



2025UT65

Ref: UTS/AP/24/0098

DECISION OF

Sheriff Colin Dunipace

ON AN APPEAL

IN THE CASE OF

Charles White Limited

per BTO Solicitors

Appellant

- and -

Mr Aylmer Millen

Respondent

FTS Case Reference: FTS/HPC/PF/23/0063

22 August 2025

Decision

The appeal is upheld, and the decision of the First-tier Tribunal dated 14 June 2024 is quashed. No further order is thereafter made.

Introduction

1. Charles White Limited (hereinafter “the Appellants”), a firm of Property Factors, have appealed against a decision of the First-tier Tribunal (hereinafter referred to as “the Tribunal”) dated 14 June 2024. Mr Aylmer Millen (hereinafter referred to as “the Homeowner”) is the owner of the property at 5 Hillpark Grove, Edinburgh, which is factored by the Appellants. The Tribunal previously concluded that Appellants had failed to comply with a Property Factor Enforcement Order (hereinafter referred to as a “PFEO”) issued on 15 March 2024. Written reasons for that decision were issued by the Tribunal on the date of their decision.

2. The Appellants initially sought permission to appeal this decision on a number of grounds, namely:

- That the Tribunal’s approach to compliance had been misguided
- That the Tribunal had failed to give adequate reasons for its decision
- That the Tribunal has misconstrued what the Property Factor was obliged to do in terms of the PFEO.
- That the Tribunal’s failure to offer the Property Factor the opportunity to respond to the Homeowner’s submission or the Tribunal’s concerns was a breach of natural justice.

3. The Appellants were initially refused permission to appeal by a differently constituted Tribunal on 3 October 2024 on the basis that it was considered that none of the matters raised disclosed arguable grounds of appeal. Subsequent permission to appeal was however granted by the Upper Tribunal on 8 February 2025 on the ground that the First-tier Tribunal may have erred by:

- (a) Taking account of an irrelevant consideration, namely the second Deed of Conditions; and

(b) misinterpreting what was required by the PFEO as actually worded.

4. This appeal is accordingly brought in terms of Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as “the 2014 Act”), which provides:

46. Appeal from the Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be Appealed to the Upper Tribunal.

(2) An Appeal under this section is to be made —

(a) by a party in the case,

(b) on a point of law only.

(3) An Appeal under this section requires the permission of—

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

5. The permitted grounds of this Appeal are as stated above at paragraph 3.

Background

6. The background to this matter relates to a property development comprising standalone houses and flatted dwellings. In relation to the standalone homes, (one of which was owned by the Homeowner) there exists a Deed of Conditions by Mactaggart & Mickel Limited dated 4 April 2002, dealing with the appointment of a factor, which provided inter alia, that:

(i) the owners within the development are entitled to appoint a Factor to manage and repair the Common Parts of the Development, (ii) the owners are equally responsible for the costs of repairing and maintaining the Common Parts of the Development, and (iii) the appointed Factor can redistribute a defaulting owner’s charges amongst the other owners.

The Appellants had been appointed as Property Factors to this development at the relevant time.

7. In relation to the flatted dwellings within the development there was an entirely separate and distinct Deed of Conditions, again by Mactaggart & Mickel Limited, dated 15 November 2005. This Deed dealt expressly with the flats built within the development and significantly did not feature as a burden in the Homeowner's title, being found only in the title for the flats. This latter Deed of Conditions provided inter alia.

(i) that the flat owners can appoint a Factor to manage the repair and maintenance of the Common Parts of the Block, (ii) the flat owners are equally liable for the costs of repairing and maintaining the Common Parts of the Block, and (iii) the appointed Factor can redistribute a defaulting owner's charges amongst the flat owners.

8. Again at the relevant time the Appellants had been appointed to function as Property Factors to the flatted dwellings in terms of this latter Deed of Conditions. However it is important to note that this latter Deed of Conditions had no effect whatsoever on the relationship between the Appellants and the Homeowner. The Homeowner would at no stage have been responsible therefore for any charges raised by the Appellants in respect of their appointment as Property Factors in terms of this latter Deed, a fact which would have been evident to the Homeowner. He was only liable for any charges arising from the appointment of the Appellants as Property Factors for the properties covered by the 2002 Deed of Conditions. Given that his property was never included in the 2005 Deed of Conditions, it will have been evident to the Appellant that he was not liable for any costs incurred by Property Factors in terms of the 2005 Deed of Conditions. Only charges which were attributable to the entire development could be charged by the Appellants to the Homeowner, and it would of course have been entirely inappropriate for them to have surreptitiously included debts incurred by the flatted dwelling owners in terms of the 2005 Deed of Conditions to the homeowners covered only by the 2002 Deed of Conditions. Quite why they would wish to do so when they were already entitled to recover these debts from the flat owners is another question.

9. Given that there were these two separate Deeds of Conditions, I was satisfied that the Appellants only duty towards the Homeowner was in terms of the 2002 Deed of Conditions,

and that any costs incurred due to the 2005 Deed of Conditions did not and could not apply to him.

The Hearing

10. The Hearing in respect of this matter took place on 5 December 2024 by WebEx. The Appellants were represented by Mr Kane, Solicitor, and the Homeowner represented himself. I heard verbal submissions from the parties at this Hearing. In advance, I had also received written submissions from the Appellants. I have taken cognisance of all the written and verbal submissions received in this case.

11. The Appellants adopted the terms of their written submissions, asserting that the only relationship between the parties was in terms the 2002 Deed of Conditions. There were no duties or responsibilities due between the parties in respect of the 2005 Deed of Conditions which related only to the flat owners and was entirely separate and standalone. Having regard therefore to the Code of Conduct for Property Factors, it was clear that the Appellants owed no duty to the Homeowner in relation to the 2005 Deed of Conditions and indeed in respect of that Deed they owed a duty of confidentiality to the flat owners covered by that Deed.

12. In relation therefore to any matters arising from the aforementioned 2005 Deed of Conditions, the terms of section 17(1)(a) of the Property Factors (Scotland) Act 2011 could not apply in the present circumstances as the Appellants owed no duties to the Homeowner.

13. It was further submitted that the Appellants had provided a breakdown of the sums due in relation to the 2002 Deed of Conditions in the form of a spreadsheet which satisfied the requirements of the PFEO. They had disclosed the development debt, and how the Homeowner's share had been calculated. It was not and could never be the case that he would be responsible for any charges incurred for the flats alone. In respect of the entire development however the Homeowner remained liable for his 1/156th share of the costs, and it was submitted that the email correspondence in December between the parties demonstrated the debt and how it had been distributed. The correspondence provided a breakdown, and the Homeowner's liability was specified therein. The Homeowner could readily ascertain how

his costs had been calculated from this documentation, allowing him to work out what was his share thereof. The Appellants had therefore satisfied the requirements of the PFEO.

14. For his part, the Homeowner expressed the view that whilst the two Deeds of Conditions were distinct documents, it was clear that the 2005 Deed was a supplementary document. The Homeowner continued to point out the difference between debt which primarily comprised of ground maintenance charges which applied across the whole development, and the grounds in the curtilage of the flatted blocks. What he had wished to know in relation to any debt accrued by an owner of a flatted property, was how much of this was related to communal property, and how much was solely attributable to the flatted properties. He continued to assert that the spreadsheets provided contained insufficient information, and that the split of any contracts remained unclear to him.

15. The Homeowner also provided further information in relation to the development itself. He stated that there were five Flatted Blocks on the Development, in total comprising 44 flats. In total there were 156 Homeowners. He stated that each block had its own grounds with retaining walls, car parking with surface water drains, grassed and planted areas with trees, hedges and shrubs. He submitted that the Appellants undertook these maintenance burdens, utilising third party maintenance contractors, and that these were often the same contractors who maintained the Development Communal property. Because the houses and flats shared maintenance liabilities and given that the curtilages of the flats were often ill defined, he remained concerned about the charges being ascribed to him.

16. The Homeowner referred to the accumulated Debt spreadsheets forwarded by the Appellants, and to the fact that the ground maintenance debt detailed, totalling £2835.45 (£2105.06 + £730.39), comprised the majority, if not all of the accumulated debt ascribed by the Appellants to a recalcitrant flat owner in the flatted block of 1 Hillpark Rise. He suggested that it was unlikely that all the accumulated Debt ascribed to the recalcitrant flat owner was Communal Property Debt and none of it related to flatted property debt. He did not specify why he found this to be unlikely.

17. Following the Hearing the Homeowner submitted further representations, which were copied to the Appellants. In these representations the Homeowner stated that the 2005 Deed of Conditions defined the burdens of the flatted blocks as "Supplementary" to the 2002

Deed of Conditions, and as such they were complementary. It was also observed that in their PFEO, the First-tier Tribunal referred to the fact that the development debt should be calculated by reference to the Deeds of Conditions (in the plural).

Discussion

18. On 14 November 2023, the Tribunal issued a decision with statement of reasons in relation to the Homeowner's application in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"), wherein they had determined that the Respondent had failed to comply with certain provisions of the Property Factors Code of Conduct ("the Code") and failed to carry out their property factor duties. The Tribunal issued a proposed PFEO in terms of section 19 of the 2011 Act. The parties had been invited to make representations regarding the terms of the proposed order, as required by the legislation. The original proposed PFEO had three conditions, namely:

(1) The Tribunal order the Property Factor to provide the Homeowner with a response to his enquiries about how his liability for a share of the development debt was calculated, by reference to the Deeds of Conditions for the development, within 28 days of intimation of the PFEO.

(2) The Tribunal orders the Property Factor to amend the Written Statement of services for the development so that it accurately reflects the level of delegated authority for the development and provide a copy of the amended document to the Homeowner and the Tribunal within 2 months of intimation of the PFEO.

(3) The Tribunal order the Property Factor to pay to the Homeowner the sum of £500 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.

19. Following the consultation period, on 15 March 2024 the Tribunal issued a PFEO in only in relation to conditions (1) and (3) as above stated

20. Following the original decision of the Tribunal on 14 November 2023, on 23 November 2023 the Appellants wrote to the Homeowner enclosing their cheque in the sum of £500 in accordance with condition (2) of the PFEO.

21. On 14 December 2023 at 08.17 the Appellants wrote to the Homeowner in the following terms:

"Good morning, Aylmer,

I hope you are well.

I can confirm you are liable for any debt relating to 1 Hillpark Rise as per the Deed of Conditions.

To clarify the position, I would like to advise that flat owners hold 2 accounts with CW. 1 of the accounts is the flatted block and the other for the grounds maintenance of which is apportioned to 156 owners.

The owners who have houses within the development only hold 1 account.

I can confirm that the debtor property is a flat owner and as such the debt has been spread in accordance with the Deeds, meaning that you have only been charged for a share of the grounds and any charges relating to full development common part/services.

I hope this clarifies matters."

22. The Homeowner responded on 15 December 2023 at 08.55, stating:

"Hi Carrie,

Regrettably your email of 14 December 2023 continues to confuse, when in the first sentence you advise I am liable for Debt relating to 1 Hillpark Rise without distinguishing what part of the Debt to the flatted block and what part of the Debt relates to the Development Communal Property. You will recall this was the whole point of my enquiry at the Tribunal Hearing.

I hereby request that you define what the overall debt is, what part relates to the Flatted Block and what part relates to the Development Communal Property please. As well as this I will require to see your calculations and respective Deed of Condition reasonings in support of these debt allocations.

23. On 20 December 2023 at 14.50 the Appellants wrote to the Homeowner in the following terms:

"Good afternoon, Aylmer,

I can confirm that the total amount accrued for the Hillpark Brae Development is £210.06 as at March 2022.

Please be advised that as a homeowner you are not liable for any debt relating to the flatted block."

24. On 21 December 2025 at 07.53 the Homeowner wrote to the Appellants in the following terms:

"Hi Carrie

You continue to confuse, prevaricate and/or waste my time.

I know I am not responsible for any debt relating to any of the flatted blocks – if you remember I told you this at the recent Tribunal.

But my question is - of the Total Debt for the Hillpark Brae Development, which includes the flatted blocks, what proportion is due to the Flatted Blocks and what proportion is due to Development Communal Property and therefore is for all 156 owners. And when this is established, what is the reconciliation with Debt payments already made in response to previous accounts.

I am copying this continuing enquiry to Robyn Rae in the hope that a more sensible response will be made. "

25. On 21 December 2023 at 08.46 the Appellants responded:

"Good morning, Aylmer,

Thank you for your email. As previously confirmed, the debtor has 2 client accounts with CWL under each WSoS, one for the Block of Flats in accordance with the Deed and Written Statement of Services for the Block and one for the overall development of 156 properties in accordance with the Written Statement of Services and Deed. There is as a result 2 debts, one of which you as a homeowner have been charged a share, and all charges included in this debt are apportioned to 1/156th share."

26. On 22 December 2023 at 09.48 Homeowner again wrote to the Appellants stating:

"Hi Carrie

And here we go round and round.

The question remains – of the two debts what was the portion of the debt allocated to the Block of flats and what was the portion allocated to all 156 Homeowners , and what is the basis of the calculation, that is to say what elements of the Debt were apportioned to the Flats and what were apportioned to the 156 Homeowners.

You have said that the total amount of Debt accrued to the Hillpark Brae Development, by which I take you to mean all 156 Homeowners, was indeed charged to Homeowners, but you ignore the £168.00 credit that was subsequently issued?

Does this mean that there was a further component of the Debt allocated to the Flatted Block, what was this amount and to what did it refer – and in turn what did the £2105.06, less £168 refer to: for example was it wholly communal ground maintenance or was it for something else?"

27. On 23 January 2024 at 12.29 the Appellants wrote again to the Homeowner stating:

"Good afternoon, Aylmer

I hope you are well.

I just wanted to assure you that accounts are still working on the full breakdown for your spread debt.

I have chased this and will provide to you ASAP.

I do just want to advise that you will only receive information on the debt that has been spread to yourself, and not anything that has been spread to the flats."

28. On 24 January 2024 at 16.52 the Appellants sent another email to the Homeowner stating:

"Good afternoon Aylmer

I hope you are well.

Please find attached x 2 documents which covers the breakdown of the debt charge Jan 24 for "£730.39. Also attached is the breakdown of the charge of £2105.06 + £13.49 in April 22 billing.

A credit of £168 = £-1.08 each was raised in 08/09/22 in relation to late payment fees etc which were included in the original sum of £2105.06 and shown in attached breakdown.

The charges in Jan 24 do include late payment fees etc, so I have shown on the 730.39 document showing how much of this relates to fees.

I trust this answers you queries in full"

Attached to this document were two spreadsheets setting out the charges attributable to the respective debts of £2105.06 and £730.39.

29. On 24 January 2023 at 11.28 the Homeowner emailed the Appellants, stating:

"Hi Robyn

The Tribunal's proposed PFEO of 14 November 2023 states that "The Tribunal order the Property Factor to provide the Homeowner with a response to his enquiries about how his liability for a share of the Development debt was calculated by reference to the Deed of Conditions for the Development, within 28 days of intimation of the PFEO".

Inevitably the Tribunal will apply to me for confirmation that the requisite information has been provided- so you will understand I need to see sufficient information to determine that my liability for a share of the Development Debt is fairly and reasonably calculated."

30. The Homeowner also contacted the Appellants at 08.57 on 30 January 2024, stating:

"Hi Robyn

Thank you for sight of your breakdown of Development Debt. As an aide to my understanding of the term s used in the breakdowns:

- 1. What is the Late Payment Administration charge for please*
- 2. What is a Paper fee please*
- 3. What is collection fee for please*
- 4. What are Court Dues of Warrant for please; the definition of these in the document is truncated.*
- 5. The Management Dee definitions, albeit a credit is truncated.*
- 6. What is the Late Fee for please.*

7. *How is the £168.00 credit arrived at please.*

As a general point it is noted that the fee and administration elements in pursuing this debt appear to be some 75% of the overall costs of pursuing the recovery of the debt, which begs the question why are expending this effort, largely on solicitor and court fees, in pursuing a debt, which make take years and is not guaranteed to recover the full amount including costs.

Clearly we do not want to create the moral hazard of signalling that we are not prepared to pursue debtors, but is there not a more happy medium of say obtaining a Notice of Potential Liability, and leaving it at that? This would mean that ultimately, we would recover the cost, if and when the debtor seeks to dispose of his/her property."

31. It would appear that sometime around February 2024 that another company of property factors, Myreside, took over aspects of the factoring in relation to the flatted dwellings. The Appellants wrote to the Respondent advising of the aforementioned change on 21 February 2024.

32. The Appellants thereafter contacted the Tribunal on 19 March 2024, stating that they considered that they had complied with the terms of the PFEO of 15 March 2024. They provided evidence of compliance with Part (2) of the foregoing order, confirming payment to the Homeowner of the sum of £500 by way of cheque and indicating that they had attached evidence of payment on 23 November 2023. It is understood that no issue is taken with this aspect of compliance with the PFEO. The Appellants also asserted that they had complied with Part (1) of the foregoing order by way of the email containing debt clarification being sent to the Homeowner on 24 January 2024. Again copy evidence in this regard was said to have been sent.

Decision

33. In its decision of 14 June 2025, the Tribunal concluded that the Appellants had not complied with the terms of the PFEO of 15 March 2024 which stated:

(1) The Tribunal orders the Property Factor to provide the Homeowner with a response to his enquiries about how his liability for a share of the development

debt was calculated, by reference to the Deeds of Conditions for the development, within 28 days of intimation of the PFEO.

(2) The Tribunal order the Property Factor to pay to the Homeowner the sum of £500 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO.

34. It is accepted that the second element of this PFEO has been implemented in full, and therefore the only matter for consideration is whether the Appellants have adequately satisfied the first element of the PFEO.

35. The first ground of appeal states that the Tribunal erred by taking into account an irrelevant matter, namely the second Deed of Conditions from 2005. As outlined above the entire development in which the Homeowner owned his property was subject to two Deeds of Conditions, namely the 2002 and 2005 Deeds of Conditions. These were however entirely separate and distinct and the 2005 Deed applied only to the flatted dwellings and not to the Homeowner. Accordingly the Appellants are the Homeowner's Factors in respect of the 2002 Deed of Conditions, but not in respect of the second Deed of Conditions dated 2005. This latter Deed of Conditions has no connection whatsoever to the Homeowner, and the Appellants owe him no obligations or duties for any services provided in terms thereof. Conversely of course the Homeowner has no obligations to the Appellants in relation to the flatted dwellings covered by this 2005 Deed of Conditions. Given that there would be no relationship, contractual or otherwise between the parties in respect of this latter Deed of Conditions, it is difficult to ascertain why the Tribunal might have concluded that it had an impact on the relationship between the parties in relation to the 2002 Deed of Conditions. Indeed there is considerable force in the submissions of the Appellants to the effect that the Appellants would be bound by confidentiality and/or data protection issues were they to consider providing the Homeowner with information relating their contractual relationship with those homeowners to whom the 2005 Deed of Conditions applies. Put simply, the only debt the Homeowner has solely arises in terms of the 2002 Deed of Conditions, and it is in respect of that debt that the Homeowner is entitled to a breakdown of costs. He is not entitled to find out potentially confidential information relating to entirely separate contracts with third parties. To the extent therefore that the Tribunal considered that there was an obligation upon the Appellants to

reveal potentially confidential information to the Homeowner in respect of the 2005 Deed of Conditions to which he was not a party, I have concluded that the Tribunal were in error.

36. Whilst the Homeowner would not have been entitled to ascertain information about a development which did not concern him, it is clear that his main concern was in relation to whether, notwithstanding the foregoing, debts in respect of that separate development and accrued in relation to the 2005 Deed of Conditions had been inadvertently, negligently, or indeed fraudulently applied to the wider development debt, thereby spreading a debt due by only the flatted dwelling owners across the entire development, and thereby inflating the sums said to be due by the Homeowner. This concern appears to lie behind the terms of the PFEO, which seeks to ensure that the Appellant can be satisfied that his indebtedness for common charges in terms of the 2002 Deed of Conditions has not been wrongly inflated by the inclusion of charges exigible under the 2005 Deed of Conditions which should not be applied to him. This is of course not an unreasonable position to adopt. The difficulty which arose for the Appellants was whether they could provide the information sought by the Homeowner whilst maintaining the privity of their relationship with the homeowners covered by the 2005 Deed of Conditions. The Appellants appear to have attempted to answer the enquiries of the Homeowner in their aforementioned correspondence as listed above at paragraphs 21 to 29.

37. In their initial correspondence of 14 December 2023, the Appellants make clear that there is a separate account maintained for the flatted dwellings to deal with matters pertaining solely to that development, albeit these homeowners also had a liability to the larger development which was maintained separately. The Homeowner was advised in this correspondence that he had only been charged for a share of the grounds and any charges relating the “full development common parts/services.” The terms of this correspondence appear to make it abundantly clear that there is a separate account for the flatted dwellings and that he has only been charged in relation to the full development services in terms of the 2002 Deed of Conditions and not any charges in terms of the 2005 Deed of Conditions. The correspondence also makes clear how his share of the debt is calculated, and this again is in terms of the 2002 Deed of Conditions. It is difficult to read this passage in any other way than to confirm that the Homeowner has not been charged in relation to matters pertaining to the

flatted dwellings. This passage also confirms how the Homeowners liability for a share of the development debt has been calculated, in satisfaction of the terms of the PFEO.

38. In his subsequent correspondence the Homeowner requests that the Appellants define what the overall debt is, what part relates to the flatted block and what part relates to the Development Communal Property, and that he requires to see their calculations. This request by the Homeowner seems to be perhaps misguided. He is entitled to know what the debt is as calculated in terms of the 2002 Deed of Conditions. He is not, as he appears to insist that he is, entitled to see the separate details of an account to which he is not a party. As indicated above there are issues of privacy, confidentiality and potentially data protection which would prevent the Appellants disclosing details of the separate account. This account would also appear to be of no relevance to him given that he has been advised that it relates solely to the flatted dwellings.

39. The Appellant confirmed the position on 20 December 2024, when they advised the Homeowner of the total debt for the development and also confirmed that as a homeowner that he is not liable for any debt relating only to the flatted block. Again this appears to be an unequivocal confirmation about the total amount of the debt due in relation to the development and again confirms that he is not liable for any debt relating to the flatted block. Again this appears to confirm the position in satisfaction of the PFEO.

40. The Homeowner responded to this correspondence stating that he wished to know what the total debt for the development was including the flatted blocks and what was due for the development communal property and therefore due by all 156 owners. This appears to be a vague and somewhat confused request. It is not clear whether the Homeowner is seeking that the two separate accounts maintained in terms of the two Deeds of Condition be aggregated to give what he considers to be the "total Debt for the Hillpark Brae Development" or whether he is seeking that in relation to the 2002 Deed of Conditions account that this be broken down into charges relating to flatted dwelling common parts and common charges relating to home owner common charges. In either event the request is not justified. In the first instance, the Homeowner is not entitled to know what charges are payable in relation to the 2005 Deed of Conditions by the flatted dwelling owners as these are private to those owners and given they are collected in a separate account they do not impact in any way on

his payments. The exercise of aggregating these two accounts is therefore completely unnecessary and inappropriate. In relation to the second possibility, again this is completely irrelevant and artificial to seek to breakdown common charges due to the flatted dwellings and the houses for common charges which are due by all in terms of the 2002 Deed of Conditions. This could have no impact whatsoever on his indebtedness. The Homeowner had been advised that no charges due only to the flatted dwellings had been added to the account for the entire development.

41. The Appellants sought to confirm the position on 21 December 2023, again confirming that there were two separate counts and that he was only due to pay in relation to the overall development and that his share was 1/156th share. The fact that a separate account for the flatted dwellings was maintained in terms of separate account which did not affect the Homeowner and which he was not entitled be given information about was made clear.

42. The Homeowner appears not to have accepted this position and again on 22 December 2023 he sought further information about what elements of the debt were apportioned to the flats and which were apportioned to the 156 homeowners. Again this appears to have been an unnecessary request. The flat owners comprised 44 of the 156 properties in the entire development. However there appeared to be no value (and indeed it might not be possible) to seek to attribute some elements of the charge to the flats and some to the houses when the charges were properly incurred in terms of the 2002 Deed of Conditions. The Homeowner was liable for 1/156th of the costs and it would not be appropriate to try and break down further that amount when such an exercise would have absolutely no bearing on his liability as a 1/156th owner. Further if he was in fact seeking information about separate charges due in respect of the 2005 Deed of Conditions which had no impact on him whatsoever, this was information he was simply not entitled to receive, especially as he had been told that no charges incurred under the 2005 Deed of Condition shad been attributed to his account. The Homeowner has therefore been advised that no costs attributable to the flatted dwellings in terms of the 2005 Deed of Conditions have been attributed to him.

43. Having regard to the foregoing I am satisfied that the Appellants did provide the Homeowner with the information required by the PFEO, and in this regard it is noticeable that in his email of 30 January 2024 (paragraph 30) that the Homeowner was seeking more

general information about the breakdown of his account, (which he is clearly entitled to do) rather than continuing to suggest that the Appellants might be adding costs to his account relating to the flatted dwellings.

44. Having considered the evidence I am therefore also satisfied that the Tribunal has misinterpreted what was required by the PFEO as actually worded, given that it is apparent from the evidence that the Appellants did comply with its terms as stated. In particular I am satisfied that the Appellants:

(i) Paid the sum of £500 as required

(ii) Advised the Homeowner with a response in relation to his liability for the share of the development debt was calculated by reference to the 2002 Deed of Conditions.

As such I find that the previous Tribunal erred in law in its decision of 16 June 2024 by taking account of an irrelevant consideration, namely the second Deed of Conditions; and also by misinterpreting what was required by the PFEO as actually worded.

Decision

45. Accordingly, I am satisfied that the Tribunal of 14 June 2024 erred in law and that decision is hereby quashed in terms of section 47(1) of the Tribunals (Scotland) Act 2014.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Colin Dunipace

Sheriff Colin Dunipace

Member of the Upper Tribunal for Scotland