Housing and Property Chamber
First-tier Tribunal for Scotland

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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Ref: FTS/HPC/PF/25/3008

Property address: 527 Clarkston Road, Muirend, Glasgow, G44 3PN (“the Property”)

The Parties:

S&D Properties Group, Suit 1/1, 79 West Regent Street, Glasgow, G2 2AW (“the Homeowner)

Indigo Square Property Ltd., 42 Holmlea Road, Glasgow, G44 4AL (“the Property Factor”)

Tribunal Members:

Ms H Forbes (Legal Member)
Mrs S Hesp (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs OSP 1 and OSP 11 of the Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”).

The decision is unanimous.

Background

1. By application received on 11th July 2025, the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to comply with paragraphs OSP 1, 2, 3, 4, 5, 9, and 11 of the Code. Details of the alleged failures were outlined in the Homeowner's application and associated documents.

2. The Homeowner intimated her concerns to the Factor by letter dated 2nd May 2025.

3. By decision dated 15th August 2025, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.

4. By email dated 11th December 2025, the Property Factor lodged written representations and productions.

5. By email dated 11th December 2025, the Homeowner lodged productions.

Case Management Discussion

6. A Case Management Discussion ("CMD") took place by telephone conference on 19th December 2025. The application was continued to an evidential hearing. A Direction was issued to parties.

7. By email dated 28th January 2026, the Homeowner complied with the Direction.

8. The Property Factor complied with the Direction by submitting further representations and productions in January 2026.

Hearing

9. A hearing was held by telephone conference on 1st July 2026. The Homeowner's Director, Ms Caroline Swan, was present. Mr Brian Gilmour attended on behalf of the Property Factor.

10. There was some discussion about a preliminary issue that had been raised by the Property Factor prior to the CMD, in that the Homeowner had not processed a complaint through the Property Factor's complaints procedure. Mr Gilmour had previously stated that the application should be dismissed. Mr Gilmour explained his position, which included several concerns regarding the administration of the Housing and Property Chamber. Although Mr Gilmour said matters had moved on from the preliminary matter at the CMD, when an evidential hearing was fixed, it was his position that the President of the Housing and Property Chamber had previously set out in a letter in 2021 that a complaint had to proceed through the Factor's complaints procedure before an application could be accepted by the Tribunal.

11. It was agreed to hear evidence from parties on the issue that led to the application being made before considering the paragraphs of the Code.

The Homeowner's position

12. The Homeowner explained that there are three shops and four flats in the building. A meeting to appoint the Property Factor took place on 24th March 2022. The Homeowner, who is the proprietor of one of the shops, which is tenanted, was not given any notice of the meeting and was unaware that the Property Factor had been appointed for a period of eight months. The Homeowner said the other shop owners had told her they did not receive any notice of the meeting. The Title Deed requires that all proprietors be given at least seven days' notice in writing and, in any event, sufficient notice to ensure all proprietors having an opportunity to attend or be represented. It was the Homeowner's position that she was not given an opportunity to attend or be represented at the meeting.

13. The Homeowner said she had now seen two different copies of the minutes of the meeting. The Homeowner's copy was at p45 of the case file, while the Property Factor had lodged a further copy (production 14i & 14j). The Homeowner said there are important differences between the minutes, including the number of people present, the number of votes cast, and the length of the meeting. The Homeowner disputes the validity of the minutes as they are not signed, there are no names of attendees and no identification of the chair. The Homeowner believes three flat owners and Mr Gilmour were present at the meeting.

14. The Homeowner said she had requested copies of all documentation, but nothing had been provided. The first communication she had from the Property Factor was an invoice dated 29th August 2022, which was sent to the Homeowner's office.

15. The Homeowner said shop owners would have 75% of the vote at any meeting, so this vote was carried by owners with only 25% of the vote.

The Property Factor's position

16. Mr Gilmour said it was important to note that the Property Factor cannot call a meeting. In terms of the Title Deeds, only homeowners can call a meeting. Homeowners usually contact the Property Factor to request a quote for their services. Tender documents are then provided to the homeowners. This building had been self-factored. One of the flat owners contacted the Property Factor as they wished to have the building factored for family reasons. The flat owners said they were interacting with all the other owners. Mr Gilmour referred to the timeline on p23 of the casefile, which was contained in a letter dated 20th June 2023, to the Homeowner's solicitor. Mr Gilmour said he was aware that some shop owners had been involved in discussions, and this was clear from some emails from August 2022 that had been lodged.

17. Mr Gilmour said the Property Factor had provided templates to the homeowner who wished to call a meeting. The homeowner had told the Property Factor that they had notified all owners of the meeting. The Property Factor also delivered letters to all properties by hand more than seven days before the meeting. One property had shutters, so Mr Gilmour told the member of staff to put the letter through the letterbox.

18. Mr Gilmour said the reason there were two different versions of the minutes was that one copy was the draft minutes and the other was the final minutes.

19. Responding to questions from the Tribunal as to what, if any, onus there is on a property factor to ensure a meeting is properly called in terms of the Title Deeds, Mr Gilmour said it is important that the property factor ensures any provisions within the Title Deeds are followed.

20. Responding to questions from the Tribunal as to the vote share at the meeting, Mr Gilmour said the Title Deed stipulates a quorum of three homeowners. If a quorum is achieved, the vote is cast on the number of people present, rather than on their vote share.

21. Mr Gilmour said there is no prescribed methodology for how to serve notice of a meeting. The Property Factor has previously taken over an empty property, and no one knew where the owner was. If they had been required to serve notice by Recorded Delivery in that case, no work would have been carried out. They are required to take reasonable steps to serve notice. The legislation is designed to allow homeowners to do this, and there should not be massive costs involved. Mr Gilmour said a tenant was required in terms of a private residential tenancy to give correspondence to the landlord. A previous Tribunal decision (FTS/HPC/PF/17/0266-0273) stated that it would be too onerous to expect a property factor to trace all owners in a development and that notice could be given to a tenant. Mr Gilmour said that all the other owners have paid their invoices. There was a building insurance policy in place before the Property Factor commenced, and it was cancelled and replaced with another common policy by the Property Factor.

Response by Homeowner

22. The Homeowner said emails made it clear that not all owners were aware of the meeting before it took place. The Homeowner said the member of staff who had delivered notices on behalf of the Property Factor ("FM") had told her he was not involved in her case.

23. The Homeowner said the previous Tribunal case referred to bore some resemblance to the current application and stated that minutes of meetings should be produced. The Homeowner said she was aware that one other owner had argued against the invoices, and that it had been stated in correspondence that there would be Notices of Potential Liability for Costs ("NPLC") lodged against two properties. The Homeowner confirmed that the NPLC was lodged in August 2025, which was after she had applied to the Tribunal. She had copied the Property Factor into correspondence about

making the application in July 2025. The Homeowner said the proprietor who had called the meeting had apologised and said they had followed the guidance of the Property Factor in arranging the meeting.

Response on behalf of Property Factor

24. Mr Gilmour said the Property Factor was not notified of the application to the Tribunal until November 2025. The Property Factor had instructed the NPLC before August 2025, and they were not aware that it had not been actioned. Mr Gilmour said that the Homeowner had previously raised an issue because FM had told her that he had not been involved in the case. Mr Gilmour explained that FM had not perceived delivering the letters as being involved in the case. Mr Gilmour confirmed that one other owner disputed the invoices, but all owners other than the Homeowner had paid their invoices before 2025.

Code of Conduct

OSP 1

You must conduct your business in a way that complies with all relevant legislation.

The Homeowner's position

25. The Homeowner said the Property Factor had behaved as if they had been properly appointed, although the Title Deeds had not been followed.

The Property Factor's position

26. Mr Gilmour said this had been covered previously.

OSP 2

You must be honest, open, transparent and fair in your dealings with homeowners.

The Homeowner's position

27. The Homeowner said the Property Factor had sent no correspondence in almost six months. In the Property Factor's undated covering letter, paragraph 2 was misleading as it did not state that all owners had to be invited to the meeting.

The Property Factor's position

28. Mr Gilmour said the interpretation of the letter was pedantic. The Property Factor was not being untruthful or lacking transparency.

29. Responding to questions from the Tribunal, Mr Gilmour said the Property Factor took up appointment on 8th June 2023. Documentation was sent to the Property until the Homeowner provided contact details in August 2023.

OSP 3

You must provide information in a clear and easily accessible way.

The Homeowner's position

30. The Homeowner said the Property Factor had not provided copies of documents requested, such as signed notices of the meeting, proof of delivery or a record of the vote. The Homeowner said she did not receive a copy of the Written Statement of Services ("WSS") until 2025.

The Property Factor's position

31. Mr Gilmour said the minutes of the meeting and attendance sheet were sent to the Property.

OSP 4

You must not provide information that is deliberately or negligently misleading or false.

The Homeowner's position

32. The Homeowner said that FM had provided false information, stating he was not involved in the case. The Property Factor had stated on 8th October 2024 (P055) that two NPLCs had been registered, which was blatantly untrue.

The Property Factor's position

33. Mr Gilmour referred to previous discussion regarding FM. Mr Gilmour said an instruction had been made to register two NPLCs and the Property Factor had not been aware that this had not been done.

OSP 5

You must apply your policies consistently and reasonably

The Homeowner's position

34. The Homeowner said the Property Factor's tender documents stated that they would search the Landlord Register to obtain owners' details, and they had not done this.

The Property Factor's position

35. Mr Gilmour said the Landlord Register only refers to private rented property, so commercial property owners would not be included.

OSP 9

You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

The Homeowner's position

36. The Homeowner said she did not believe that the Property Factor had retained paperwork to show that owners had been notified in line with the requirements. There were no records of attendees at the meeting or of who voted. All documents must be there to show that a valid vote took place. The Homeowner said she only saw the spreadsheet with the names of attendees when the Property Factor lodged their productions. There was no mention of Mr Gilmour being present.

The Property Factor's position

37. Mr Gilmour referred to his productions (pp 30,29 and 28) which showed all the engagement with the Homeowner. Mr Gilmour said a lot of correspondence was sent to the owners.

OSP 11

You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

The Homeowner's position

38. The Homeowner said she raised a complaint on 28th October 2024 (p60) and received a holding response (p63). No further response was received.

The Property Factor's position

39. Mr Gilmour said the Property Factor responded to the Homeowner's letter to say they had replied to her solicitor. They attached their complaint procedure.

Summing up by the Homeowner

40. The Homeowner said she would like to have the NPLC removed. The Property Factor has raised a Simple Procedure claim in the Sheriff Court which has been sifted for the outcome of this application. A debt of almost £1900 has escalated to £2634.53.

41. The Homeowner said the Property had not been included in the previous insurance policy, so when the Property Factor put new insurance in place, the Homeowner's property was double insured for a time.

42. The Homeowner said the appointment of the Property Factor was not valid. The Property Factor was remiss in not satisfying themselves that the procedure in the Title Deeds had been followed.

Summing up on behalf of the Property Factor

43. Mr Gilmour said it all comes down to whether the Property Factor was appointed properly. The Homeowner seemed to be looking for the Property Factor to pay the insurance that had been put in place. Costs have escalated due to debt collection fees and legal costs. Mr Gilmour said if he had known about the Tribunal application in July 2025, the legal costs of Sheriff Court action would not have been incurred. Mr Gilmour agreed he had received a communication stating the Homeowner was going to make an application to the Tribunal, but he had not received anything official until November 2025.

Findings in Fact

44.

i. The Homeowner is the proprietor of the Property, which is a tenanted shop situated within a tenement block of properties comprising three shops and four flats.

ii. The Property is registered in the Land Register for Scotland under Title Number GLA237862.

iii. The tenement is subject to a Deed of Declaration of Conditions, recorded G.R.S. (Glasgow) 12th May 1951.

iv. In terms of clause (Decimo) of the Deed of Conditions, any proprietor of a portion of the tenement shall have power to call a meeting of the proprietors by giving at least seven days' notice in writing, and in any event sufficient notice to ensure all proprietors have an opportunity to attend or be represented.

v. One of the flat owners called a meeting, which took place on 24th March 2022.

vi. The flat owner provided timely written notice of the meeting to each portion within the tenement, including delivering notice to the tenanted shop.

vii. The Property Factor assisted by providing written notice of the meeting to each portion within the tenement, including delivering notice to the tenanted shop.

viii. The Homeowner was not aware of the meeting and did not attend.

ix. The meeting was attended by a Chair and three flat owners.

x. The Chair of the meeting acted as a mandatory for one flat owner.

xi. The vote to appoint the Property Factor to provide factoring services was carried by four votes.

xii. The Homeowner did not receive sufficient notice to ensure she had an opportunity to attend or be represented at the meeting.

xiii. The Property Factor provided factoring services to the block from 8th June 2022.

xiv. The Property Factor arranged for the existing insurance policy to be cancelled and a new common policy to be put in place.

xv. The Homeowner became aware of the Property Factor's appointment when she received an invoice for services in August 2022.

xvi. By letter dated 13th October 2022, the Homeowner challenged the Property Factor's appointment.

xvii. The Homeowner has refused to pay management fees and insurance costs.

xviii. The Homeowner has paid fees for work carried out in the tenement.

xix. In August 2025, a Notice of Potential Liability for Costs was registered by the Property Factor against the Property.

xx. In 2025, the Property Factor raised a simple procedure application in the Sheriff Court for recovery of outstanding sums and legal fees.

Determination and Reasons for Decision

45. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

46. The Tribunal does not take the view that a complaint has to proceed through a property factor's complaints procedure before it can be made to the Tribunal. That is not what is stated at section 17(3) of the 2011 Act. It is stated that no application can be made unless:

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

47. The Tribunal notes the view of the Chamber President, as stated in their letter dated 19th March 2021 (PF production 1), that interpretation of section 17(3)(b) is generally taken to mean that an application cannot be made until the matter has been through all stages of the factor's complaints procedure. This does not mean that an application must have proceeded through the factor's complaints procedure before it can be accepted. In this case, the Homeowner notified the Property Factor that they wished to make a complaint. The Property Factor then failed to progress the complaint through their procedure.

OSP 1

48. The Tribunal found that the Property Factor had failed to comply with this paragraph of the Code by failing to ensure that their appointment was made in accordance with the procedure outlined in the Deed of Conditions. The Deed of Conditions contains community burdens, which fulfil the requirement of a common scheme in terms of section 52 of the Title Conditions (Scotland) Act 2003. In terms of section 30(a) of the 2003 Act, any decision made by the owners can only be binding if it is made in accordance with such provision as is made in community burdens. Paragraph (Decimo) of the Deed of Conditions requires sufficient notice to be given to all proprietors to ensure they have an opportunity to attend the meeting. The Homeowner was not given sufficient notice to ensure she had an opportunity to attend the meeting. Both the homeowner who called the meeting and the Property Factor only saw fit to provide notification by hand-delivering it to the tenanted shop. This was not sufficient notice. The notice ought to have been served on the Homeowner by serving at or sending to the last known business or residential address to ensure they received notice. The onus to ensure sufficient notice was given was upon the homeowner who called the meeting, but there was also an onus on the Property Factor, as accepted by Mr Gilmore, to ensure that their appointment was valid. In the absence of sufficient notice, the meeting cannot be held to have been properly convened, and the decision taken at the meeting in these circumstances cannot be held to be valid. The Property Factor was required to ensure that due diligence had been carried out in calling the meeting, and the Property Factor has failed in this regard.

49. In terms of the Tenements (Scotland) Act 2004, the Property Factor, not having been validly appointed, was not entitled to register an NPLC against the Property. Section 13(1)(a) of the 2004 Act outlines those who are entitled to register an NPLC. This includes a manager within the meaning of a tenement management scheme. Not having been properly appointed, the Property Factor does not meet the definition of a manager in terms of the 2004 Act. The Property Factor did not have the authority to register an NPLC against the Property.

OSP 2

50. The Tribunal did not find that there was sufficient evidence that the Property Factor had failed to comply with this paragraph by failing to send out correspondence. Neither did the Tribunal find that the cover letter referred to by the Homeowner was misleading.

OSP 3

51. The Tribunal did not find that the Property Factor had failed to comply with this paragraph by failing to provide information in a clear and easily accessible way. The complaints made by the Homeowner in this regard did not appear to fall within this paragraph. There are specific paragraphs within the Code that deal with communication and with the requirement to provide a WSS.

OSP 4

52. The Tribunal did not find that the Property Factor had failed to comply with this paragraph. FM's statement that he was not involved with the case was understandable given that his only involvement had been to hand-deliver notices. It was not considered to be deliberately or negligently misleading or false for FM to make this statement.

53. The Tribunal did not find that the Property Factor had deliberately or negligently provided false or misleading information when stating that two NPLCs had been registered. The Tribunal accepted the evidence of Mr Gilmour that he believed that to be the case at the time of writing the letter referred to.

OSP 5

54. The Tribunal did not find that the Property Factor had failed to comply with this paragraph by stating in the tender document that they would search the Landlord Register and then failing to do so. The statement within the factoring document is not a policy. In any event, searching the Landlord Register would not have assisted in this case. The Tribunal observed that the Property Factor could, without too much difficulty, have searched other sources (such as Companies House records or the internet) to obtain a business address for the Homeowner. While this was the responsibility of the homeowner who called the meeting, the Property Factor clearly took a role in arranging the meeting, and could have taken these extra steps to ensure the meeting was properly called.

OSP 9

55. The Tribunal did not find that the Property Factor had failed to comply with this paragraph by failing to keep appropriate records. There was no evidence to substantiate this claim. The records relating to the meeting were provided to the Tribunal. The Property Factor's spreadsheets showed a record of

dealings with homeowners. The Tribunal accepted the Property Factor's evidence that there was a draft copy of the minutes and a final copy.

OSP 11

56. The Tribunal found the Property Factor had failed to comply with this paragraph of the Code. It was clearly stated in the response to the Homeowner (p63), made by email on 28 October 2024, that the Property Factor would respond in line with their complaints procedure, and they failed to do so, despite acknowledging that the Homeowner had made a formal complaint.

Further explanation

57. The Tribunal considered that, as a result of the invalid vote to appoint the Property Factor, the Property Factor was not entitled to (i) charge management fees to the Homeowner; (ii) charge late payment or legal fees to the Homeowner; or (iii) register an NPLC over the Property. The Tribunal did not consider that the Property Factor should repay the Homeowner's legal costs. It was the Homeowner's decision to take legal advice in this regard.

58. The Tribunal considered that the Homeowner is eligible to pay insurance costs from the date that they became aware of the new common insurance policy. The Title Deed requires a common insurance policy which was to the benefit of the Homeowner, and the Property Factor ought not to have to bear the cost of the insurance policy after the Homeowner became aware of the new common policy.

Observations

59. The Tribunal considered the Property Factor's failure to do due diligence in respect of the meeting might more properly have been alleged in the application as a failure to carry out property factor duties.

60. The Tribunal is not bound by any previous decision of the First-tier Tribunal.

Proposed Property Factor Enforcement Order (PFEO)

61. Having determined that the Factor has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.

62. In considering the terms of the PFEO, the Tribunal took into account the distress, frustration and inconvenience caused to the Homeowner by the Factor's failure to comply with the Code.

63. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.

64. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of Appeal

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.

Helen Forbes
Legal Member and Chairperson
4th August 2026