



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').**

Chamber Ref: FTS/HPC/PF/22/4244

**19, The Beeches, Ayr Road, Newton Mearns, G77 6AZ ('the Property')**

**Mrs Esther Forsyth residing at 19, The Beeches, Ayr Road, Newton Mearns, G77 6AZ ('the Homeowner and Applicant')**

**Hacking and Paterson ('the Factor and Respondent')**

**Committee members:**

**Jacqui Taylor (Chairperson) and Elizabeth Dickson (Ordinary Member).**

## **Background**

1. The Homeowner is heritable proprietor of the property **19, The Beeches, Ayr Road, Newton Mearns, G77 6AZ** ('the Property').
2. Hacking and Paterson are factors of the Property.
3. The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the Property Factor's duties and sections 5, 6 and 7 of the Property Factor Code of Conduct 2021.
4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 28<sup>th</sup> April 2023 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 27<sup>th</sup> November 2022 and 2<sup>nd</sup> April 2023) to a Tribunal.

## **5. First Case Management Discussion.**

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 10th July 2023 at 10am

The Homeowner attended on her own behalf.

The Factor was represented by Craig Cosgrove, Associate Factoring Director.

## 5.1 Background

The parties advised the Tribunal of the following background information:

5.1.1 Mrs Forsyth purchased her property 19, The Beeches, Ayr Road, Newton Mearns in December 2018.

5.1.2 Hacking and Paterson acquired the business of the originally appointed factors of the development and have been acting as factors of the development for a considerable period of time.

5.1.3 The development at The Beeches is approximately 33/35 years old.

5.1.4 The development comprises 33 units in 3 blocks. The Property 19 The Beeches is part of block 2 of the development and there are 9 units within block 2.

5.2 Mrs Taylor advised that the application was not sufficiently specific as the application did not detail which specific paragraph of the Code of Conduct the Property Factor as not complied with and also it does not explain how the Property Factor had failed to comply with each section of the Code of Conduct. She referred the Homeowner to the letter from the Tribunal dated 24<sup>th</sup> March 2023. The Homeowner advised that she did not recall receiving the letter. The letter was in the following terms:

*'We have sufficient information to proceed with your application on the basis that you believe that the Property Factor has failed to comply with Property Factor duties.*

*If we do not receive the information we requested in our letters of 6th January 2023 and 6th March 2023 by 21st of April 2023, we will proceed with your application but ONLY in relation to alleged breaches of Property factor Duties.*

*For the Tribunal to include alleged breaches of the Property Factor Code of Conduct you must provide the following:*

*1. You have submitted a Form 2 which is applicable for any matters after 16th August 2021 relating to alleged breaches of the 2012 Code of Conduct. A new version of the Code was implemented in respect of matters after that date. You refer to you raising matters with the property factor since you moved to the property in 2019. If there are any issues prior to 16th August 2021 which you want the Tribunal to deal with then you should give consideration to submitting a Form C1 which deals with alleged breaches of the 2012 version of the Code. A property factor is not bound to comply with the 2012 Code after 16th August 2021 or to the 2021 Code prior to that date. You will require to consider matters and determine whether or not you require to submit a Form C1 in addition to the Form C2 which you have lodged. Please note that the two versions of the Code have different provisions. It is assumed that the C2 form which you have submitted refers to the 2021 version of the Code. 2. It is a requirement that an application is accompanied by a copy of the property factor's written statement of services. Please provide this. If you do not have a copy, please obtain one from the property factor.*

*3. You have not completed form correctly. Section 7 clearly states that an applicant should insert the paragraphs of the Code which is considered the property factor has failed to comply with. Please amend and resubmit. Your application forms states that*

*the Property Factor has not complied with the following sections of the Code of Conduct: 5 (Insurance); 6 (Carrying out Repairs and Maintenance) and 7 (Complaints Resolution). We enclose a copy of the 2021 Code of Conduct. You will see that there are many paragraphs within each of these sections of the Code. Please confirm which paragraphs form the basis of your complaint eg 5.1 etc*

*4. Section 17 (3) of the Property Factors (Scotland) Act 2011 states that no application can be made to the Tribunal unless the homeowner has notified the property factor in writing as to why it is considered that the property factor has failed to carry out the property factor's duties or comply with the Code and the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern. You have submitted copies of communications which you sent to the property factor but it is not considered that this constitutes notification in terms of the Act. You will require to provide notification which requires to state which particular paragraph(s) of the Code you think have not been complied with and why you consider that the property factor has failed to comply. Notifications require to be given for each version of the Code so if you intend to submit a Form C1 then you will have to send the appropriate notification. Template letters in respect of both versions of the Code are enclosed and you may find them to be of assistance. Continuation sheets may be necessary. If you are sending letters of notification, the Tribunal requires to have copies of them and evidence that the property factor has received them such as an acknowledgement, copy of sent email or proof that the letter has been delivered such as by recorded delivery. An application requires to mirror the letter of notification.*

*Please reply to this office with the necessary information by 21st of April 2023, when your application will be further considered by the Chamber President. If we do not hear from you within this time, the application will be processed on the basis of the alleged property factor breaches alone.'*

Consequently, the Tribunal agreed to adjourn the CMD to enable the Homeowner to amend the application form and also to provide the Tribunal with a copy of the Property Factor's written statement of services and the title deeds of the Property.

### **5.3. Outcome of the First Case Management Discussion.**

The First Case Management Discussion was adjourned.

### **6. Direction.**

6.1 The Tribunal issued a Direction dated 10<sup>th</sup> July 2023 in the following terms:

*'The Tribunal Directs the Homeowner to:*

*(i) Amend the application form C2 (Housing and Property Chamber application by a Homeowner regarding property factor duties/ 2021 Code of Conduct) to provide details of which paragraphs within sections 5,6 and 7 of the Code of Conduct the Property Factor has failed to comply with and the reasons why she believes they have failed to comply with them.*

*(ii) Provide the Tribunal with a copy of the Factor's Written Statement of Services*

and

(iii) *Provide the Tribunal with a copy of the Land Certificate for the Property 19, The Beeches, Ayr Road, Newton Mearns, G77 6AZ.*

*The said information should be lodged with the Tribunal no later than close of business on 15<sup>th</sup> August 2023'.*

6.2 The Homeowner provided the Tribunal with a copy of the Factor's Written Statement of Services but did not provide the amended C2 application or a copy of the Land Certificate for the Property 19, The Beeches, Ayr Road, Newton Mearns, G77 6AZ.

## **7. Second Case Management Discussion.**

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 4<sup>th</sup> October 2023 at 10am

The Homeowner did not attend. The Tribunal clerk unsuccessfully tried to contact the Homeowner by telephone shortly after 10am on 4<sup>th</sup> October 2023 .

The Factor was represented by Craig Cosgrove, Associate Factoring Director.

7.1 Mr Cosgrove advised that Mrs Forsyth had been corresponding with the management team of Hacking and Paterson, as far as her was aware she had not mentioned the complaint. In connection with the roof repairs he advised that the owners are adopting a different approach. In connection with the work required to the trees he explained that they are obtaining quotations for the required works. In connection with the common insurance policy they have provided the insurance details to Mrs Forsyth, as required by the Code of Conduct. As Mrs Forsyth has not attended the Case Management Discussion, he asked for the application to be dismissed.

## **7.2 Outcome of the Second Case Management Discussion.**

The Tribunal were satisfied that Mrs Forsyth had been advised of the Second Case Management Discussion by email on 25<sup>th</sup> July 2023.

The Tribunal were concerned that Mrs Forsyth had not complied with the Direction and had not attended the Second Case Management Discussion. The Tribunal found that her actions suggest that she no longer wishes to proceed with the application. Consequently, the Tribunal dismiss the application.

## **8. 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.**

Signed ..........

Date 4<sup>th</sup> October 2023

Chairperson