Housing and Property Chamber
First-tier Tribunal for Scotland

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 relation to an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref: FTS/HPC/PF/25/4720

Flat 1/2,258 Stonelaw Road, Burnside, G73 3SA ('the Property')

CAP Property Holdings Limited having its registered office at 69 Capelrig Road, Newton Mearns, G77 6UF ('the Homeowners')

Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL ('the Factor and Respondent')

Tribunal members:

Jacqui Taylor (Chairperson) and Jane Heppenstall (Ordinary Member).

Background

1. The Homeowners are proprietors of the Property.

2. Hacking and Paterson is factor of the Property and they are registered property factors.

3. William McClymont, managing director of CAP Property Holdings Limited, submitted a C2 Application to the Tribunal in respect of alleged acts or omissions of the Factor on or after 16th August 2021. The application was dated 31st October 2025.

The application sought a determination that the Factor had failed to comply with the sections 3.7, 3.8 and 7.1 of the Property Factor Code of Conduct 2021.

4. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 16th January 2026 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 31st October 2025 and 11th December 2025) to a Tribunal.

5. The Tribunal administration sent the parties a letter dated 1st July 2026 notifying them that a Case Management Discussion by conference call would take place on 14th August 2026 at 14.00. The Property Factor sent the Tribunal a notification dated 21st July 2026 advising that they would be attending the CMD. The Homeowners sent the Tribunal a notification dated 10th July 2026 advising that they would not be attending the CMD.

6. The Property Factor sent the Tribunal an email dated 10th August 2026 seeking a postponement of the CMD.

7. The Tribunal sent the Property Factor an email dated 11th August 2026 advising that it is an over riding objective of the Tribunal to avoid delay and before the Tribunal consider the request for postponement they wished to advise that the Homeowners had stated that they would not be attending the CMD and in the circumstances they asked the Property Factor if they would be agreeable to the Tribunal determining the application on the basis of the written documents without an oral CMD.

8. The Property Factor sent the Tribunal an email dated 12th August 2026 advising that they were happy for the Tribunal to determine the application on the basis of the documents before it without an oral CMD. They stated that they understand that both their Stage 1 and Final formal complaint responses have been lodged by the Homeowners. The content of those responses sets out the basis of their position in relation to the application. For completeness, they provided a copy of their email to the Homeowners dated 10 August 2026, following a telephone discussion with them that day. This correspondence post-dates the documents previously lodged and therefore could not have formed part of our earlier submissions. It provided some further context regarding HPMS's engagement with the Homeowners and the steps taken following the formal complaint process. They invited the Tribunal to have regard to that correspondence if it considered it appropriate to do so. They accepted that it was provided at a late stage and understood if Tribunal determined that it should not be admitted or considered. The email dated 10th August 2026 advised that they retrospectively reduced the apportionment fee and generated a credit of £90. They also asked that the Homeowners contact them to discuss any other futures sales in advance of the sale

date to ensure that the situation was not repeated. They stated that their position was that they had complied with the Code of Conduct but they regretted that they had not taken a more customer focused approach.

9. The Homeowners sent the Tribunal an email dated 12th August 2026 confirming that he was happy to proceed on the basis of the written evidence submitted.

10. The Tribunal advised the parties by email dated 13th August 2026 that the application would be determined on the basis of the parties' written representations.

11. The documentation lodged by the Homeowners is as follows:

11.1 Application form C2 dated 31st October 2025.

11.2 Letter from the Homeowners to the Tribunal dated 27th October 2025 headed 'formal complaint against Hacking and Paterson Management Services'.

11.3 August 2025 Quarterly Invoice

11.4 Emails between Bill McClymont and Andrew Maitland.

11.5 Application for formal complaint resolution.

11.6 Formal response from the Factor to stage 1 complaint.

11.7 Bill McClymont request to proceed to stage 2 of complaint process.

11.8 The Factor's final response to the formal complaint.

11.9 Letter from Harper Macleod solicitors dated 3rd September 2024.

11.10 The Factor's Written Statement of Services.

12. The documentation lodged by the Factor:

12.1 A copy of the email from the Factor to the Homeowners dated 10th August 2026.

13. As a preliminary matter the Tribunal determined that they were not able to consider the terms of the email from the Factor to the Homeowners dated 10th August 2026 in relation to the alleged breaches of the Code of Conduct as it had been submitted late and the Homeowners had not had an opportunity to provide any response.

14.The Tribunal considered the application and documentation submitted. They acknowledged that the Homeowners had summarised the complaint as follows:

‘Mr McClymont is managing director of the property business CAP Property Holdings Ltd (“CAP”) and the company purchased the property in question at 258 Stonelaw Road (flat 1/2), Burnside, G73 3SA (“The Property”) on 3rd September 2024 with the objective of carrying out refurbishment and then selling the property. With the factor being HPMS, they were required to pay a £350 float fee which they understood to be normal practise on the understanding that they have eleven rental properties, three of which are also factored by HPMS. Following a period of refurbishment and marketing of the property, the sale was agreed and scheduled to conclude on 22nd August 2025. Some time prior to the sale date HPMS requested a retention of £275 to cover the August 2025 quarterly invoice which their solicitors duly set aside. On 11th August 2025, they received the August quarterly invoice for the sum of £280.45 which they paid in good faith on 15th August 2025 despite the retention being in place. One week later, the sale ‘

15.The detail of the parties’ written representations and the Tribunal’s decisions are as follows:

Section 3.7 of the of the Code of Conduct:

In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change in ownership).

The Homeowners’ complaint:

The process started with a series on emails to/from the Homeowners and Andrew Maitland of HPMS. In summary, with the £350 float, the £275 retention and the fact that the August quarterly invoice included an advanced insurance charge of £161.56, HPMS were holding back circa £786 of their funds. The emails provided show that despite the Homeowners’ protestations, HPMS continued to hold the position that the Code of Conduct for Property Factors allowed then to hold the full sums until the next quarterly invoice in November 2025 on the basis that this would be concluded within the 3 months designated period. The Homeowners' position has been to stress that on the understanding there were no major works over the runup to the sale, a position confirmed by HPMS, then it was unreasonable to hold back such a significant sum for almost the full 3 month period and a modest retention would have been more appropriate to cover a circa £40 charge to cover gardening and stair cleaning for two months. Mr McClymont also made the case on numerous occasions that the Code stated that settlement should be within 3 months and as such HPMS could have taken a more customer focussed approach to return these sums sooner rather than look to hold back as much of his cash for as long as possible.

The Factor's response:

The Factor referred to their letter to the Homeowners' solicitor, Messrs. Harper Macleod, dated 06 August 2025, wherein it states, under point no.1, "1. We account to our homeowners quarterly in February, May, August and November. The outgoing homeowners Common Charges account will be apportioned as at the date of sale identified above. Whilst an apportioned account will be issued in the quarter immediately after the date of sale, to ensure all invoices for works/services carried out during the homeowners' period of ownership are accounted, their final common charges account will be issued in the subsequent Quarter. We would request this is confirmed to the outgoing homeowner." This response to the Homeowners' appointed solicitor's letter of 05 August 2025 intimating the change of ownership clearly indicates the Factor's process for accounting and repaying any funds and specifically requests that this is confirmed to the Homeowners as the outgoing owner. The Factor not believe therefore that there has been any breach or failure to comply with the above Section 3.7 of the Code of Conduct.

The Tribunal's Decision:

Section 3.7 of the Code of Conduct requires the Factor to confirm the process for repaying any funds due and presenting final financial information relating to the account within three months of the Factor being aware of the settlement date, unless there is good reason not to. However, the Homeowners' complaint in relation to the Factor not exercising some flexibility and adopting a more customer focused approach to the retention and final accounting process. The Homeowners' complaint is not that the Factor did not confirm the process for repaying funds on the sale of the Property.

The Tribunal find that the alleged lack of flexibility and customer focus by the Factor is not a breach of section 3.7 of the Code of Conduct.

The Tribunal note that the Factor confirmed the end of account process to the Homeowners' solicitor by letter dated 5th August 2025, albeit that that letter has not been produced to the Tribunal.

Section 3.8 of the of the Code of Conduct:

A property factor must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on the sale of the property)

The Homeowners' complaint:

This section of the Code states that the Factor should have procedures in place to deal with payments made in advance by homeowners. The £161.56 insurance charge was for the three month period to 27th November 2025 and the Homeowners believe HPMS failed to address this requirement under the Code by wrapping everything up into their interpretation of Section 3.7 above. The Homeowners firmly believe that at the very least they should have returned this charge. On a similar note, HPMS waited until the Homeowners notified them of their desire to lodge a formal complaint before instructing the release of the £275 retention. This was a full four weeks after the August quarterly invoice was paid in full, three weeks after the sale was concluded and two weeks after he raised the issue in his early emails.

The Factor's response:

The above section relates specifically to payments made in advance ie. advance funds for proposed works of which there were none and no advance funds were held at the time of the sale. If the Homeowners believe this relates to the payment and proposed refund of the Property Float, they referred to Section 4.6 of the Factor's Terms of Service and Delivery Standards document which states:

"The Property Float is reviewed from time to time to ensure availability of funds to meet common works and service costs. The float is refunded by us following the sale of a house or flat, or termination of the factoring service, at the point of settlement of the final apportioned common charges account, less any outstanding charges due at that time. The float is held in an account separate from our funds."

As advised in correspondence, the apportioned account will be issued at the next accounting date in November 2025.

The Factor did not therefore believe there has been any breach or failure to comply with the above Section.

The Tribunal's Decision:

Section 3.8 of the Code of Conduct requires the Factor to have procedures for dealing with payments made in advance by Homeowners. The Tribunal find that the float of £350 and the insurance premium of £161.56 were paid in advance by the Homeowners.

The Homeowners complaint is that advance payments made were not repaid soon enough. As stated, the requirement of section 3.8 of the Code of Conduct is for the Factor to have procedures in place for dealing with advance payments. The Tribunal find that the timing of the repayment of advance payments is not prescribed by section 3.8 of the Code. The Tribunal acknowledge that the Factors written statement of services includes their procedure for dealing with advance payments including the float and advance funding.

The Tribunal determine that the Factor has not breached section 3.8 of the Code of Conduct in relation to the Homeowners' complaint.

Section 7.1 of the of the Code of Conduct:

Property Factor Complaints Handling Procedure

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.

The Homeowners' complaint:

With HPMS being unwilling to consider any suggestion to resolve the matter, the Homeowners notified them of his intention to proceed to their formal complaint process. Appendix 2 shows that all of the previous communications between Mr McClymont and Andrew Maitland were responded to by HPMS within a matter of hours and certainly no longer than one working day. The moment he formally requested the complaint form on 12th September 2025 (it's not possible to download this form and therefore it must be requested first), Andrew Maitland made him wait until 18th September 2025 before sending out the attachment. When he phoned to complain about the delay in sending the form he was directed to the footer on HPMS emails where they would ".. endeavour to respond within 7 working days". The Homeowners regards this action as being spiteful at worst but certainly not what any reasonable person would describe as offering good customer service. For completeness He enclosed the following: - Stage 1 Application for Formal Complaint Resolution (appendix 3) The formal response to stage 1 from HPMS (appendix 4) My request to HPMS to proceed to their stage 2 complaint process (appendix 5) HPMS final response to the Stage 2 complaint (appendix 6) In summary, The Homeowners consider the general behavior of HPMS to be completely lacking of any form of customer service and they have demonstrated that their business model is to hold on to as much of the customers cash for as long as possible by citing the Code at every turn. The main reason for bringing this matter to the attention of the Tribunal is in the hope that the Tribunal will find that rather than working to the spirit of the Code which is to aimed at providing a reasonable level of service to property owners, HPMS were effectively taking a literal interpretation to ensure they continue to retain customer funds for as long as possible and the deliberate delays in releasing the retention and sending out the stage 1 complaint form point to deliberate actions to frustrate customers rather than look to find solutions.

The Factor's response:

The Factor referred to section 5.2 of their Terms of Service and Delivery Standards document which states: "We have a formal complaints handling procedure which can be found at www.hackingandpaterson.co.uk and is also available upon request in hard copy." The Factor does not believe there has been any breach or failure to comply with the above Section. The Homeowners have indicated in the "Additional Information" section of the form that you have had to wait for a period of "a full week" and "After six days" to receive a response from the HPMS Team Manager responsible for the property. Section 5.5 of the Factor's Terms of Service and Delivery Standards document states: "We will endeavour to respond to email enquiries within 7 working days of receipt. If more time is required to respond, we will let you know within that period." The same statement is made at the foot of the Factor's email signatures. Upon perusal of the Factor's email exchange, it is evident that they have met their stated timescales for responding on each occasion. The sale letter sent to the Factor from Harper MacLeod was received in their office on 5th August 2025 advising them of the sale date of 22nd August 2025. This is the date that they work towards when finalising common charges due for the period of ownership. At the time of receiving the aforementioned letter, the Factor had already produced heir August quarterly common charges accounts for clients, dispatched on 8th August 2025. As a goodwill gesture, on 12th September 2025, they advised the Homeowners' solicitor that no retention was required and that funds to be credited will be sufficient to cover any charges that may be due by the Homeowners for their period of ownership. Notwithstanding, the Homeowners would have to wait until the production of the f quarterly common charges run in November 2025, to show the exact charges and allow the Factor to finalise and close the Homeowners' account. The final account will include the credit of the £350.00 Management Float. In addition to this, it will include a credit for the buildings insurance premium.

The Tribunal's Decision:

Section 7.1 of the Code of Conduct requires the Factor to have a written complaints handling procedure.

The Homeowners' complaint is in relation to how the Factor operated their complaints process and not in relation to whether or not they have a written complaints procedure. The Tribunal find that how the Factor operates their complaints procedure is not prescribed by section 7.1 of the Code. Section 7.1 of the Code of Conduct details the matters to be included in a written complaints handing procedure. The Tribunal acknowledge that the Factors written statement of services includes a link to their formal complaints handling procedure.

The Tribunal determine that the Factor has not breached section 7.1of the Code of Conduct in relation to the Homeowners' complaint.

16.Decision

In all of the circumstances narrated above, the Tribunal finds that the Factor has not failed in its duty under section 17(1)(b) of the 2011 Act to comply sections 3.7, 3.8 and 7.1 of the 2021 Code of Conduct.

17. 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.

Jacqui Taylor

Signed ……………………………..Date 14th August 2026

Legal Member