

**First-tier Tribunal for Scotland (Housing and Property Chamber)
Property Factors (Scotland) Act 2011**

DECISION NOTICE

Reference number: FTS/HPC/PF/25/3670

**Re: Property at 65 Waverley Street, Glasgow G41 2DY
("the Property")**

**The Parties Mr Benjamin Semple
("the Applicant")
Macfie & Co, 5 Cathkinview Road, Glasgow G42 9EA
("the Respondent")**

Hearing on the papers: 2nd October 2026

Tribunal Members:

Fiona Cook (Legal member) Sara Hesp (Ordinary Member)

Background

1. The Applicant made an application to the Tribunal which was accepted by them on 27th August 2025. The initial casefile comprised 53 pages and included the application. The Applicant provided further information to the Tribunal which was the case file for a separate case involving the same parties and which is being considered by the Tribunal under reference : FTS/HPC/PF/24/3381.
2. In his Application, the Applicant asked the Tribunal to decide that the Respondent had breached sections 1, 2, 3, 4, 5, and 11 of the Overarching Standards of Practice (OSP) and that they had failed to comply with paragraph 1.1 A of Section 1: Written Statement of Services; paragraphs 2.1 and 2.7 of Section 2: Communications and Consultation; paragraphs 3.1, 3.2, 3.5 and 3.6 of Section 3: Financial Obligations; and paragraphs 7.1 and 7.2 of Section 7: Complaints Resolution of the Code of Conduct.
3. Mr Semple attended the Case Management Discussion on his own behalf.
4. Mr Walker appeared on behalf of the Respondent.

5. Both parties completed a Response Form prior to the Case Management Discussion (CMD) and both parties provided written representations.
6. The application related to the Respondent intimating to the Applicant and the other owners in the block on 16th May 2025 that they intended to resign as factors on 31st August 2025. The Applicant had replied to advise that he accepted the resignation but from 31st May 2025.
7. The Tribunal were aware that the parties were also involved in a separate and earlier application to the Housing and Property Chamber under reference PF/24/3381 and had established that the case had called as a hearing and was due to call again on Thursday 5th March 2026. Mr Semple explained that he was presenting his case to the Tribunal and expected to conclude that on the next hearing date, which was in the same week as the CMD. Mr Walker explained that he was attending as a witness on Thursday and the Respondent's case was being presented by their legal representative.
8. The Tribunal explained that as parties were participating in the hearing later that week, they did not want to ask them for detailed information about the case and would not make a final decision on this case during the CMD. The Tribunal did however want to make progress with the case and asked both parties to consider whether this case could be dealt with on the basis of the papers rather than a hearing being fixed. Both parties agreed to consider this with them both being receptive to this suggestion.
9. The Tribunal noted that it would be helpful if the Applicant could provide further detail as the parts of the code that he wants the Tribunal to consider. Mr Semple indicated that he could have a look at the parts of the code he had referred to and consider whether the case could be more focused. It was suggested that he prepare a note for the Tribunal, and he agreed that he could provide this in four weeks. He also agreed that he would advise the Tribunal if he was content that consider the application on the basis of the papers.
10. While the Respondent advised the Tribunal that his written representations covered the points raised by the Applicant and he would be content for the Tribunal to make their decision based on the papers, the Tribunal decided that the Applicant should have an opportunity to respond to any further information sent to the Tribunal and the Tribunal allowed two weeks for the Respondent to send them any further representations along with confirmation that the application can be dealt with on the basis of the papers.

11. Thereafter both parties sent the Tribunal further written representations and both parties confirmed that they were content that the Tribunal decide the application based on the papers and without the need for an oral hearing.
12. In his response to the Notice of Direction dated 3rd March 2026 the Applicant asked the Tribunal to decide that the Respondent had breached sections 2, 3, 4, 6, and 9 of the Overarching Standards of Practice (OSP) and that they had failed to comply with paragraph 1.1 A of Section 1: Written Statement of Services and paragraphs 3.4 and 3.5 of Section 3: Financial Obligations of the Code of Conduct.
13. In their further written representations received on 20th April 2026, the Respondent noted that they had not previously been given notice of any alleged breaches of OSP 6 and 9 and that the complaint relating to the breaches of those parts of the Code lacked specification. They also noted that they had not received prior notification that the Applicant sought to establish a breach of the Code in relation to the final account or in relation to any "conduct issues" during the notice period.

The Tribunal's Decision

14. The Tribunal were mindful of the terms of s.17 (3) of the Property Factor (Scotland) Act 2011 ("the Act") when deciding this application. In his application the Applicant stated that his complaint was that the Factors had failed to vacate their post and continued to issue invoices after they intimated their intention to resign. Essentially the Applicant wanted the Respondents to cease acting as his Factors earlier than the 3-month time limit set out in their Written Statement of Service (WSS).
15. In his direct letter to the Respondents dated 27th August 2025 the Applicant noted that the Respondent's had "failed multiple aspects of the code by stating (sic) the to continue to invoice for management fees, float, and other charges after issuing their resignation on 16th May 2025."
16. In his response to the Notice of Direction the Applicant suggests that the decision for the Tribunal is "whether the Respondent's conduct during the notice period" breached the Code of Conduct. That was not however what the Applicant set out in his letter to the Respondent on 27th August 2025 or in his application to the Tribunal. The Respondent had made no application to the Tribunal to amend his application.
17. The Tribunal must ensure that there is fairness in their procedures and therefore the Tribunal agreed that as the Applicant had not intimated his complaint in relation to the content of the final common charges account to the Respondent, they could find no breach of the code on that basis. Similarly, as there was no prior intimation of a

complaint regarding the time scale of receipt of the last account then they could make no finding of a breach based on the alleged late receipt of the final account.

18. The Respondents have attempted to answer the "new issues" raised by the Applicant following the CMD and it is noted that they are otherwise unable to provide a more detailed response due to the lack of specification in relation to the alleged breaches of OSP 6 and 9. The Tribunal agree that there is a lack of specification but in any event the Respondents were entitled to an opportunity to answer these complaints prior to them being brought before the Tribunal.
19. The Tribunal therefore decided that there was no breach of OSP 3, 6 and 9 as these alleged breaches had not previously been intimated to the Respondent and it was therefore not competent for the Tribunal to consider these breaches.
20. In relation to OSP 2, the Tribunal decided that it was competent and appropriate for the Respondent to issue a full management fee during the notice period as they were required to continue to offer the same level of service during that period and they had advised that they would have obtained quotes for work had a proprietor asked them to do so. There was no suggestion that they failed to obtain quotes. The Tribunal decided that there was no breach of that part of the Code.
21. In relation to OSP4, the Tribunal again noted that the Respondent had not been given notice in relation to this complaint (the dating on the final invoice) but noted the Respondent's position and also noted that the invoice (which is in the hearing bundle for the associated case) had dates for all the separate elements of the invoice. It is noted that 31st August 2025 related to the tax point of the invoice. The Tribunal did not agree that the invoice was "negligently misleading" and the Tribunal decided that there was no breach of that part of the Code.
22. When considering whether there was a breach of part 1.1 of the Code, the Tribunal noted the WSS which was part of the hearing bundle for this case and considered the terms set out in the Termination of Appointment clause (p.23 of the Case file (party) bundle). The Tribunal agreed that it was a reasonably implied term of the contract that the usual charges and service-delivery standards would apply during the period of notice. The Respondent remained subject to the Code during that time and otherwise the other contract terms would continue to apply during this period. The Code does not specify that the Factor must set out what the terms are during any notice period and the Tribunal decided that there was no breach of this part of the Code.

23. The Applicant submits that parts 3.4 and 3.5 of the Code have been breached and these breaches relate to the issuing of the final account. As has been noted earlier in this decision, the Respondent was not given prior notice of this complaint and have therefore not had an opportunity to respond to the Applicant prior to the Tribunal being asked to consider these breaches (other than what they have set out in their further written submissions of 20th April 2025.) The Applicant had and in his letter to the Respondent and original application suggested that there was a breach of paragraph 3.5 of the Code and the Tribunal did note that on the case file for the associated case there were copies of emails from the Respondent to the Applicant regarding the final account and that he received an email in December 2025 to advise that the account was being drafted and would be issued in early 2026. It was then sent in January 2026. The Tribunal decided that was reasonable and the Respondent has provided an explanation for being out with the 3-month period set out in this paragraph – namely that they were awaiting contractor’s invoices and funds returned by insurers. The Tribunal accepted that this was amounted to a good reason for the final account being issued out with the 3 month period and accordingly decided that there was no breach of this part of the Code.

24. The Applicant did not insist on the remaining OSPs and paragraphs of the Code that were contained in his original application and the Tribunal considered these parts of the code to have been withdrawn by the Applicant and therefore there was no need for the Tribunal to consider them.

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, a 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 of the decision was sent to them.

Fiona Cook - Chairperson of the Tribunal
Dated: 5th October 2026