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/PF/25/4037

Re: Property at 19 The Steils, Edinburgh, EH10 5XD ("the Property")

The Parties:

Mr Payam Chu, 19 The Steils, Edinburgh, EH10 5XD ("the Applicant")

James Gibb Residential Factors, Red Tree Magenta (3rd Floor), 270 Glasgow Road, Rutherglen, G73 1UZ ("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*"). That Application also answers "*yes*" to the question: "*Does your complaint relate to a failure to carry out the Property Factor's duties?"*

Prior Procedure

[2] The Application called for a Hearing by conference call at 2pm on 22 April 2026. The Hearing was conducted as a Case Management Discussion ("CMD"). The Applicant was personally present. The Respondent's own Ms Wilson was present.

[3] Case management orders were made in the form of a Direction and the Application was continued to a Hearing in person for evidence and submissions to be heard.

The Hearing

[4] The Application called for a Hearing in person in Edinburgh Tribunals Centre at 10am on 15 September 2026. The Applicant was personally present. The Respondent was represented by their own Ms Ashley Wilson and Mr Tom McKie. The Tribunal began by enquiring if parties wished time to discuss a settlement to their dispute in private. Parties agreed to discuss matters but having done so, regrettably were unable to

reach an agreement. The Tribunal thanked parties for their efforts but commenced hearing evidence. The Tribunal heard from the Applicant, allowed cross-examination before moving on to hear from Ms Wilson and Mr McKee. The Tribunal asked questions throughout to ensure that it understood the evidence. Each party also had the opportunity to make closing submissions.

Preliminary matters

[5] At the outset, the Tribunal discussed with the Applicant the particular sections of the Code referred to in the Application. It seemed apparent that some of them were not relevant to the substance of the allegations. The Applicant was prepared to acknowledge this and accept that some of the alleged breaches ought to be disregarded. The results of this preliminary discussion were as follows:

SP1. "*You must conduct your business in a way that complies with all relevant legislation."* The Applicant agreed that this section of the Code should be dismissed and was not relevant.

OSP2. "*You must be honest, open, transparent and fair in your dealings with homeowners"*. The Applicant agreed that this section of the Code should be dismissed and was not relevant.

OSP3. "*You must provide information in a clear and easily accessible way.* The Applicant maintained this alleged breach.

OSP4. "*You must not provide information that is deliberately or negligently misleading or false*". The Applicant agreed that this section of the Code should be dismissed.

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*". The Applicant maintained this alleged breach.

OSP8. "*You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property*". The Applicant maintained this alleged breach.

The evidence

[6] The Tribunal comments on the evidence heard as follows:

[7] The Application relates to two issues which to a degree involved the Applicant referring to the interpretation of various real burdens in the relevant Deed of Conditions in respect of the development. The Tribunal was mindful that the Title Conditions (Scotland) Act 2003 Section 90 (1) (a) (ii) provides that the Lands Tribunal for Scotland

may determine any question as to its validity, applicability or enforceability or as to how a title condition is to be construed. The Tribunal was therefore mindful that jurisdiction over such matters rests with the Lands Tribunal for Scotland this Tribunal should not therefore attempt to provide guidance as to the applicability or enforceability of a title condition or to provide a determination as to how it is to be construed. That rests with the Lands Tribunal for Scotland. This Tribunal instead was tasked with determining whether the standards of the Code have been breached.

The allegations

[8] The Application set out the following at page 43 of 81 of the electronic bundle in a complaint sent by the Applicant to the Respondent on 18 May 2025.

"I am writing to formally raise a complaint regarding the inappropriate use of owners' funds for repairs that do not relate to the common property maintained under our title deeds or fall within the scope of your obligations as the property factor.
It has come to my attention that, on multiple occasions, you have authorised and funded repairs using money collected from all owners within the development for work that appears to have been conducted on private property. This is a clear violation of the responsibilities outlined in our title deeds and the Deed of Conditions, as well as contrary to the original purpose of the funds, which was to maintain common property. I am referring to at least two incidents of which I am aware:
1. The painting of a garage door that is privately owned, following a dispute raised by the residents' association over the colour of the door.
2. The removal of graffiti from a block of garages owned privately by residents, members of the committee that are making decisions on where common funds are to be spent. This has only come to light after the initial resistance on your part to withhold crucial information when there is a duty to disclose. This was only resolved after a formal complaint to the First-Tier Tribunal was raised, at which point Nic agreed to provide the necessary details. In addition, after consulting with several neighbours in recent weeks, I have been made aware that these types of expenditures are not isolated incidents and there have been concerns raised previously. For example, there has been an instance of roof repairs conducted on privately owned building within the development (around the clock mechanism)."

[9] The Form C2 submitted to the Tribunal on 18 September 2025 then set out the detail of the allegation in a paper apart which was itself a complaint:

As raised previously, this complaint relates to James Gibb having carried out maintenance work, using funds from the common sinking fund, on property that is not commonly owned by all owners or property of common interest (i.e shared ownership between a private owner and the estate/all owners). James Gibb has now confirmed funds raised for communal property has been spent by James Gibbs on private property, and despite the concerns raised on 18 May 2025, you have dismissed these concerns repeatedly on the basis that you were only doing what you were told to by the Residents Association. You quote the Deeds and Scheme of Regulations to support this was done under Common Interest. The Scheme of Regulations is clear that the authority of

the Association is limited to common interest. Common interest, per the Deeds relate to the "maintenance, insurance and use of all common property". Common property, in law relates to property owned collectively, and in this case, the communal land. Not private garages where James Gibb has spent common funds on. Common interest, in law relates to real burden, the legal obligations the arise between owners of property, i.e. the communal owned land that we as proprietors in this estate have a shared legal obligation on land that we own as an estate as defined in the Deeds. Not private garages. To suggest that James Gibb believe it is ok for common funds to be used on private property just because the Association told them to because it is "common interest", is seriously concerning. Especially when a member of the Association making the decision owns said private property. The fund was originally started on November 2016, and in accordance with the Deed of Conditions, the stated purpose of the fund was for garden and communal grounds improvements, in line with common interest. The below extract is from a letter sent out by James Gibbs, dated 24/11/16. This issue is of serious concern and I believe it may constitute a breach of your duties under the Property Factors (Scotland) Act 2011, as amended in 2021, our Deeds, as well as the terms set forth in your Written Statement of Service.

The First Allegation

[10] The Respondent had been instructed by the local residents' association to paint a garage door. The Applicant's position was that this repair should not have been funded by the 162 properties in the development but rather by the 15 properties which owned the garages. The Respondent had levied a charge to all the properties of £1.42 each for the cost of settling this outlay. The Applicant accepted that the Respondent had carried out this action on the express instruction of the residents' association. The Respondent in turn accepted that the garages were not common property and they should not have acted on those instructions from the residents' association. They pointed out though that no one at the time objected to this or raised any concern. They explained that they didn't consider it appropriate or necessary to examine the title deeds to establish the particular ownership of the garage door and simply acted on the request made to them which at the time appeared reasonable.

[11] The relevant Deed of Conditions narrates the following regarding the ownership status of the garages:

"(Fourth) Each proprietor of a remote garage shall possess a right of common property with each and every other proprietor (a) in the block of garages of which his garage forms part in and to the drains, pipes and all other common and mutual parts and pertinents thereof and (b) of garages entering therefrom in and to the mutual access courtyard, the paths leading thereto, any common lighting and all other common or mutual parts and pertinents thereof; And each garage shall be held by the proprietor thereof in all time coming under the burden of upholding and maintaining in good order and repair jointly with the proprietors of all other garages in that block all of the foregoing common items."

[12] It is therefore clear that the garages are privately owned and their maintenance costs are to be shared between the proprietors of the garages and not the wider development. This is now readily accepted by the Respondents.

[13] Condition 16 of the Deed of Conditions also provides for the formation of a "*Proprietors Association*". This Condition specifically provides for the Association *"to issue instructions to the Factor with regard to the management and maintenance of all common property and the said open amenity areas*".

[14] That appears to have been what happened on this occasion but the Association gave the Respondent an instruction that was illegitimate. The Applicant himself was clearly disenchanted with the Residents' Association and made reference to having had challenging interactions with the Residents' Association.

[15] The Applicant sought to refer to various aspects of the real burdens in a land certificate which was included at page 45 of the bundle. This land certificate was for title number MID2311 51 The Steils, Edinburgh and listed the proprietor as a "*Mr and Mrs Lally*". It was not apparent why the Applicant had not submitted his own land certificate initially but the Tribunal had obtained a copy of that separately which was also within the Tribunal's papers.

[16] It was not contentious that the garage doors were not common property. However one owner out of the 15 garage owners did not agree to the costs and also had arrears on their management fees owed to the Respondent. The Respondent ultimately wrote off £293.06 pence of fees which they would otherwise have been entitled to apportion as a charge against all the residents in the development. The Applicant explained that he did not believe that the Respondent was entitled to recover the costs of bad debt from the development unless it was in the specific circumstances set out in the relevant section of the Land Certificate which the Applicant referred to. The relevant title condition suggested that bad debt could only be recovered from the development as a whole in the event of the bankruptcy of a proprietor and in certain other circumstances and it was clear that the Applicant wished the Tribunal to conduct a forensic analysis of the various circumstances in which bad debt could be passed to the wider development. The Tribunal however did not want to stray into territory exclusively reserved for the Lands Tribunal for Scotland and attempt to provide directions as to how the operative title condition should be interpreted and applied and it was clear that the apportionment or otherwise of the £296.06 debt was not specifically an issue in the application. The Respondent's approach here seemed reasonable and was not obviously wrong. Beyond that the Tribunal does not wish to stray beyond its jurisdiction.

The Second Allegation

[17] The second issue was that the Respondent had again acted on the instructions of the residents' association to paint graffiti on the back of one of the garages referred to in the

first allegation. This had been charged to all residents at a cost to each household of £0.93 pence. The Applicant had not paid either of the two invoices charged relating to both issues and while this appeared to suggest that this Tribunal Application stemmed from a dispute over £2.37 the applicant stressed that it was the principle rather than the amount which was in dispute. The Tribunal was shown a photograph of the back of the garage. The Applicant's concern was that again the walled area was actually the back of a privately owned garage and private rather than common property.

[18] The photograph showed the back of the garage as forming a border of sorts which separated the development from a path and a wooded area. Again, the Respondent had acted on the instructions of the Residents' Association. If the back of the garage constituted a boundary of the estate, then parties appeared to agree that it would be common property and could legitimately be charged to the residents. If it was not a "*boundary*", then the charge would not be legitimate.

[19] Taking a common-sense approach, the photograph clearly showed that the back of the garages formed a natural boundary of the development which separated it from a path accessible by members of the public and a wooded area. The fact that the surface area in question had been graffitied also seemed to sit with the fact that the area was a natural boundary. The Tribunal again was aware that its jurisdiction did not extend to making orders about how title conditions ought to be applied or construed. That was within the jurisdiction of the Lands Tribunal for Scotland. The Tribunal instead was tasked with assessing the facts of the situation against the paragraphs of the Code alleged to have been breached. The Respondent's interpretation was not unreasonable.

Comment on the evidence

[20] The Tribunal did not consider this to be the sort of case were there were any concerns regarding the credibility of the evidence to the extent that parties were not being honest. The Tribunal was however somewhat cautious about the reliability of the parties' submissions regarding the various parts of title deeds which the Applicant referred the Tribunal to. The Applicant's presentation was not always easy to follow but the Tribunal considered that it was not central to the Tribunal's decision making process to provide detailed interpretations about various aspects of the Deed of Conditions. The Tribunal noted the very low, almost negligible financial value of the issues raised. The Tribunal did find it surprising that the Applicant seemed unaware of the fact that the Respondent had actually written off bad debt which they may otherwise have been entitled to claim from the residents. It did seem odd that the Applicant's preferred outcome may then have resulted in additional expense to the residents if the Respondent had not elected to waive the bad debt.

Findings in Fact

[21] Having considered the evidence and documentation, the Tribunal made the following findings in fact.

1. *The Applicant is the proprietor of the Property known as 19 The Steils, Edinburgh, EH10 5XD ("The Property").*
2. *The Property is in a development factored by the Respondent within the meaning of the Act.*
3. *The development has a Residents' Association.*
4. *Several years ago, the Residents' Association instructed the Respondent to paint a garage door. The garages are in fact owned privately by 15 proprietors who own the garages. The Respondent however acted on the instructions of the Residents' Committee and carried out the instruction.*
5. *The Respondent ultimately invoiced the entire development for those costs which should have been met exclusively by the garage owning proprietors.*
6. *The Respondent ultimately accepts that this was inappropriate and should not have happened. The Respondent did not examine the title deeds to establish if the instructions of the Residents' Association was legitimate.*
7. *This error cost each proprietor in the developement £1.42.*
8. *The Respondent however wrote off the bad debt of a resident who left the development in arrears on their invoices in the sum of £293.63 in fees. This bad debt would have been recoverable from all the residents in the development. This action ensured that no residents were left having been overchargeed that had not been off set elsewhere by the Respondent.*
9. *The Respondent similarly acted on the instructions of the resident's association to paint graffiti on the back of one of the garages. This cost had been charged to all residents with at a cost to each household of £0.93 pence. The Tribunal were shown a photograph of the wall. The Applicant's position is that the back of the garage is privately owned property rather than common property.*
10. *The Respondent maintains that they did not act unreasonably and the area could be legitimately considered as a boundary to the development.*

Decision

[22] Having made the above findings in fact, the Tribunal then considered the remaining sections of the code alleged to have been breached.

OSP3. "*You must provide information in a clear and easily accessible way*".

[23] The Tribunal does not conclude that the Respondent has breached this paragraph. The Respondent has not been opaque or vague about what happened. The have been upfront and frank about it. The Tribunal cannot establish this paragraph to be breached.

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*".

[24] The Tribunal note that the Respondent ideally would have told the Residents' Association that the garages were owned privately and that they could not legitimately act on their instruction to paint a garage door and recover costs from the residents. The Tribunal concludes that this section has been breached. However, the Tribunal notes how isolated this incident was and that the Residents' Association themselves had instructed the Respondent to carry out the work. The Tribunal also notes the Respondent waived a resident's bad debt which more than offset the cost of any error. The Tribunal therefore does not consider it necessary or appropriate to make any proposed property factor enforcement order.

OSP8. "*You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property*."

[25] The Tribunal does not find this alleged breach to be established. There is no evidential basis for concluding that the Respondent's staff are now aware of their obligations.

Property Factor's Duties

[26] The Tribunal also considered the allegation of whether the Respondent had failed to carry out their property factor's duties in terms of Section 17 (5) of the Act which is in the following terms.

(5)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.

[27] The Tribunal considers that the Respondent has breached these duties for the same reasons that they have been found to be in breach of OSP 6. The Tribunal however also comes to the same decision that it would be inappropriate to make a proposed property factor enforcement order for the same reasons.

Disposal

[28] The Tribunal therefore upholds the Application to the extent that the Respondent acted in breach of OSP 6 and their Property Factor's Duties within the meaning of Section 17(5) of the Act but does not consider it appropriate to make a Proposed Property Factor Enforcement Order.

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.

_____ **24 October 2026**

Legal Member/Chair **Date**