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

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Property Factors (Scotland) Act 2011 ("The Act")

2021 Code of Conduct for Property Factors ("The 2021 Code")

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The Regulations")

Reference number: FTS/HPC/PF/25/3945

Re: Property at 23 West Mount Street, Aberdeen, AB25 2RD ("the Property")

The Parties:
Mr Ian McKimmie residing at 16 Raeden Avenue, Aberdeen ("the Applicant")

Newton Property Management Limited ("the Respondent" or " Newton")

Tribunal Members:
S Gibb (Legal Member) and Miss Elaine Munroe (Ordinary Member)

Background

1. A CMD was held on 5th August 2026. Following discussion with the parties at the close of the CMD it was agreed that the Tribunal would make a decision based on the papers and oral evidence.

2. Mr McKimmie, the Applicant, is the homeowner with a heritable interest in the Property since 1978. The Applicant represented himself at the Hearing.

3. The Respondent was represented at the Hearing by Ms Flanagan.

4. The Appellant had alleged a breach of Clause 7.6 of 2021 Code; "Complaints

that have arisen in connection with issues that arose during the appointment of a previous property factor should be dealt with by that property factor. Any unresolved issues that require to be addressed can be raised with the new, formally appointed property factor if the continuing failure is present after their appointment. This will be dealt with as a new complaint in accordance with their complaints handling procedure."

The CMD

5.1. Unfortunately, the Legal Member was experiencing some difficulty with his phone signal but with the considerable assistance of the Ordinary Member the Tribunal was able to proceed.

5.2 The Tribunal was introduced and, in introductory remarks, an explanation of the purpose of the CMD was given to the parties with particular reference to Rule 17(3) of the Housing and Property Chamber (Procedure) Regulations 2017 (the Regulations). The CMD attempted (1) to guide the Appellant as to what the Tribunal could consider and what it would not determine, (2) to allow both parties to explain their respective positions and, in particular, to allow Mr McKimmie to explain the background and history of the Property and (3) to explore the foundations of any possible settlement or Decision.

5.3 At the heart of the matter was Mr McKimmie's belief that the previous Factors, Atholls, may not have been validly appointed and that he had asked Newton to provide proof of their valid appointment as Factors. In his view, their failure to provide adequate proof of their appointment was a breach of the 2021 Code; specifically Clause 7.6.

5.4 The Respondent's position was that, as lodged in the papers, they had explained to Mr McKimmie how they came to acquire the business assets of Atholls and, thus, were Factor to the Property.

5.5 Mr McKimmie explained that he and his brother had been brought up by their parents in the building and when an opportunity subsequently arose in adulthood to acquire two flats in the building, they did so. The flats continue to be occupied by members of the McKimmie family. Mr McKimmie has never lived in the flat as owner. Three of the flats are let out, two owned by the McKimmie family and the remaining flat is owner occupied but the owner works away a lot.

5.6 In about 2013 Atholls started providing a factoring service to the Property but Mr McKimmie could not recall how that came about nor agreeing to it. He advised that his brother had not agreed to it and to the best of his knowledge another owner had not agreed to it either. Nevertheless, Atholls provided grass cutting and close cleaning services without objection from Mr McKimmie and did so until 2024.There was no common building insurance as far as Mr McKimmie was aware. Atholls failed to render any bills until February 2024 when a substantial bill was rendered and, understandably, Mr McKinnie objected to it. He advised the Tribunal that ultimately he agreed to pay a small portion of the bill in consideration of the grass cutting.

5.7 Miss Flanagan explained that Newton took on factoring duties since June

2024. The terms of the acquisition of Atholls factoring “book” were such that Newton did not have access to the original correspondence for this property. They were unable to say how Atholls’ appointment came about. On taking over factoring duties, Newton lettered all owners and explained how they had taken over Atholls’ factoring business and that owners had the option of instructing new factors if they wished to. The Tribunal was advised that no objection had been received except, now, by Mr McKimmie. She pointed out that a roof repair was required at the property and that Mr McKimmie had agreed to the repair and paid his contribution and that other roof repairs and redecoration had been instructed without objection.

5.8 The Tribunal advised Mr McKimmie that a Factor could be appointed in three ways; (1) by being named as Factor in the Title deeds, (2) by custom and practice and (3) by a majority of owners in a meeting. When asked if the arrangement with Atholls and Newton was one of custom and practice Mr McKimmie was unable to say.

5.9 Following a short adjournment, the Tribunal asked, from a pragmatic point of view, if Newton would consider calling a vote of the co-proprietors to confirm their appointment as Factors in order to put the matter beyond doubt. Miss Flanagan could not commit to that course of action without discussing it with her CEO. Her preference was that the Tribunal make a decision on the complaint before them.

5.10 Mr McKimmie was asked if he would prefer an adjournment to allow Miss Flanagan to consult about a possible vote or for a decision to be made on his complaint. It was pointed out to him that it was the job of the Tribunal to determine his complaint and not to determine if Atholls (and Newton) had been validly appointed as Factors. A second adjournment was granted to allow him to consider his options. His decision was that he would prefer to have his complaint determined.

5.11 Following consideration of papers and oral discussions the Tribunal decided that there had been no breach of Section 7.6 of the 2021 Code. By emails dated 3rd, 5th and 18th August 2025 the Respondent explained to the Appellant the basis of their appointment.

5.12 The following comments are obiter dicta and do not form part of this decision. Hopefully, they will be helpful to both parties. It seemed to the Tribunal that notwithstanding any possible lost agreement or, indeed, no agreement with Atholls, their appointment as Factors had been established by custom and practice. The actings of the co-owners and their collective and individual failure to object to Atholls’ service over a substantial period of years homologated their appointment as Factors and Newton’s acquisition of Atholls’ factoring business validly appoints them as Factors. The co-owners may choose to dismiss Newton but we note that so far, after two years, no such step has been taken.

Findings in Fact

1. The Appellant has had a heritable interest in the Property since 1978.
2. Atholls provided factoring services to the Property from about 2013.
3. The Appellant could not recall agreeing to Atholls’ appointment.

4. The Appellant did not take any objection to the limited services Atholls provided.
5. When Atholls finally rendered a bill in 2024 for 11 years work the Appellant negotiated a substantial reduction and paid a small amount for the grass cutting service.
6. Newton took over Atholls' factoring service in 2024.
7. The Appellant has engaged with Newton in carrying out common repairs since 2024
8. By emails dated 3rd, 5th and 18th August 2025 the Respondent explained to the Appellant the basis of their appointment.

This decision takes effect from 5th August 2026

Review

The Appellant may seek a review of this decision within 14 days from today's date in terms of Rule 39 of the Housing and Property Chamber Rules of Procedure 2017. The process for doing so is detailed in Rule 39 (2).

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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Chairperson of the tribunal; S Gibb

Dated: 5th August 2026