

JAMES GIBB WAS ORDERED TO HAVE THE ACCOUNTS AUDITED. THE RESULT: A £4,200 SHORTFALL IT COULD NOT EXPLAIN.

One First-tier Tribunal case lays bare what can happen when homeowners cannot verify where their money has gone.

There are property-factor disputes about slow emails. There are disputes about repairs. There are disputes about contractor choice. And then there are cases where a Tribunal concludes that the financial information provided by the factor is so inadequate that the homeowner cannot verify the movement of money in a sinking fund and orders the factor to obtain an independent audit at its own expense.

That is what happened in FTS/HPC/PF/17/0274, a case involving James Gibb Property Management.

The homeowner had challenged the accounting of the development's sinking fund, the way major repairs had been authorised, how contractors had been selected, and long-running failures involving repairs and complaints. The application was made in July 2017, hearings took place in December, and the Tribunal issued its decision in January 2018.

The most serious financial issue was simple: The homeowner could not verify what had happened to the sinking-fund money from the records James Gibb had provided.

The Tribunal agreed that this was a problem. And the remedy it imposed was significant.

JAMES GIBB WAS ORDERED TO PAY FOR AN INDEPENDENT AUDIT:

The final Property Factor Enforcement Order, dated 20 March 2018, required James Gibb: "At its own expense, provide an independent audit of the sinking fund applicable to the development from 1 March 2015."

The audit was not a general audit of every James Gibb company account. It was

specifically directed at the development's sinking fund, but the scope was substantial.

The auditor was required to examine incoming contributions and outgoing payments, explain how money had been apportioned, and identify unexplained shortfalls, including around the transfer from the previous factor and during James Gibb's period of management.

Why this mattered:

- The Tribunal did not simply tell James Gibb to send the homeowner another spreadsheet.
- It did not tell the homeowner to accept an internal explanation.
- It required an independent audit.

Why? Because the financial information already supplied was not enough to allow the sinking-fund transactions to be verified. That should concern every homeowner who has ever been told, "The account is correct." The real question is: Can the account actually be independently verified?

THEN THE AUDIT FOUND A £4,200 SHORTFALL:

This is where the case becomes especially serious.

- The later Tribunal compliance decision records that Acumen Accountants and Advisors produced a report dated 15 February 2018.
- According to the Tribunal: **"The report identifies a shortfall in funds amounting to £4,200 which the Factor has admitted it cannot explain."**

Read that again.

- **Not:** "the homeowner alleged a £4,200 discrepancy."
- **Not:** "It seems £4,200 was somewhere else."

The Tribunal recorded that the independent accountant's report identified the shortfall and that James Gibb admitted it could not explain the shortfall.

That is the central fact in this case.

- A factor had been managing homeowners' money.
- The Tribunal required an independent audit.
- The audit identified a shortfall.
- And the factor could not explain it.

THIS DOES NOT MEAN THE TRIBUNAL FOUND THEFT OR FRAUD:

That distinction is important.

The available evidence does not establish theft. It does not establish fraud. It does not establish the cause of the shortfall. And the underlying Acumen report itself has not been obtained as part of this evidence pack.

What is established is narrower and still extremely serious: An independent report identified a £4,200 shortfall in the sinking fund, and the Tribunal recorded that James Gibb admitted it could not explain it.

For homeowners, that is enough to raise a fundamental question about financial control. If a property factor is holding and administering money on behalf of homeowners, how can there be an unexplained shortfall at all? And if there is one, what controls failed to prevent it?

THE FINANCIAL RECORDS HAD ALREADY FAILED THE TRIBUNAL'S TEST:

The audit was not ordered out of nowhere.

The Tribunal had already considered James Gibb's handling of the sinking-fund information. Its finding was that contributions and outgoings could not be verified from the records provided.

The Tribunal found a breach of the relevant financial-record obligations. It also rejected the idea that homeowner privacy prevented meaningful disclosure: identities could be redacted while still allowing the financial information to be examined.

That is important because "confidentiality" is sometimes treated as a convenient barrier when homeowners ask to see how money has been handled. This case shows that privacy and accountability are not opposites.

- Names can be protected.
- The money still has to reconcile.

THE ACCOUNTING PROBLEM WAS NOT THE ONLY FAILURE:

The case did not revolve around one isolated finance issue. The Tribunal also found failures in several other parts of James Gibb's management.

A Written Statement of Services was supplied more than a year after it had been requested. The Tribunal found problems with approval and consultation procedures. It found two approval-related statements made in correspondence were incorrect. It found frequent and persistent complaint-handling failures. It found deficiencies in contractor-selection and maintenance records.

Taken individually, each finding is serious. Taken together, they show a much broader pattern: poor records, poor communication, poor consultation, and poor accountability.

THE TRIBUNAL FOUND THAT A PROPER COMPETITIVE TENDER HAD NOT TAKEN PLACE

One of the later compliance findings is particularly striking.

James Gibb had made an assertion about tendering. But the documentary evidence showed that a proper competitive tendering exercise had not occurred for the works being considered. The Tribunal recorded that the earlier assertion was factually incorrect.

This is the Tribunal's finding. And it matters because homeowners were being asked to trust the factor's explanation of how major works and contractor decisions had been handled. When the documents tell a different story, the question becomes, what exactly were homeowners being asked to rely on?

COMPLIANCE DOES NOT ERASE THE FINDINGS THAT LED TO THE ORDER:

It does not change the fact that:

- The sinking-fund records had not allowed transactions to be verified;
- An independent audit had to be ordered;
- The audit identified a £4,200 unexplained shortfall;
- James Gibb admitted it could not explain that shortfall;
- Approval and consultation failures had occurred;
- Correspondence contained incorrect statements;
- Complaint handling had repeatedly failed;
- Tendering evidence was inadequate;
- Roof action was delayed for more than 600 days;
- Contractor-selection explanation was absent; and
- Maintenance records were deficient.

It should not be a situation that a homeowner has to take a factor to court just to find out information they are under law already entitled to.

IF A PROPERTY FACTOR CANNOT EXPLAIN WHERE HOMEOWNERS' MONEY HAS GONE, SHOULD HOMEOWNERS EVER BE EXPECTED SIMPLY TO TRUST THE NEXT ACCOUNT THEY RECEIVE?

CASE DETAILS:

Case reference: FTS/HPC/PF/17/0274

First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision date: 1 June 2018 (Compliance)

Factor: James Gibb Property Management Ltd, trading as James Gibb Residential Factors

Property: 27 Dempsey Court, Queens Lane North, Aberdeen, AB15 4DY

Homeowner: Mr David Gordon

Key finding: Independent audit identified £4,200 shortfall in sinking fund which Factor admitted it could not explain

Compensation awarded: £750