Housing and Property Chamber
First-tier Tribunal for Scotland

Decision and Statement of Reasons under Section 17 (1) of the Property Factors (Scotland) Act 2011 ("The Act")

Reference number: FTS/HPC/LM/25/3699

Re: Property at East Craigs Rigg, Edinburgh, EH12 8JA ("the Property")

The Parties:

Mr George McLeish, 54 East Craigs Rigg, Edinburgh, EH12 8JA ("the Applicant")

91BC, Garscadden House, 3 Dalsetter Crescent, Glasgow, G15 8TG ("the Respondent")

Background

[1] By Application in Form C2, the Applicant seeks a determination that the Respondent has failed to comply with The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors 2021 ("*The Code*") and the "*Property Factor's Duties*" in terms of Section 17 (5) of the Act.

Previous Procedure

[2] The Application called for a Hearing by conference call at 2pm on 24 April 2026. The Hearing was conducted as a Case Management Discussion ("CMD"). The Applicant was personally present. The Respondent was neither present nor represented. The Application and details of the CMD had been competently served on the Respondent. Accordingly, the Tribunal proceeded in the absence of the Respondent.

[3] The Tribunal decided that the Application should proceed to a Hearing with a Direction ordering that the Respondent submit a full written response setting out the basis upon which the Application is opposed and containing the relevant evidence they intend to rely on.

[4] The Application thereafter was continued to a Hearing in person for evidence and submissions to be heard.

The Hearing

[5] The Application called for a Hearing in person in Edinburgh Tribunals Centre at 10am on 22 September 2026. The Applicant was personally present. There was no appearance by or on behalf of the Respondent who had at no point engaged with the process or responded to the Tribunal's direction. The Tribunal began hearing the Applicant's evidence. The Tribunal asked questions throughout to attempt to ensure that it understood the Applicant's evidence.

[6] The Applicant alleges multiple breaches of the 2021 Code of Conduct. However, some of these appeared repetitive and set out against the wrong sections of the Code. The Application referred to the following sections of the Code.

Written Statement of Services-	1B
Communications and Consultation	5.2 and 5.6
Insurance	5.2 and 5.6
Carrying out repairs and maintenance	6.1 and 6.6
Complaints resolution	2.5

[7] The Application also included an allegation of a breach of the Property Factor's Duties within the meaning of Section 17 (5) of the Act.

Summary of the Allegations

The Application referred to 4 issues.

1. *Failure to repair a common land fence reported on 6 November 2024.*
2. *Failure to provide evidence of tendering for public liability insurance and correct documents*
3. *Failure to respond to enquiries within 24 hours, continual chasing for updates and failure to provide responses to deadlines.*
4. *Overdue quarterly Newsletter (by 20 weeks) that was incomplete*.

The Tribunal comments on the evidence heard in respect of each allegation in turn.

"*Failure to repair a common land fence reported on 6 November 2024*".

[8] The Application set the basis of this complaint out simply enough. It included the following:

"1 Protracted Fence Repair
Maintenance Request MR18911 and Portal Message Complaint ID18505 contains all correspondence.
• *6th Nov 2024 - MR raised to repair fence.*
• *19th Nov 2024 - Recorded in 91BC Newsletter.*
• *26th Feb - Recorded in 91BC Inspection Report.*
• *4th June - Formal complaint raised as continued pursuance (see MR correspondence) of fence repair proved futile.*
• *2nd July - Meeting held with Gillian Law to discuss complaint as there has been no progress.*
• *10th July - Report from meeting published with proposal to repair fence.*
• *29th August - Application submitted to H&PC as fence repair is still outstanding, after approximately 10 m"*

[9] The Tribunal discussed what happened with the Applicant. A boundary fence came down in a storm in November 2024. The Respondent were appointed as the relevant property factor in September 2023. The Applicant explained that the fence was still not fixed to this day. He explained that the Respondent was no longer the relevant property factor and that their services had been dispensed with and a new factor appointed in October 2025. The Applicant explained that a new factor had been appointed but there were now "*issues with them*" and that the apparent problems with the fence were continuing. The Tribunal examined the available information.

[10] The Respondent had an online platform for residents to log repairs and for communicating with residents about related matters. The Tribunal considered this was a helpful tool made available by the Respondent. The Applicant showed the Tribunal various messages exchanged between the residents and the Respondent about the fence. The Applicant clearly intended this to paint an unfavourable picture of the level of service offered by the Respondent.

[11] The Tribunal however could not agree with that assertion. It was apparent that the residents were enthusiastic contributors to the forum discussions. Many voices were participating in the discussion and offering their own insights. Due to the volume of the contributions submitted and the enthusiasm of the participants, the Tribunal considered that the forum had quickly ceased to be a useful function for logging simple tasks and announcing their completion.

[11.2] On page 49 of the bundle, one contributor suggests that before any repairs can be carried out there should be a committee review of "*The original deed of conditions and the supplementary deed of conditions, taking into consideration whether the subject fence forms a boundary fence or a plot fence. The committee will advise in due course."*

[11.3] The following pages reveal other contributors questioning whether the fence is common and querying the quotes obtained and suggesting other contractors. Others directly state that they do not want the works to proceed at the costs quoted. Other comments suggest that other parts of the fence should also be repaired at the same time. It should also be noted that there are also regular replies by the Respondent to the various comments. It is clear that the Respondent was presented with a conflicting set of responses from the residents to whom they are accountable and from whom they take instruction.

[12] The Applicant repeatedly referred to the failures of the Respondent to set out a "*Scope of work*". The Tribunal asked the Applicant what he meant by this and where he was getting this term from. It appeared that this was not a term of art or term referred to by the Respondent in any of their documentation. The Applicant explained that he meant that the Respondent had failed adequately to set out the works required to effect the repair that could then be sent to contractors to obtain directly comparable quotes. The Applicant repeatedly referred to this term with a degree of fervour.

[13] The Tribunal again observed that contributions to the forum from the residents clearly demonstrated that the "*scope of work*", as the Applicant would put it, was not in any event accepted by all the residents and certainly not those contributing to the forum. There were again diverging opinions about what work was required.

[14] In all the circumstances of the case, the Tribunal was unwilling to attribute blame to the Respondent and find that the simple passage of time was enough to demonstrate a breach of the Respondent's obligations.

"Failure to provide evidence of tendering for public liability insurance and correct documents"

[15] The Applicant's precise concerns here were somewhat hard to understand. In the paper apart to his Application, he stated the following:

" 16th April - MR raised requesting renewal proposal as policy renews on 1st May.
• 4th June - Formal complaint raised as continued pursuance (see MR correspondence) failed to provide evidence of tendering/quotations and policy documentation (FCA 30-day rule breach).
• 2nd July - Meeting held with Gillian Law to discuss complaint as there has been no progress.
• 10th July - Statement of Fact (SoF) and Certificate finally published but with inconsistencies and inapplicable/unexplained information.
• 13th July - Issues with documents highlighted and still no evidence provided of the tendering process.
• 29th August - Application submitted to H&PC as issues are still outstanding and there has been no progress/update with the complaint since 13th July."

[16] In his evidence the Applicant explained that there was a mishandling of public liability insurance renewal. In his evidence he explained that his principal concern was the failure of the Respondent to produce to him a "*statement of fact*"- he claimed that this was a requirement of the financial conduct authority. The Applicant spoke to raising *"MR21511"* (the reference for the online job raised on 16 April 2025). The Applicant however said little in his evidence about any alleged failings to produce tendering documentation. That is perhaps because at page 55 of the bundle it appears that the Applicant was provided with tendering documentation and came back with a query about who the broker for the insurance policy was. There were further exchanges back and forth.

[17] The Tribunal could not quite understand what the issue was as the Applicant accepted that there was no break in insurance cover and ultimately the Respondent had renewed the relevant insurance policy appropriately and even ultimately disclosed the additional information requested by the Applicant. The Applicant could not adequately explain to the Tribunal what information was contained within the insurance certificate and statement of fact that was eventually produced to the Applicant on 10 July that contained "*inconsistencies and inapplicable/unexplained information*".

[18] On the information available and the evidence heard, the Tribunal was again unable to conclude that the Respondent had breached their obligations to the Applicant.
[19] The next allegation was regarding portal response failures. It was set out in the Application as follows"

"4. Portal Response Time Failures
Portal Message Complaint ID18560.
• *Failure to respond to comments on the portal within target time of one working day,*
• *Continual chasing for updates and answers to questions.*
• *Unanswered questions.*
• *Responses deferred to a later dates only to be followed by failure to respond by committed date.*
• *Evidence of the above points can be found in the Maintenance Requests associated with the other complaints.*
• *MR's closed without consultation/consent.*
• *Formal complaint raised on 4th June as issues continue.*
• *Meeting held with Gillian Law on 2nd July to discuss complaint as there has been no progress.*
• *Issues continue despite assurances that the New Team Structure, introduced on 22nd July, would remedy this.*
• *Application submitted to H&PC on 29th August as issues continue."*

[20] The Tribunal examined the available information. It was clear to the Tribunal that the Applicant had logged many complaints online through the portal system. The Respondent did not reply to these within one day. However, from examining the Written Statement of Services, the Tribunal could not see what section set out that service standard. The Tribunal could see evidence that the Respondent's own Gillian Law met with the Applicant in July 2025 to discuss various issues which the Respondent wished to address. It was clear that these concerns included matters which went beyond the points raised in this Application and related to broader concerns which the Applicant had about the Respondent's service delivery. The Applicant did not explain in his evidence where the requirement for a response time of one working day came for responses to messages on the portal.

[21] Accordingly the Tribunal could not find that the Respondent had breached any of the relevant standards in this regard in respect of responding to portal messages within one working day.

[22] The next and final issue was regarding overdue quarterly newsletters.

Overdue quarterly newsletter

[23] The Application set this issue out as follows.

"Overdue 91BC Quarterly Newsletter
Maintenance Request MR21012 and Portal Message Complaint ID18503 contains all correspondence.
• *6th April - MR raised as Quarterly Newsletter overdue by 6 weeks.*
• *4th June - Formal complaint raised as continued pursuance (see MR correspondence) to publish Newsletter proved futile.*
• *2nd July - Meeting held with Gillian Law to discuss complaint as there has been no progress.*
• *10th July - Newsletter finally published (20 weeks overdue) with an incomplete article and missing information specified in the Core Services of the Bespoke Written Statement of Services.*
• *13th July - Issues with Newsletter highlighted.*
• *29th August - Application submitted to H&PC as there has been no progress/update with the complaint since 13th July*".

[24] From listening to the Applicant, it seemed that the Respondent had failed to regularly issue newsletters as agreed with the residents in the bespoke written statement of services. The Applicant was not happy with the content of the newsletters that were issued. He said that they should have contained information about "*KPI and financial matters*". He explained that the residents only received the newsletter in July 2024 and November 2024 and July 2025 and then they stopped from October 2025 onwards.

[25] Paragraph 5 (viii) of the relevant WSS does state that the Respondent's core services include:

"Issuance of a Quarterly Newsletter describing all relevant issues affecting the estate with a report on KPI's and financial matters."

[26] On the evidence presented, the Tribunal concluded that the Respondent had failed to meet their obligations. The Tribunal considers this failing against the relevant sections of the code alleged to have been breached below. But before considering the sections of the Code and deciding whether they had been breached, the Tribunal found the following facts to be established.

1. *The Respondent was the relevant property factor for the development in which the Applicant's home is situated.*
2. *The Respondent was appointed as the relevant property factor in September 2023.*
3. *In November 2023, a communal fence was blown down in a storm. There was disagreement among the residents about the steps that the Respondent should take to fix the fence. The fence was accordingly not repaired by the Respondent. The Respondent's services were dispensed with. A new factor had been appointed and at the time of the Hearing they too appear to have been unable to take the action to fix the fence. The Applicant is not content with the new factor that has been appointed.*
4. *The residents have logged various complaints with the Respondent by means of an online portal operated by the Respondent for efficient logging of repairs.*
5. *The online portal was subject to a high volume of comments and issues raised by the residents on the portal. These included comments from those who suggested it was inappropriate for the Respondent to act on a quote obtained. Some commentators suggested that the fence was not common property and that the residents' committee should consider the matter. Others simply disputed the cost.*
6. *The Respondent competently organised the renewal of the public liability insurance for the development.*
7. *The Respondent was asked by the Applicant to provide him with some documentation associated with the renewal. This documentation was ultimately provided. The Respondent also provided the Applicant with documentation relating to a competitive tender process for the renewal.*
8. *The Respondent failed to regularly issue quarterly newsletters as provided for in their written statement of services.*

Decision

[27] Having made the above findings in fact the Tribunal makes the following findings in respect of the alleged breaches of the Code set out in the Application.

"B. Services Provided

(4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);

(5) the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified to homeowners."

[28] The Tribunal cannot conclude that the Respondent has breached this section of the code. It does not adequately tie in with the complaints advanced and with the relevant evidence.

"5.2 Property factors may wish to make homeowners aware of their statutory duty to insure against prescribed risks, such as fire or flood (see section 18 of the Tenements (Scotland) Act 2004, and the Tenements (Scotland) Act 2004(Prescribed Risks) Order 2007 (SSI 2007/16))."

[29] The Tribunal cannot conclude that the Respondent has breached this section of the code. It does not adequately tie in with the complaints advanced and with the relevant evidence.

"5.6 If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information must be made available if requested by a homeowner. If homeowners are responsible for submitting claims on their own behalf (for example, for work that is not on common parts), a property factor must take reasonable steps to supply to homeowners all information that they reasonably require in order for homeowners to be able to do."

[30] The Tribunal cannot conclude that the Respondent has breached this section of the Code. They arranged the renewal of the insurance. There was no break in cover. They ultimately supplied the Applicant with the Statement of Facts that he requested. The Tribunal does not conclude that any failure to provide tendering documentation would be relevant to this Section. There are specific other sections of the Code which deal with such matters.

"6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard."

[31] The Tribunal cannot conclude that this section of the Code has been breached. Presumably the Applicant is referring to the issue with the fence. For the reasons above, the Tribunal is not prepared to find that this section has been breached.

"6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner."

[32] The Tribunal cannot conclude that this section of the Code has been breached. Presumably the Applicant is referring to the issue with the fence. For the reasons above, the Tribunal is not prepared to find that this section has been breached

[33] The Application also referred to an alleged breach of Section 2.5. This was contained in the Section of the Application form that should have referred to complaints resolution but as outlined at the beginning, the Application was framed in a somewhat illogical manner. In any event the Tribunal considers the terms of paragraph 2.5 in any event.

"2.5 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors."

[34] The Tribunal finds no basis to conclude that this section of the Code has been breached. It does not appear relevant to the issues.

[35] The Tribunal however also requires to consider the allegation of a breach of the "*Property Factor's Duties*". These duties are set out at Section 17 (5) of the Act and are as follows"

"In this Act, "property factor's duties" means, in relation to a homeowner—

(a)duties in relation to the management of the common parts of land owned by the homeowner, or

(b)duties in relation to the management or maintenance of land—

(i)adjoining or neighbouring residential property owned by the homeowner, and

(ii)available for use by the homeowner."

[36] The Tribunal cannot conclude that the lack of a regular quarterly newsletter falls into this definition.

[37] This results in the Application being refused as no breaches of any sort have been established.

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.

Andrew McLaughlin

_____ **16 November 2026**

Legal Member/Chair **Date**