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

Cathryn Moe, 82/6 The Shore, Edinburgh EH6 6RG ("the Applicant")

Trinity Factors Ltd, 209-211 Bruntsfield Place, Edinburgh EH10 4DH ("the Respondent")

Re: Property at 82/6 The Shore, Edinburgh EH6 6DH ("the Property")

Chamber Ref: FTS/HPC/PF/24/4764

Tribunal Members:

John McHugh (Chairman) and Kingsley Bruce (Ordinary (Surveyor) Member).

DECISION

The Respondent has not failed to comply with its property factor's duties or its duties under the Code.

The decision is unanimous.

We make the following findings in fact:

1 The Applicant is the owner of Flat 82/6 The Shore, Edinburgh EH6 6RG (hereinafter “the Property”).
2 She has owned the Property since 2003.
3 The Property is located within a mixed commercial and residential development consisting of the Property, other flats and commercial units plus common areas including a car park (hereinafter "the Development").
4 The Development consists of two blocks – one being “the Oval” and the other “the Rectangle”.
5 A Deed of Declaration of Conditions by City of Edinburgh District Council recorded in the General Register of Sasines on 29 May 2001 (“the Deed of Conditions”) contains arrangements for the maintenance and management of the Development.
6 The Applicant lives in the USA.
7 The Property is occupied by the Applicant’s friend, Marc Dabic.
8 The Deed of Conditions created an Association comprising of the original developer and each of the owners of houses and commercial units within the Development.
9 The Deed of Conditions requires the appointment by the Association of a Manager to manage the Development.
10 The Respondent is the appointed Manager.
11 The Deed of Conditions allows the Manager to call meetings of owners and to implement the decisions of the majority of owners concerning the maintenance and repair of the Development.
12 The Respondent has held this role since 2016.
13 The Respondent, by acting as Manager, is a Property Factor for the purposes of the 2011 Act.
14 On 5 October 2022 the Owners voted by majority to carry out a scheme of works to the Development which involved re-rendering the external walls.
15 The Applicant had voted against the works.
16 The Respondent instructed that the works were managed by Alan Robertson Consulting Ltd (ARC).
17 ARC arranged for the appointment of contractors to carry out the works.
18 Mr Dabic was unhappy with the conduct of the rendering works. He expressed dissatisfaction to those carrying out the works to the extent that the workers reported feeling intimidated and the contractors were unwilling to work in his presence.
19 The replacement render was in a different but very similar shade of blue to the existing render.
20 Some safety bars were removed from windows during the works.
21 On 9 August 2023 Mr Dabic approached Mr Philp of the Respondent to express his concerns regarding the works. Mr Dabic reported to the Respondent that during that meeting he was pushed by Mr Philp.
22 The Respondent investigated but found no evidence to support Mr Dabic’s claim.
23 In addition to the main entrance door, there is a fire exit door at the east of the Development. It is not designed to serve as a normal entrance and exit.

24 Mr Dabic has requested a key for that door. The Respondent refused as it does not have a key.

25 An owner of a flat within the Development had placed a shed on a private roof terrace on the Sixth Floor. It does not impede safe emergency evacuation.

26 The 2024 AGM was convened in accordance with the terms of the Deed of Conditions.

27 The door entry system was in need of replacement in 2024. The Respondent followed an appropriate process for its replacement. The Applicant was not happy with the new system and her flat was therefore not included.

28 The Applicant has, by her correspondence, including her letter dated 18 July 2024, informed the Respondent of the reasons why she considers the Respondent has failed to carry out its property factor's duties.

29 The Respondent has not unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Background

A Case Management Discussion had originally been due to take place in May 2025 but was postponed at the request of the Respondent. A Case Management Discussion took place in person on 5 September 2025 at George House, Edinburgh. The Applicant was represented by her friend, Marc Dabic, who lives in the Property. The Respondent was represented by its Michelle Blake, Property Manager and George McGuire, Chief Executive. At the CMD, the Applicant's representative agreed the 15 heads of complaint which form the basis of the Application. A hearing was assigned to take place on 26 January 2026.

The Applicant subsequently sought to add a further three heads of complaint and this was refused by the Tribunal by Decision dated 20 January 2026.

The Tribunal brought a dog to the CMD. He explained it was an emotional support animal. The Tribunal allowed the dog to remain at the CMD.

The Tribunal was concerned that the next element of procedure would be a lengthy hearing which would not be likely to be a suitable environment for the dog and that disruption might result. The Tribunal ordered the Applicant to produce a soul and conscience certificate from a medical doctor confirming that the dog was required at the Hearing. No such certificate has been produced. The Applicant instead sent to the office of the Tribunal a letter by his GP. It identified that the Applicant has a support dog. Unfortunately, the letter is not a soul and conscience certificate. It is a standard "to whom it may concern" letter. It does not identify the condition which Mr Dabic has nor the benefit that attendance of the dog would bring (or the effect of the dog's absence). The letter is not addressed to the Tribunal nor does it address the question of the Tribunal hearing at all. Mr Dabic had originally stipulated that the letter should be seen only by the President of the Tribunal. When advised that the President would not make any decision on the question of the dog's attendance and that the decision fell only to the Tribunal, he agreed to the letter being sent to the Tribunal members hearing the case. Unfortunately, this occurred only one business

day before the Hearing which meant that the members were unable to consider the matter. In the event, the Tribunal proceeded without the dog and Mr Dabic appeared well able to present his case without it. The matter was not raised at the Hearing.

At the beginning of the CMD, Mr Dabic complained that the Respondent had two representatives present whereas he was on his own and that this breached the rules of the Tribunal. When advised that there was no rule limiting the number of representatives, he then complained that there were, in fact, four representatives of the Respondent present. The additional two were actually members of the public sitting at the back of the room observing and not taking part in the proceedings. Mr Dabic identified one of the members of the public as a "stalker" and wished them removed from the room. The Tribunal indicated that as this was a public hearing, members of the public were entitled to attend and would not be excluded provided that they behaved appropriately. At no point was there any kind of interruption or inappropriate behaviour by any member of the public in attendance and so no one required to be excluded from the proceedings.

Hearing

A Hearing took place on 26 January 2026 at George House, Edinburgh. Mr Dabic again appeared for the Applicant and was assisted by a friend. The Respondent was again represented by Ms Blake and Mr McGuire.

Mr Dabic raised a concern at the outset of the Hearing that at the CMD he had been shown into the Hearing room after the representatives of the Respondent. He complained that he perceived a "cosiness" between the Tribunal members and the representatives of the Respondent. The Tribunal reassured him that he had been shown into the room immediately following the Respondent's representatives and that no discussions had taken place between the Tribunal and the Respondent's representatives. Mr Dabic raised a concern that the Tribunal Chairman had an existing relationship in that he had heard another Tribunal case involving the Respondent in 2020. The Chairman reassured Mr Dabic that that had simply been a professional hearing and that no relationship existed between him and the Respondent or its representatives. The Respondent's representatives confirmed this point.

At the CMD, a member of the public had been present who Mr Dabic identified as being a "stalker". He reported that he had felt intimidated by that person's presence. Although there were some members of the public present at the Hearing, he confirmed that the individual in question was not among them.

The Applicant's submissions had not been completed and so a second day of Hearing was fixed for 13 April 2026 again in-person at George House. When the case called on that day, Mr Dabic was in attendance. No one appeared for the Respondent. One of the members of the public in attendance (who is a flat owner in the Development) volunteered that her understanding was that the Respondent intended not to appear but to rely only upon its written representations. The Tribunal

had received no notice of this and decided that the hearing should be discharged until a later date to enable the Respondent to appear or to confirm that it did not wish to do so. It subsequently transpired that the Tribunal administration had received an email from the Respondent in advance of the hearing indicating their intention not to attend. By that time, however, the hearing had been discharged and a new date of 10 August was then fixed.

The Respondent intimated again in advance of that hearing its intention not to attend and to rely upon written submissions. By email of 28 July 2026, it provided some further written submissions on the remaining heads of complaint and invited the Tribunal to allow these. The documents included a letter written by six of the owners of properties within the Development which indicated support for the Respondent and indicated that Mr Dabic's complaints were unfounded.

The hearing on 10 August 2026 took place at Edinburgh Sheriff Court. Mr Dabic attended. As expected, the Respondent did not. Mr Dabic had no objection to the admission of the Respondent's latest written submission.

He did however wish to respond by lodging further documents of his own. The Tribunal indicated that it was reluctant for the process to continue with further documents from each side but that if Mr Dabic's latest documents were confined to responding to the Respondent's latest written submission, the Tribunal would be prepared to consider allowing those documents to be received. Mr Dabic was instructed to lodge any further documents promptly after the hearing on 10 August had concluded.

On 25 August 2026, Mr Dabic emailed the Tribunal. That submission covered some of the heads of complaint which are the subject of the Application. It also made reference to the arrears position which had been mentioned in the 28 July 2026 submission and to an allegation that the Applicant is an unregistered landlord. Those are not relevant to the issues before the Tribunal. The submission also attached a photograph of the east door; a postcard containing a message of thanks to Mr Dabic from a neighbour; an email from Crolla, a ground floor occupier; correspondence between Mr Dabic and a company called Vault who dealt with the window with the broken part which Mr Dabic had reported; and emails between the Applicant and the Respondent. We have taken these into consideration in this Decision despite their late production as we consider that it would be in the interest of achieving affair hearing to do so.

After the hearing, the Tribunal issued a Direction requiring the Respondent to provide clarification of its position in relation to head of complaint 11 below. The Respondent provided a written response on 7 September 2026. The Tribunal has taken the Respondent's response into account in this Decision.

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 revised with effect from 16 August 2021 as “the Code” and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Respondent is a Registered Property Factor and has a duty under section 14(5) of the 2011 Act to comply with the Code.

The Tribunal had available to it, and gave consideration to, all of the documents lodged on behalf of the Applicant and the Respondent and to the parties’ oral submissions at the Hearing.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out property factor's duties under reference to the Deed of Conditions Clause 11.2.3 and a general failure to keep the Development and its residents safe.

Clause 11.2.3 provides:

"*Terms of Appointment: The terms and conditions of appointment of the Manager shall include the following:*

(a) A duty to exercise in a professional, efficient and economic manner the whole powers, rights and obligations of the Association contained in this deed subject to such limitation on expenditure and other restrictions as the Members may impose.
(b) Bank Accounts: a duty to lodge, without delay, in a separate bank account in the name of the Owners all monies paid to the Manager by the Owners or the Commercial Tenants (as the case may be)(save for payment of fees or other remuneration due to the Manager) and a duty to pay to all expenditure incurred by the Members from the relevant Accounts.
(c) Financial Year: the Manager shall fix the financial year of the Association.
(d) Accounts: a duty to have annual Accounts prepared of the Association's intromissions and a duty to convene the Annual General Meeting to consider and approve such Accounts as soon as reasonably practicable after the expiry of the year in question.
(e) Information: not later than 14 days before an Annual General Meeting the Manager should send to each Member
(i) the Accounts for the last financial year and
(ii) a draft budget for the new financial year as provided for in this deed.
(f) Block Insurance: a duty (if delegated to him by the Association) to effect and maintain and keep constantly in force the Block Insurance Policy in accordance with the provisions of this deed.
(g) Contracts for Works: the right (if delegated to him by the Association) to enter into such maintenance and service contracts (acting reasonably) subject to the limits laid down as hereinafter provided and so long as such contracts can be terminated without penalty at any time after the first year on not less than three months' notice.
(h) Record: a duty to maintain a Record identifying for each of the Units the name and the United Kingdom address for the current Owners and Commercial Tenants and a requirement to keep this up-to-date and to make it available to Owners on reasonable request. In this regard each of the Owners or Commercial Tenants (as appropriate) shall, without delay, on becoming an Owner or Commercial Tenant (as appropriate) and thereafter on any change

of name or United Kingdom address or disposal, give the Factor full details in writing so that such record is kept up to date from time to time.

(i) *Minutes: a duty to maintain and make available for inspection a file containing certified true copies of the Minutes of all the meetings which file will be delivered to the Association or as the Members direct on termination of the Manager's appointment.*

(j) *Duty to manage: a duty to manage the whole subjects for the benefit of the Members."*

The Applicant has also referred to Sections 1 D13 and 15 of the Written Statement of Services. However, those numbers do not seem to appear in the Written Statement of Services so we have had regard to the whole terms of that document.

The Code

The Applicant complains of failure to comply with the Code.

She complains of a breach of the following sections of the Code:

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

***…OSP4.** You must not provide information that is deliberately or negligently misleading or false.*

***OSP5.** You must apply your policies consistently and reasonably.*

***OSP6.** You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.*

***OSP7.** You must not unlawfully discriminate against a homeowner because of their age, disability, sex, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, race including colour, nationality, ethnic or national origin, religion or belief or sexual orientation…*

…2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner…

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.

6.2 Property factors may also agree, by contract, to instruct that specific maintenance duties are undertaken by specialist contractors on behalf of homeowners which contribute to fire safety. For example, the requirement in fire safety law to maintain any measures provided in communal areas for the protection of firefighters e.g. firefighters lifts, rising fire mains etc, or to ensure that common areas are kept free of combustible items and obstructions…

…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.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works…

…6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner…

…6.12 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.

…7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- *The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*
- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*
- *Where the property factor provides access to alternative dispute resolution services, information on this.*

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing…"

The following 15 matters represent the Applicant's heads of complaint:

1. When the decision was taken by the owners to approve the rendering works the Respondent's representative had been told by the Respondent's Mr Philp that the decision was final and no further avenue of challenge existed. Mr Philp should have referred him to the possibility of arbitration under the Deed of Conditions.
2. The consultant employed by the Respondent, ARC, ought not to have been employed as it was not suitably qualified. The Respondent had refused to provide details of its earlier projects with ARC. ARC had exaggerated its experience.
3. The rendering works were executed incompetently. The scaffolders, Clyde Scaffolding had not been competent contractors.
4. At a meeting in August 2023, Mr Philp had assaulted Mr Dabic by pushing him. When he complained to the Respondent, it had failed to engage with him.
5. The contractors who carried out the rendering works, AFS, failed to progress the works diligently.

6. The Advisory Committee had not been formed in accordance with the requirements of the Deed of Conditions and so the Respondent should not have followed its instruction.
7. Safety bars had been removed from windows on the stairs for a period of two months during the rendering works creating a risk of injury.
8. The Respondent ignored Mr Dabic's representations concerning the colour of the new render.
9. The Respondent falsely claimed that Mr Dabic was rude to its staff.
10. The rendering project was too expensive and may have been a scam.
11. The 2024 AGM was not properly convened.
12. The door entry replacement quotations had been too high. The Respondent had failed to obtain competitive quotes and had been prepared to employ an expensive replacement with a lesser standard (audio only) system.
13. The Respondent had denied the Applicant access via the East access door including by not providing a key and placing notices on the door.
14. The Respondent had failed to repair windows on the common stair next to the lift.
15. The Respondent had allowed a shed to be placed on the sixth floor which obstructs an emergency exit.

Mr Dabic tended to stray from one head to another on a frequent basis often because there was an overlap between the various heads. He tended to find it difficult to constrain himself to providing short answers to questions and would tend to engage in long monologues covering multiple heads or additional matters. Mr Dabic explained that he felt passionately about the subject matter of the Application because the Applicant was a close friend and the Property's value was important to the Applicant as it represents her pension.

It would be fair to say that the overarching theme of the Application is the Applicant's concerns about repair works which were carried out at the Development.

In summary, it had been identified for some years that repairs were required to the render of the buildings which make up the Development. Certain owners had taken it upon themselves to carry out enquiries in relation to this issue. Those owners had formed an informal working group and had liaised with the Respondent.

The result of this exercise was the production of a report by Alan Roberston Consulting Ltd ("ARC") dated 10 August 2021. That report recommended extensive repairs.

ARC sought tenders from contractors to carry out the works. Information and recommendations were circulated to owners.

A vote was held by the owners of properties within the Development on 5 October 2022.

A majority of owners voted to proceed with the repairs.

Two owners within the Oval block (where the Property is situated) voted against. The Applicant was one of those two.

The Applicant was concerned from the outset that the works were unreasonably expensive. The Applicant has concerns about how the works were carried out and managed.

The works were carried out during 2023.

We now address the 15 heads of complaint:

The Advice regarding the Decision

Mr Dabic explains that he did not have access to the Applicant's title deeds at the time of the vote. He had asked the Respondent for a copy. The copy had not been provided at that time. He reports being told by the Respondent's Property Manager, Alan Philp, that the vote to carry out the repair works was final. Mr Dabic subsequently learned that that advice was wrong because Clauses 12 and 13 of the Deed of Conditions permit arbitration among the owners in this situation. Such an arbitration was only available within 14 days of the decision to carry out the works. By the time Mr Dabic saw a copy of the Deed, that time had passed. The Applicant was therefore denied the opportunity to proceed with an arbitration.

We do not consider that the Respondent was under a duty to provide a copy of the Deed of Conditions to any owners but consider that owners ought to retain their own copy and satisfy themselves as to its meaning. We therefore identify no breach of property factor's duties or of the Code in this respect.

The Tribunal would observe that while a provision for arbitration exists, it is the type of provision which is rarely employed. It is not apparent that the Applicant would have had the basis for a successful application to challenge the carrying out of the works approved by the vote of the majority. The basis of the application to an arbitrator would have been that the works were excessively priced. However, the Applicant was at the time (and remains) without any professional opinion on the cost of the works and it would seem likely that an arbitrator would have been persuaded by the evidence, including the opinion of ARC, which had led to the majority decision to proceed with the works. So, to the extent that Mr Philp's advice was incorrect, it appears to have had no practical effect.

ARC

The Applicant is concerned that ARC was not suitably qualified. Her first concern is that ARC is a "one man company" and therefore of insufficient size to handle the project. ARC appears to be a limited company with one employee, Alan Robertson, who is a Fellow of the Royal Institution of Chartered Surveyors. We do not see any basis to conclude that ARC was unsuitable for the job. In construction project terms, the works were relatively low value and the employment of a local, small surveying

practice might therefore seem appropriate. The Applicant might have equally complained if a large, more remote surveyor had been instructed. It is not obvious to the Tribunal that there was anything unsuitable about ARC. The Respondent could not say how ARC came to be first identified but it seems that it may have been selected by the initial working group of owners.

ARC was known to the Respondent from having worked on similar projects in the past and the Respondent regarded ARC as a suitable appointee for this project.

The Applicant complains that when asked to produce evidence of ARC's experience, the Respondent declined to do so. On the face of it. ARC was a professional firm suitably qualified to deal with the works. ARC had been identified by the working group of owners and subsequently employed after the vote by all owners without any valid expressions of concern by anyone other than the Applicant. We identify no breach of property factor's duties or of the Code in this respect.

The carrying out of the Works

The works followed on from a render condition survey carried out by ARC in August 2021, the provision of information to owners and the chance to vote on the works at an EGM in September 2022.

The Applicant complains that the works were poorly executed by the appointed contractors and were poorly supervised by ARC. The Applicant has produced an extensive series of photographs taken by Mr Dabic at various stages of the works which show areas of concern to him. He monitored the attendance of contractors on site and has formed the view that the hours worked were few and erratic.

He was concerned that the scaffolding company employed was a Glasgow based company whereas he considers that a local company would have been more suitable. He was concerned that the site was left insecure by the scaffolders leaving ladders available to public access with the result of attempted burglaries. He was concerned that one of the two entrances was difficult to access because of the placement of scaffolding and that the scaffolding affected the trade of one of the commercial units on the ground floor.

The Applicant was concerned that the refurbishment works may have been a "scam". This was on the basis that Mr Dabic stated that he had been advised by an unnamed diplomat in London that fraud was endemic in the Edinburgh construction market.

In November 2023, the contractors carrying out the works refused to return to site because they reported that Mr Dabic was interfering with their progress. They complained of Mr Dabic's conduct towards their employees and that that were not prepared to expose their employees to it. They reported that he was shouting at them, giving them instructions in relation to the works and videoing them as they worked.

We do not accept that the evidence produced by Mr Dabic demonstrates poor conduct or supervision of the works. We have not identified any evidence that the parties selected to carry out the works were unsuitable. We have seen no evidence of any kind of "scam" being involved. We find there to have been no breach of property factor's duties or of the Code in this respect.

Mr Philp's Conduct and the Respondent's Response

The Applicant complains that he was assaulted by Mr Philp on 9 August 2023 and that the Respondent failed to apologise for this or to take any action. The Respondent instead indicated that it was unwilling to have future contact with Mr Dabic on the Respondent's behalf.

The Respondent denies that the assault occurred. Mr Philp has left the Respondent's employment. The Respondent is aware of no evidence that the alleged assault happened. There are no witnesses to it. The police have apparently not attempted to pursue the matter further with Mr Philp. The Respondent considers Mr Philp to have been a very good property manager. The allegation here is a serious one and the Respondent is unwilling to find that any assault took place based solely on the account of Mr Dabic.

The Tribunal does not consider that the Respondent has failed in its duties or breached the Code in its response to the assault allegation. It investigated and satisfied itself that the assault had not taken place. On the available evidence, it was entitled to reach that conclusion.

Advisory Committee

Clause 11.3 of the Deed of Conditions provides that the owners may at a Meeting appoint an Advisory Committee. That Committee is entitled to give advice to the Respondent as Manager. The Respondent is bound to consult with the Advisory Committee but not bound to follow its advice.

The Applicant doubts that the Advisory Committee has been properly elected. The Applicant considers that other owners would be better qualified than the current members although there is no evidence that any such other owners have asked to join the committee and been denied. Elections to the Advisory Committee take place at Owners' meetings and are a matter for the owners and not for the factor and we do not identify any breach of property factor's duties or of the Code.

Safety Bars

The Applicant considers that the removal of safety bars from the windows during the rendering works presented a danger as building users could have fallen through the windows. No one, in fact, did fall. The removal of the bars appears to have been an inherent part of the rendering works. The Respondent had entrusted the detailed conduct of the works to ARC and the contractors and it was entitled to do so. The

Respondent had written to owners on the subject on 28 June 2024 so owners were aware that the bars would be absent for a number of weeks and were able to take alternative precautions should they have been concerned about the issue. There is no evidence that there was any concern on the part of owners about the any resulting increased danger. We identify no breach of property factor's duties or of the Code.

Complaint of Rudeness

AFS, the contractors working on the render project, had emailed the Respondent to express concern about Mr Dabic's interference in their work. On 31 October 2023 they complained of "abuse" of their operatives by Mr Dabic and of a risk to their safety. They complained that Mr Dabic was "roaring", "shouting" and "screaming" at them. On 3 November 2023, they complained about Mr Dabic's "attitude" and the likelihood of "confrontation" between him and their operatives. Mr Philp sent a communication to all owners of properties within the Development to alert them to the existence of the issue.

We consider that the Respondent was entitled to proceed on the basis of the information given to it by AFS. It is evident that there were considerable strains in the relationship between those concerned with the works and Mr Dabic. Mr Dabic has highlighted (as well as the alleged assault by Mr Philp) an instance of Mr Philp losing his temper with him and banging the table at one meeting and other occasions where he has felt at meetings that he was not permitted to ask the questions he wanted. He characterises that conduct as bullying by the Respondent. We can find no evidence that Mr Dabic was inappropriately accused of rudeness. We identify no breach of property factor's duties or of the Code.

2024 AGM

The Applicant complains that the Respondent has failed to properly convene the Owners' AGM on 14 November 2024. Clause 11.4.3 of the Deed of Conditions requires certain information to be made available 14 days before the Meeting. The Respondent has produced evidence of the communication which was sent to owners on 24 October 2024 and which set out the proposed agenda. The meeting therefore appears to have been convened appropriately and in accordance with the terms of the Deed of Conditions. Mr Dabic did not attend on 14 November and a quorum was not achieved resulting in a fresh meeting being convened later. We identify no breach of property factor's duties or of the Code in this respect.

Door Entry Replacement

In September 2024, the door entry system was suffering faults and the Respondent received advice that spare parts were becoming difficult to source and that a replacement system should be considered. Quotations were obtained for a number of different options at different prices and a majority of owners voted for a replacement system. The Applicant was concerned that the proposed renewal of the door entry system was unsuitable in that it would be audio only and not video. This

was of concern to the Applicant on security grounds. Ultimately, the Applicant refused to accept the new system and did not pay a share hence the system was not extended to her flat. The Respondent appears to have behaved appropriately and it is the majority of the owners (not the Respondent) who selected the system. Accordingly, there appears to have been no breach of property factor's duties or of the Code.

Render Colour

The Applicant regards the choice of the shade of blue for the new rendering as inappropriate. He regards the new colour as materially different from the original shade of blue. He has a particular concern that the new shade is identical to the shade which features on a magazine published by a charity concerned with Parkinson's Disease. He reports that an unnamed resident in the Development has Parkinson's and the similarity of the shades causes that person distress. The Applicant's representative describes the new shade as "Council blue" or "NHS blue" by which he means that a similar colour is used on public buildings and social housing. He believes that the new colour has attracted those who wish to engage in anti-social behaviour to the Development because they are wrongly encouraged by the new shade to believe that the Development is in public ownership and that there will be an increased tolerance of anti-social behaviour. On the final day of the hearing, Mr Dabic read out a letter which he stated had been sent to him by the owner of a ground floor shop unit, Crolla's. That letter indicated that the author shared Mr Dabic's concern regarding the colour of render and also used the term "Council Blue". The author attributed anti-social behaviour and an incident involving violence towards its staff as contributed to by the colour choice.

The evidence of the Respondent is that the original shade known as Cornflour Blue was not available at the time the works were to be carried out and that the next nearest shade was selected. The Tribunal observed that the two colours of blue are extremely similar although Mr Dabic remains of the view that he can see a significant difference. There was no evidence of any concern on the part of any other resident (other than the Crolla's letter author) about the colour choice. The idea that the colour choice has caused an increase in anti-social behaviour seems fanciful and remains unevidenced. In any event, the Respondent appears to have behaved reasonably in allowing ARC to select a colour for the new render which was as similar to the existing shade as possible. We identify no breach of duty or of the Code in this respect.

Provision of Key

The Applicant complains that she has asked for a key to the East car park fire exit door but not been provided with one. Mr Dabic likes to use that door as a more convenient alternative to the main front door when he wishes to go directy onto The Shore. He can exit using the door because it is operated by an internal thumb turn lock but he cannot enter as a key would be required. Mr Dabic reports that signs have been placed on the door – he does not know by whom – requesting that the door is not used as a means of access and egress. A fellow resident has

approached him and asked him not to use the door. He prefers to continue using it. The Respondent states that quite simply it does not have a key to the door in question and so cannot assist. The available evidence is that the main door is available to provide access; the door which Mr Dabic is using appears to have been designed as an emergency exit door. In the circumstances, we identify no breach of property factor's duties nor of the Code.

Window repairs

Mr Dabic had produced at an early hearing a metal part which he said had fallen from a common stairway window. The Respondent offered to look into this issue. Mr Dabic reported that a window repair has been carried out incorrectly He showed a photograph of the window. The metal part in question is said by Mr Dabic to have been fitted the wrong way around. The part is a component of an automatic opening and closing mechanism designed to vent smoke in the event of fire. It was not apparent to the Tribunal from the photograph or otherwise that the repair has been incorrectly completed.

The Respondent raised the point that this particular issue was not raised with the Respondent prior to the Case Management Discussion (CMD). The Respondent has produced an email by the contractor who repaired the window. The contractor expressed the view that the component appeared not to have fallen off as a result of damage but to have been deliberately unscrewed by someone. Mr Dabic infers that it is suggested that he was responsible. He denies any responsibility. The Respondent also observes that at its last regular inspection in 2025 it had not been observed that the window part had become become insecure. We find no breach of property factor's duties or breach of the Code in relation to this matter.

Shed

The proprietor of Flat 14 has placed a shed on a private roof terrace. The shed is around 10 inches from smoke vent windows in the stairway. Mr Dabic is concerned that the windows may not be able to be used for the purposes of escape in the event of fire because of the obstruction caused by the shed. There is however no evidence that the windows in question were ever intended to offer a means of escape during a fire. After discussion, Mr Dabic accepted this. We identify no breach of property factor's duties or of the Code in this respect.

PROPERTY FACTOR ENFORCEMENT ORDER

As we have found no breaches of the Code or of property factor's duties, we will not make a property factor enforcement order ("PFEO").

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: 26 October 2026