a two-year period. The Respondent uses a broker to obtain the best insurance deal by putting the insurance out to tender from insurance companies and receives a commission from the broker. Given the increase in the premium, the Applicant considers that the Respondent should have tried to negotiate a better deal with the insurance companies and also could have tried different brokers as, he understood, had been done on a previous occasion.
18. The Respondent had also retained all of its commission for arranging the policy, which commission increased because the premium had increased. Given the size of the increase in the premiums and therefore the commission received, the Applicant thought that the Respondent should have considered reducing what he considered was a "windfall" commission it received in order to ease the burden on the bill payers.
19. The Applicant said that he had asked these questions of the Respondent but had not received a response which meaningfully addressed his questions. He had withheld payment. He said that it was not an outright refusal to pay, he had made clear what was required to resolve the dispute, which was a straightforward answer to his three questions.
20. The Applicant said that the Respondent escalated the matter to the Sheriff Court on the basis that he had refused to engage with a view to making payment. He disputed that characterisation. He said that his complaint had two elements:
  - Whether the Respondent dealt with his concerns in accordance with OSP2
  - Whether subsequent handling and recovery of the disputed debt complied with the relevant provisions of section 4 of the Code, including if reasonable steps had been taken to resolve the dispute before legal action and if the resulting legal charges were reasonable and proportionate.
21. The Tribunal asked the Applicant to point it towards the documents in his submissions that showed the questions being asked of the Respondent, and its responses. The Applicant was reluctant to do so, saying that he had lodged

all the documents. The Tribunal allowed a short break for him to attempt to locate what he was being asked for.

22. After the break the Applicant said that he had been unable to locate the documents but read from a letter he had in front of him which had been sent by his MSP to the Respondent. He confirmed the letter had not been lodged with the Tribunal and accordingly the Tribunal did not allow it to be referred to. Miss Rae assisted the Tribunal by pointing to the Stage 1 Complaint letter (page 25 of the Respondent's submission of 15<sup>th</sup> January 2026) and the Respondent's response, dated 4<sup>th</sup> June 2025 (page 27 of the same submission). This appeared to be a reiteration of information which had already been given to the Applicant in previous emails.
23. Miss Rae explained that the Respondent has successfully negotiated a lower interest rate from a finance company in relation to a different matter.
24. The Applicant reiterated that in relation to the block insurance he had at least expected the Respondent to ask the broker to reduce the cost. It was his contention that it did not do so as it would have impacted on the level of commission received by the Respondent.
25. Miss Rae said that there is negotiation in theory. The Respondent puts its whole portfolio, including other developments, out to the market twice per year. This is to encourage the most attractive premiums. It meets with the broker to discuss the renewal process. Developments are not dealt with on a one by one basis. Once quotes are received the Respondent and the broker decide how to divide among the properties. They look at things such as claims history, which can drive up the premium, and if a reinstatement valuation has been updated that year. She said that in 2023 there was a massive market increase due to factors outwith their control and there was little they could do about it. The increase over the year in question had been 10%.
26. Miss Rae said that the premium is not based on the value of the property, but on the reinstatement value i.e. the cost of rebuilding the whole block in the event of total devastation.
27. Miss Rae said that the commission earned by the Respondent on the insurance is 20%. She said that sometimes the Respondent does reduce its percentage. Arranging insurance and dealing with claims is not a core service in terms of the Written Statement of Services and is not covered by the management charge. The commission earned on arranging the insurance covers the cost of arrangement and dealing with complaints and claims. In considering whether to reduce the premium the Respondent looks at the work involved in a particular development. She said that the Applicant's development has a high work rate.
28. The Tribunal asked Miss Rae why these details had not been put in the response to the complaint. Miss Rae said that they had all been given in

correspondence before, including in a letter sent out to all Homeowners, although it was not lodged with the Tribunal.

29. The Applicant said that only one broker had been approached. He said he had every right to expect the Respondent to pick up the phone to other brokers. The Respondent had not provided rates of commission that other brokers would pay. He said that he was not able to arrange insurance himself or change factor, so it was incumbent on the Respondent to do everything to get the price down. He said that receiving commission has been banned in England and Wales.

30. Miss Rae pointed out that in the Respondent's Written Statement of Services ("WSS") (page 4 of the 15<sup>th</sup> January 2026 submission) at section 7 it is clearly stated that the Respondent has a solus agreement with the broker, and therefore there is no breach of OSP2. The Respondent had advised the Applicant that they valued the relationship with the broker concerned as they had delegated authority to deal with claims and had approached 16 different companies in an effort to secure the best insurance deal.

*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.*

30. The Applicant accepted that the charges were clearly identified on his bills and this paragraph of the Code was not a big issue for him.

31. Miss Rae said that all charges had been applied in accordance with the WSS.

*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.*

32. The Applicant said that he was not given proper forewarning of the costs involved in the matter going to the Sheriff Court. He had not invoked the Complaints procedure as he had no faith in it, having been let down by it in the past. He had previously made complaints which had not been upheld. He said that he had always intended to pay the insurance, but he had taken a stand against profiteering.

33. Miss Rae said that it had never been the view of the respondent that the Applicant had financial difficulties which had led to nonpayment, they knew he was taking a stance, and it was a disputed issue. The dispute had begun around 2022, but no court action had been raised until 2024. She said that the Respondent could not have given an estimate of the legal costs as those would depend on the amount of work which the solicitors would have to do. She said that the Respondent had asked for the court action to be dismissed

as the Applicant had decided to use the Complaints process. She said that it was not the Respondent's responsibility to encourage a Homeowner to make a complaint, she said that the Applicant was fully aware of the Complaints process, having used it before. The legal costs were not expenses awarded by the Court, they were the fees charged by the solicitor instructed.

34. The Applicant restated that he had been reluctant to use the Complaints process as it had not been successful for him in the past. He confirmed that his account is currently around £4000 in arrears as he is still withholding the amount charged for legal fees.
35. The Tribunal asked the Applicant if he accepted that the Respondent must be given an opportunity to resolve a matter, but that at some point they are entitled to say enough is enough, and they have a responsibility to the other owners to collect any outstanding debt relating to the block.

The Applicant accepted that but said that if they had answered his questions he would have paid. He said that he was not getting the answers that he wanted. He said that he did not take legal advice when the court action was raised, and he knew nothing about Sheriff Court procedure.

*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).*

36. The Applicant did not think reasonable steps had been taken to resolve the matter and that giving him straight answers was key.
37. Miss Rae referred to Appendix 6 of the 15<sup>th</sup> January 2026 submission. She said that there were emails notifying of legal action and giving a break down of how it works. Meetings were offered but the Applicant refused them.
38. The Applicant said they were just trying to get him to pay, not addressing the fundamentals of the questions. Many emails were produced showing the Applicant insisting that he had made a payment plan and the Respondent pointing out that what he was referring to was not a payment proposal saying, 'Your "payment proposal" was that you would make no payment, this is not a proposal.'
39. Many emails were produced showing the Applicant saying that the Respondent had not answered his specific questions about the insurance broker and the Respondent replying that they had. During questioning, Miss Rae was asked why the Respondent had not provided a comprehensive response on all of the insurance matters. After having been given time to check her submissions, Miss Rae had to admit that she had omitted to include the specific reply which she said had been sent to all of the residents and that full details were sent out on every renewal.

## Findings In Fact

- i. The Applicant owns the property at 186 Waverley Crescent, Eliburn North, Livingston, EH54 8JT, which is within a development of properties;
- ii. The Respondent is the appointed factor for the development;
- iii. The Respondent has issued a Written Statement of Services ("WSS") covering the development;
- iv. The WSS confirms at Paragraph 7.1 that the Respondent has a solas agreement with the insurance broker;
- v. The WSS confirms at Paragraph 7.5 that the Respondent gains commission on the insurance premium and details what that commission covers by way of service;
- vi. The WSS confirms at Paragraph 3 the charges for late payment fees;
- vii. The WSS confirms at Paragraph 5.9 the Respondent's debt recovery procedure;
- viii. There is a long history of email correspondence between the parties on various matters;
- ix. In his emails the Applicant can be rude, aggressive, and at times abusive;
- x. The current dispute regarding insurance began in or around 2022;
- xi. In the series of emails produced to the Tribunal the Applicant asked questions regarding the insurance premium and the commission earned and the Respondent provided answers;
- xii. The answers given by the Respondent did not satisfy the Applicant;
- xiii. The Respondent raised a court action for payment against the Applicant at Livingston Sheriff Court;
- xiv. The Respondent instructed dismissal of the court action with no expenses and the action was dismissed on 16<sup>th</sup> May 2024;
- xv. The Respondent asked for the action to be dismissed due to the Applicant engaging in the complaints process;
- xvi. The Respondent incurred legal fees in relation to the debt collection and court procedure;
- xvii. The Respondent applied the legal fees to the applicant's account in accordance with Paragraph 5.9 of the WSS;
- xviii. On 4<sup>th</sup> June 2025 the Respondent issued a letter to the Applicant in relation to his Stage 1 Complaint, answering the points and confirming that they did not uphold it;
- xix. The Applicant made a Stage 2 Complaint;
- xx. On 16<sup>th</sup> June 2025 the Respondent issued a letter to the Applicant in relation to his Stage 2 Complaint, answering the points and confirming that they did not uphold it;
- xxi. The Respondent has sent regular invoices to the Applicant with any late payment or other charges clearly shown;
- xxii. The Respondent sent emails to the Applicant warning him that they were going to instruct court action for recovery of the sums not paid by him.

## Decision

40. The Tribunal found both the Applicant and Miss Rae to be credible witnesses. In coming to a decision, the Tribunal addressed each alleged breach in turn.

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

41. The Tribunal did not consider that there was a breach of OSP 2. The emails lodged show that the Applicant sent multiple emails to the Respondent and the Respondent provided replies and answers. The Applicant said himself that he did not get the answers he wanted, and this seems to be the crux of the matter. The Applicant was unwilling to accept what the Respondent told him.
42. The Respondent's WSS is clear in relation to the arranging of insurance. It is clear that the Respondent has a solas agreement with the broker. Miss Rae explained that they had looked at other brokers in the past but were satisfied that the broker they used gave the best service. This information was provided to the Applicant during the complaints process.
43. The Respondent's WSS is clear in stating that the Respondent receives commission, and it also states clearly what the commission goes towards. The Respondent is not obliged to reduce the commission, which the Applicant does not seem to accept. Miss Rae said that on occasion the Respondent will reduce the premium and one of the factors taken in to consideration is the amount of work required in a particular development. She said that the Applicant's development has a high work rate, no doubt increased by the amount of correspondence received from the Applicant.
44. It seemed to the Tribunal that the Applicant had made a number of assumptions about what the Respondent should do, e.g. change brokers, reduce premiums and reduce commission, without having a proper basis for doing so, and without having regard to the terms of the WSS. It also seemed that the Applicant had decided, without an evidential basis, that the Respondent had failed to do these things so that it could take advantage of increased commission. He was not going to be satisfied unless the Respondent did what he wanted.

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

45. The Tribunal did not consider that there was any breach of Paragraph 4.3. The charges imposed were all in accordance with the WSS and were clearly stated on the invoices. The Applicant accepted this.

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.

46. The Tribunal did not consider that there was any evidence to back up this claim, and there was no breach of Paragraph 4.5. As pointed out by Miss Rae, there was no suggestion that the Applicant was in financial difficulties and it was clear that his lack of payment was because he disputed the charges. The Applicant was also clear that his nonpayment was because he was in dispute. He had paid some of the charges.
47. This paragraph of the Code is aimed at situations where people are struggling with their finances and does not apply in this situation.

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).

48. The Tribunal did not consider that there was any breach of Paragraph 4.11. The Respondent had engaged in lengthy correspondence with the Applicant regarding the outstanding sums. It answered his questions and provided explanations. It attempted to negotiate a payment plan. The Applicant offered to pay but only on condition that he was given answers to his questions that were satisfactory to him. This is not a payment plan. The Respondent warned the Applicant in emails that court action would be raised. The WSS is clear in laying out the steps of the Respondent's debt recovery procedure. The WSS makes clear that any legal expenses incurred will be charged to the Homeowner.
49. Insurance must be arranged and the premium must be paid, whether all Homeowners make payment of their share or not. Unpaid premiums must be covered by the Respondent or passed on to the remaining Homeowners in the block. The Tribunal is satisfied that the Respondent took reasonable steps to resolve the matter before raising legal action, and they were left with no choice but to do so. The Applicant was candid in saying that he did not seek any legal advice when proceedings were raised. He said that he did not attend the second court calling. That was his choice. The legal costs were applied to his account in accordance with the WSS.

50. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has not breached any duties incumbent on them in terms of the Property Factors (Scotland) Act 2017, nor have they breached any paragraphs of the Code of Conduct.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

Alison Kelly – Legal member  
5 October 2026